

## **STAMP DUTY & STAMP DUTY RESERVE TAX**

### **INTERMEDIARY AND STOCK LENDING RELIEFS – FA 2007 CHANGES**

Section 73 and Schedule 21 Finance Act 2007 made significant changes to the Stamp Duty and Stamp Duty Reserve Tax ('SDRT') intermediary and stock lending relief legislation to reflect the implementation in the United Kingdom of the Markets in Financial Instruments Directive 2004/39/EC ('MiFID'). This note describes the changes to the legislation, which take effect on 1 November 2007, and explains how the relief will operate in practice. All statutory references are to the provisions of Finance Act 1986, as amended by Finance Act 2007.

#### **Intermediary Relief**

1. **Definitions of 'intermediary' and 'options intermediary'**
  - 1.1 These remain unchanged. An intermediary is a person who carries on a bona fide business of dealing in chargeable securities (or, in the case of an options intermediary, in quoted or listed options to buy or sell chargeable securities) and who does not carry on an excluded business (see sections 80A/88A (4) & (5)). There are no changes to the definition of excluded business.
2. **Recognition as an intermediary**
  - 2.1 Up to 31 October 2007, an intermediary must be recognised as such, in accordance with arrangements approved by HMRC, by the EEA exchange, prescribed multilateral trading facility (MTF), or recognised foreign exchange of which he is a member and on which securities of the kind that are the subject of the transfer are regularly traded.
  - 2.2 From 1 November 2007, intermediary relief will be available to members of a regulated market, MTF or recognised foreign exchange, who are recognised by that market, facility or exchange in accordance with arrangements approved by HMRC (see sections 80A/88A (1) & (1A)). The requirement that the stock be regularly traded on the market, MTF or exchange remains. A stock is regularly traded for these purposes where it is admitted to trading on that market, MTF or exchange.
  - 2.3 Firms that have already been recognised as intermediaries, under the pre-1 November arrangements, by the exchanges etc. of which they are members will not need to re-apply. Firms newly applying for recognised intermediary status should approach the relevant market, MTF or exchange of which they are, or are intending to become, a member.
  - 2.4 In addition, from 1 November 2007, it will also be possible for persons to apply direct to HMRC for approval as intermediaries. Applicants must be authorised under the law of an EEA state to execute orders on behalf of clients or deal on

own account. The authorisation need not be directly under MiFID so that it will be possible, for example, for a bank or credit institution authorised under the Banking Consolidation Directive to apply. Applications for approval may also be made by credit institutions and investment firms operating through a branch in an EEA Member State who, although not authorised directly under MiFID, are authorised by the regulator in an EEA Member State under the arrangements envisaged by Recital 28 of MiFID.

- 2.5 An application for approval by HMRC as an intermediary for the purposes of intermediary relief should be made to

Birmingham Stamp Office,  
SDRT Operations,  
9<sup>th</sup> Floor,  
City Centre House,  
30 Union Street,  
Birmingham B2 4SA

and should contain a full and clear description of the applicant's business sufficient to demonstrate that it falls within the terms of sections 80A/88A(4)(a), together with a declaration that the applicant does not carry on an excluded business as defined in sections 80A/88A(5). The application must provide evidence of the applicant's authorisation by its home state regulator. HMRC may require applicants not based in the UK to supply a UK address where records of transactions may be inspected for audit purposes.

### 3. Recognition as an options intermediary

- 3.1 Up to 31 October 2007, an options intermediary must be recognised as such, in accordance with arrangements approved by HMRC, by the EEA exchange, prescribed MTF, or recognised foreign options exchange of which it is a member and on which options to buy or sell securities of the kind that is the subject of the transfer are regularly traded, and are listed by or quoted on that exchange.
- 3.2 From 1 November 2007, the relief will be available to members of a regulated market, MTF or recognised foreign options exchange who are recognised by that market, facility or options exchange in accordance with arrangements approved by HMRC (see sections 80A/88A(2) & (2A)). The requirement that options and stock be regularly traded on, and are listed by or quoted on, the market, facility or exchange remains.
- 3.3 Firms that have already been recognised as options intermediaries, under the pre-1 November arrangements, by the exchanges etc. of which they are members will not need to re-apply. Firms newly applying for recognised options intermediary status should approach the relevant market, MTF or exchange of which they are, or are intending to become, a member.
- 3.4 In addition, from 1 November 2007, it will also be possible for persons to apply direct to HMRC for approval as an options intermediary. Applicants must be

