

# 2008 Pre-Budget Report



PBRN06

24 November 2008

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## TAX ON CHARGEABLE GAINS, STAMP DUTY AND STAMP DUTY RESERVE TAX: STOCK LENDING ARRANGEMENTS

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### Who is likely to be affected?

1. Market makers, securities dealers and financial institutions that enter into stock lending arrangements with a financial institution which subsequently becomes insolvent and unable to return securities borrowed under the arrangement.

### General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to disapply the rule that treats the non-return of borrowed securities as a disposal by the lender for capital gains purposes (capital gains tax and corporation tax on chargeable gains), provided that the lender uses collateral provided by the borrower to acquire replacement securities of the same kind in the market.
3. The legislation will also disapply the stamp duty and stamp duty reserve tax (SDRT) rules that impose an SDRT charge on the borrower under a stock lending arrangement, and the purchaser under a sale and repurchase agreement (repo), in respect of the default. And, where the lender uses collateral provided by the borrower to acquire replacement securities, the purchase will be relieved from a charge to stamp duty or SDRT.

### Operative date

4. The changes to the capital gains rules will have effect for stock lending arrangements where the borrower becomes insolvent on or after 24 November 2008. It will also be possible to elect for the changes to have effect from 1 September 2008 up to 24 November 2008.
5. The stamp duty and SDRT changes will have effect for stock lending arrangements where the borrower becomes insolvent, or to repos where the purchaser becomes insolvent, on or after 1 September 2008.

## **Current law and proposed revisions**

### Capital Gains Treatment

6. Under section 263B of the Taxation of Chargeable Gains Act 1992 (TCGA), transfers and re-transfers of securities under stock lending arrangements are disregarded for capital gains purposes. The securities to which this rule applies are, for corporates, shares, and for non-corporates, shares and debt instruments such as gilts and bonds. Where a loan goes into default and it becomes apparent that the securities will not be returned, section 263B(4) deems the lender to make a disposal of the securities at market value for capital gains purposes.
7. A stock borrower normally provides collateral that the lender can use in the event of default. Finance Bill 2009 will contain a provision subject to appropriate safeguards, that the lender will not be deemed to dispose of the securities lent in situations where the borrower has become insolvent and the lender uses the collateral provided by the borrower to buy replacement securities of the same kind. The effect will be to allow the disregard of the transfer and transfer back of the securities to continue, so that no capital gains or losses will arise to the lender.
8. Corresponding changes to the rules for securities sold under repos (in section 263A(1B) of TCGA and paragraph 6(3) of Schedule 13 to the Finance Act (FA) 2007) are under consideration.

### SDRT and Stamp Duty Treatment

9. Under sections 80C and 89AA of FA 1986, transfers of shares or securities that take place under a stock lending arrangement are exempt from stamp duty and SDRT provided that, at the end of the arrangement, securities of the same kind and amount are returned to the lender. If the securities are not returned, a charge to SDRT arises on the borrower to reflect the fact that the original loan has effectively become an outright sale. The same rules also apply to sale and repurchase arrangements.
10. Finance Bill 2009 will contain a provision to remove the SDRT charge in the situation where the default of the stock loan arrangement is attributable to the borrower becoming insolvent. The rule will also apply to sale and repurchase agreements that terminate because of the purchaser's insolvency.
11. Currently, where the lender uses part or all of the collateral provided by the borrower under a stock loan arrangement to acquire securities to replace those lent to the borrower but not returned, a stamp duty charge under Schedule 13 to FA 1999, or an SDRT charge under section 87 of FA 1986, may arise in respect of the purchase.
12. Finance Bill 2009 will contain a provision removing the stamp duty or SDRT charge where, in the situation where the borrower has become insolvent, the lender uses collateral provided by the borrower to buy the replacement securities of the same kind.

## **Further advice**

13. If you have any questions about this change, please contact Geoff Heaton on 020 7147 2577 (email: [geoff.heaton@hmrc.gsi.gov.uk](mailto:geoff.heaton@hmrc.gsi.gov.uk)) for capital gains aspects or Miles Harwood on 020 7147 2801 (email: [miles.harwood@hmrc.gsi.gov.uk](mailto:miles.harwood@hmrc.gsi.gov.uk)) for stamp duty/SDRT aspects. Information about Pre-Budget Report measures is available on the HM Revenue & Customs website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).