authorised under the law of an EEA state to execute orders on behalf of clients or deal on own account. The authorisation need not be directly under MiFID so that it will be possible, for example, for a bank or credit institution authorised under the Banking Consolidation Directive to apply. Applications for approval may also be made by credit institutions and investment firms operating through a branch in an EEA Member State who, although not authorised directly under MiFID, are authorised by the regulator in an EEA Member State under the arrangements envisaged by Recital 28 of MiFID.

- 3.5 An application for approval by HMRC as an options intermediary for the purposes of intermediary relief should be made to

Birmingham Stamp Office,  
SDRT Operations,  
9<sup>th</sup> Floor,  
City Centre House,  
30 Union Street,  
Birmingham B2 4SA

and should contain a full and clear description of the applicant's business sufficient to demonstrate that it falls within the terms of sections 80A/88A(4)(b), together with a declaration that the applicant does not carry on an excluded business as defined in sections 80A/88A(5). The application must evidence of the applicant's authorisation by its home state regulator. HMRC may require applicants not based in the UK to supply details of where records of transactions may be inspected in the UK for audit purposes.

- 3.6 Lists of market-recognised intermediaries and regularly traded shares will be held in the CREST system and maintained by the appropriate market. A separate list of HMRC-approved intermediaries will be maintained by Euroclear UK & Ireland. For information on CREST processing from 1 November 2007 please see the Euroclear UK & Ireland booklet "UK SDRT: reliefs for principal traders". This is available for download from [www.euroclear.co.uk](http://www.euroclear.co.uk).

#### 4. Execution venue and transaction reporting

- 4.1 Up to 31 October 2007, relief is only available if the sale or agreement to transfer the securities is 'effected on' the exchange/MTF by which the intermediary is recognised, i.e. it is subject to the rules of the exchange/MTF and is reported to the exchange/MTF in accordance with those rules. For options intermediaries, the sale or agreement must be effected on any exchange/MTF on which securities of that kind are regularly traded or, if the agreement is pursuant to the exercise of a relevant option, where options to buy and sell securities of the kind concerned are regularly traded and are listed or quoted by that exchange/MTF.

- 4.2 From 1 November 2007

- an intermediary that is a member of a regulated market on which the shares in question are regularly traded and recognised as such by that market will qualify for relief wherever the transaction takes place, i.e. on any regulated market, MTF or 'over the counter' (sections 80A/88A(1)). Transactions in shares that are regularly traded (admitted to trading on a regulated market) will no longer need to be reported to an exchange in order to qualify for relief. See examples 1-4 in Appendix 1;
- an intermediary that is not a member of a regulated market but is a member of an MTF or recognised foreign exchange, and that is recognised by that MTF/exchange as an intermediary, will qualify for relief if the transaction is in respect of shares regularly traded (admitted to trading) on the MTF/exchange and is subject to the rules of, and reported to, the MTF/exchange (see sections 80A/88A(1A) and examples 5-11 in Appendix 1);
- an HMRC-approved intermediary will qualify for relief in respect of a transfer of shares that are regularly traded on any regulated market wherever the trade is executed and there is no requirement to report the transaction to an exchange (see sections 80A/88A(1B) and example 12);
- an HMRC-approved intermediary will qualify for relief in respect of a transfer of shares that are regularly traded on an MTF or recognised foreign exchange provided that the transaction is executed on and reported to the MTF/exchange (see sections 80A/88A(1C) and example 13);
- an options intermediary, recognised as such by the regulated market, MTF or recognised foreign options exchange of which it is a member (being a market etc. on which options to buy or sell the particular stock are regularly traded and are listed by or quoted on that market etc.), will qualify for relief in respect of a transfer of stock that is regularly traded on a regulated market wherever that transaction takes place. There is no requirement to report the transaction to an exchange (see sections 80A/88A(2) and examples 14-17);
- where an options intermediary, recognised on the same basis as in the previous bullet, acquires shares that are regularly traded only on an MTF, recognised foreign exchange or recognised foreign options exchange, relief will be available if the transaction is effected on and reported to such a MTF/exchange (see sections 80A/88A(2A) and example 18);
- an HMRC-approved options intermediary who acquires regulated market shares, and options to buy and sell shares of that kind are regularly traded on, and are listed by , or quoted on, a regulated market, MTF or recognised foreign options exchange, will qualify for relief wherever the transaction is carried out. There is no requirement to report the transaction to an exchange (see sections 80A/88A(2B) and example 19);
- where an HMRC-approved options intermediary acquires shares that are not regularly traded on a regulated market, but are instead regularly traded

on an MTF, recognised foreign options exchange or recognised foreign exchange, relief will not be available unless the transaction is reported to the MTF/exchange (see sections 80A/88A (2C) and examples 21-22);

- the requirement that a transaction be reported to the exchange, MTF or market in accordance with the rules of that exchange, MTF or market will be regarded as satisfied if the transaction is reported in accordance with MiFID.

### **Repurchases and Stock Lending Relief**

- 5.1 Up to 31 October 2007, relief from stamp duty and SDRT in respect of repurchases and stock lending agreements is available where there is an arrangement for one party to the agreement to transfer stock to the other and for the other to return stock of the same kind and amount to the original transferor at the end of the arrangement. The essential conditions are that the arrangement/agreement is effected on (i.e. subject to the rules of and reported to) an EEA exchange, prescribed MTF or recognised foreign exchange, and that stock of that particular kind is regularly traded on that exchange/MTF.
- 5.2 From 1 November 2007 there are two alternative sets of conditions for relief. As far as exchange members are concerned, the conditions for relief set out at sections 80C/89AA(3) are essentially unchanged. But from 1 November 2007, the rules on where an arrangement or agreement is effected are brought into line with MiFID, so as to include any regulated market, MTF (which no longer needs to be prescribed by regulations) or recognised foreign exchange. The requirement for the stock to be regularly traded on the market/MTF/exchange is retained. See examples 23-24.
- 5.3 In addition, from 1 November 2007, relief will be available under new sections 80C/89AA(2A) where either party to the arrangement/agreement, whether or not an exchange etc. member, is authorised under the law of an EEA state to execute orders on behalf of clients and deal on own account in relation to securities of the type concerned. Here again specific authorisation under MiFID itself is not necessary. Relief under this sub-section is only available in respect of arrangements relating to stocks that are regularly traded on a regulated market, and applies irrespective of where the arrangement or agreement is effected. Under new sections 80C/89AA(2A), there is no requirement that the arrangement be effected on (i.e. subject to the rules of and reported to) any exchange etc. and may therefore be an over the counter transaction. See examples 25-26.
- 5.4 For stamp duty, the changes to stock lending relief apply to instruments executed on or after 1 November 2007. For Stamp Duty Reserve Tax, they are effective for conditional agreements to transfer chargeable securities made prior to 1 November 2007 where the condition is only satisfied on or after that date, and to all agreements made on or after 1 November 2007.

- 5.5 Lists of market members will be held in the CREST system and maintained by the appropriate market. A separate list of members authorised under the law of an EEA state will be maintained by Euroclear UK & Ireland.

**New Stamp Duty Certificates**

- 6.1 New wording for certificates to be included in instruments of transfer where intermediary relief and stock lending relief are claimed is set out in Appendix 2 .

## **APPENDIX 1**

### **Examples**

#### **A Intermediary Relief - 1 November 2007 onwards**

##### **Members of a Regulated Market**

1. LSE member, recognised by LSE as an intermediary.  
Shares admitted to trading on LSE.  
Trade executed on LSE.

##### **Relief available – sections 80A/88A(1)**

2. Member of both LSE and virt-x, recognised as intermediary by LSE only.  
Shares admitted to trading on LSE and virt-x.  
Trade executed on virt-x.

##### **Relief available – sections 80A/88A(1)**

3. LSE member, recognised by LSE as an intermediary.  
Shares admitted to trading on LSE.  
Trade executed over the counter.

##### **Relief available – sections 80A/88A(1)**

4. Member of both LSE and virt-x, recognised as intermediary by LSE only.  
Shares admitted to trading only on virt-x.  
Trade executed on virt-x.

**Relief not available under sections 80A/88A(1), but if intermediary has received HMRC approval, relief will be available under sections 80A/88A(1B).**

##### **Members of a Multilateral Trading Facility**

5. Member of AIM, recognised by AIM as an intermediary.  
Shares regularly traded on AIM .  
Trade executed on, and reported to, AIM

##### **Relief available – sections 80A/88A(1A)**

6. Member of AIM, recognised by AIM as an intermediary.  
Shares regularly traded on AIM .  
Trade executed over the counter, but not reported to AIM.

**Relief not available because the sale/agreement is not 'effected on the MTF'.**

7. Member of AIM and Chi-X, recognised as intermediary by AIM only.  
Shares regularly traded only on AIM and Chi-X.  
Trade executed on, and reported to, Chi-X.

**Relief not available under sections 80A/88A(1A), but if intermediary has received HMRC approval, relief will be available under sections 80A/88A(1C).**

8. Member of Chi-X, approved by HMRC as (equity) intermediary.  
Shares regularly traded on LSE.  
Trade executed on LSE.

**Relief available – sections 80A/88A(1B)**

9. Member of both virt-x and Chi-x, recognised as intermediary by Chi-X only.  
Shares regularly traded on both virt-x and Chi-x.  
Trade executed on virt-x.

**Relief not available under sections 80A/88A (1) because not recognised as an intermediary by virt-x. No relief either under sub-sections (1A) because the sale/agreement is not effected on an MTF. Relief will, however, be available if HMRC has approved the applicant as an intermediary under sub-sections (1B)**

#### Members of a Recognised Foreign Exchange

10. Member of a recognised foreign exchange and recognised as an intermediary by that exchange  
Shares regularly traded on LSE and the recognised foreign exchange  
Trade executed on the recognised foreign exchange

**Relief available – sections 80A/88A(1A)**

11. Member of a recognised foreign exchange and recognised as an intermediary by that exchange  
Shares regularly traded on LSE only  
Trade executed on LSE

**Relief not available under sections 80A/88A (1A) because the shares are not regularly traded on the recognised foreign exchange. Relief may be available under sub-sections (1B) provided that the intermediary can meet the test set out in subsections (6A) i.e. authorisation under the law of an EEA State.**

Non-members

12. Not a member of a regulated market, MTF or recognised foreign exchange.  
Approved by HMRC for the purposes of sections 80A/88A.  
Shares regularly traded on LSE.  
Trade executed on LSE

**Relief available under sections 80A/88A(1B)**

13. Not a member of a regulated market, MTF or recognised foreign exchange.  
Approved by HMRC for the purposes of sections 80A/88A.  
Shares regularly traded on Chi-X.  
Trade executed on and reported to Chi-X

**Relief available under sections 80A/88A(1C)**Options Intermediary Relief

Members of a regulated market, MTF, recognised foreign options exchange

14. Member of LIFFE, recognised as options intermediary by LIFFE.  
Option listed on LIFFE  
Underlying shares regularly traded on LSE  
Trade executed on LIFFE

**Relief available under sections 80A/88A(2)**

15. Member of LIFFE, recognised as options intermediary by LIFFE.  
Option listed on LIFFE.  
Underlying shares not regularly traded on a regulated market, MTF or recognised foreign exchange.  
Trade executed on LIFFE.

**Relief not available because underlying securities are not regularly traded on a regulated market (sub-sections (2)(d)), MTF, recognised foreign exchange or recognised foreign options exchange (sub-sections (2A)(d))**

16. Member of LIFFE, recognised as options intermediary by LIFFE.  
Option not listed on LIFFE  
Underlying shares regularly traded on a regulated market/MTF, recognised foreign exchange, recognised foreign options exchange.  
Trade executed over the counter

**Relief not available as option is not regularly traded on, and listed by or quoted on, the regulated market of which the options intermediary is a member (sub-sections 2(b) and 2A(b))**

Hedge of an option with purchase of underlying equity

17. Member of LIFFE and LSE, recognised as an options intermediary by LIFFE.  
Option listed on LIFFE  
Underlying shares regularly traded on LSE  
Trade executed on LSE

**Relief available under sections 80A/88A(2)**

Exercise of Option

18. Member of LIFFE, LSE and Chi-X, recognised as options intermediary by LIFFE  
Option listed on LIFFE.  
Underlying shares regularly traded on Chi-X  
Trade executed on Chi-X

**Relief available under sections 80A/88A(2A)**

19. Member of LIFFE, approved by HMRC as options intermediary  
Option listed on LIFFE.  
Underlying shares regularly traded on LSE and virt-x  
Trade executed on virt-x.

**Relief available under sections 80A/88A(2B)**

20. Not a member of a regulated market, MTF or recognised foreign options exchange, but approved by HMRC as an options intermediary.  
Option not listed on regulated market, MTF or recognised foreign options exchange.  
Underlying shares regularly traded on AIM  
Trade executed on and reported to AIM.

**No relief unless further application made to HMRC seeking approval as an (equities) intermediary under sections 80A/88A(1B)**

21. Not a member of a regulated market, MTF or recognised foreign options exchange, but approved by HMRC as an options intermediary.  
Option listed on LIFFE.  
Underlying shares regularly traded on POSIT  
Trade executed on and reported to POSIT

**Relief available under sections 80A/88A(2C)**

22. Not a member of a regulated market, MTF or recognised foreign options exchange, but approved by HMRC as an options intermediary.  
Option listed on EDX London Ltd.  
Underlying shares listed only on POSIT.  
Trade executed over the counter, but not reported to POSIT.

**No relief due, because the sale/agreement is not in respect of shares that are regularly traded on a regulated market (sections 80A/88A(2B)(c)) or effected on a relevant qualifying exchange (sections 80A/88A(2C)(c))**

**B Stock Lending Relief**

23. Arrangement between two LSE members.  
Stock regularly traded on LSE.  
Arrangement/agreement effected on LSE.

**Relief available under section 80C/89AA(3)**

24. Arrangement between a French authorised firm and a member of Chi-X.  
Stock regularly traded on Chi-X .  
Arrangement/agreement effected on Chi-X

**Relief available under section 80C/89AA(3)**

25. Arrangement between two LSE members  
Stock regularly traded on LSE  
Arrangement/agreement effected over the counter

**Relief available under section 80C/89AA(2A)**

26. Arrangement between firm authorised under Spanish law to execute orders and deal on own account and a US broker.  
Stock regularly traded on virt-x  
Arrangement/agreement effected over the counter

**Relief available under section 80C/89AA(2A)**

**APPENDIX 2****Form of certificate required when claiming relief from Stamp Duty  
under section 80A or 80C Finance Act 1986****Section 80A Finance Act 1986**

'I/We [*insert name of individual or organisation & CREST Participant Code Id*] hereby certify in accordance with section 80A Finance Act 1986 (as amended by section 73 and Schedule 21 Finance Act 2007) , that this instrument dated [*insert date*] transfers stock of a kind that is regularly traded on the [*insert name of the regulated market, multilateral trading facility or recognised foreign exchange*] to an intermediary (or his nominee) recognised by a regulated market, multilateral trading facility, recognised foreign exchange, or approved by the Commissioners for Her Majesty's Revenue and Customs.

Authorised signatory: .....  
Name in block letters: .....

**Section 80C Finance Act 1986**

'I/We [*insert name of individual or organisation & CREST Participant Code Id*] hereby certify that this transfer dated [*insert date*] is made under an arrangement within the meaning of section 80C Finance Act 1986 (as amended by section 73 and Schedule 21 Finance Act 2007) and that either:

the stock is regularly traded on the [*insert name of the regulated market, multilateral trading facility or recognised foreign exchange*] and has been reported to that [*delete those not applicable: regulated market, multilateral trading facility or exchange*] in accordance with the rules of that [*Delete those not applicable: regulated market, multilateral trading facility or exchange*],

or

the conditions for relief contained within section 80C(2A) FA 1986 have been satisfied,

and the transfer has been reported under CREST Transaction Id [*insert CREST Transaction Id reference*]

Authorised signatory: .....  
Name in block letters: .....

