



HM Revenue  
& Customs

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**Stamp Duty and Stamp Duty Reserve Tax: Shares  
transferred to depositary receipt issuers or clearance services as a  
result of the exercise of an option.**

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Technical note  
9 December 2015

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## **Introduction**

The Government will introduce legislation in the Finance Bill 2016 relating to the transfer of shares to depositary receipt issuers or clearance services as the result of the exercise of an option. Draft legislation and a consultation has been published on 9 December 2015. The new rules will apply to options which are exercised on or after Budget day 2016 and which were entered into on or after 25 November 2015.

This document provides some technical details on the circumstances and manner in which the proposed legislation will operate.

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## Chapter 1: Overview

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1. Where registered UK company shares are transferred as the result of an exercise of an option, Stamp Duty (SD) or Stamp Duty Reserve Tax (SDRT) is calculated and paid on the 'strike' or 'exercise' price (the amount paid as consideration for the shares) rather than the market value of the shares. This applies both to transfers subject to the 0.5% charge and to transfers subject to the 1.5% charge.
2. The new legislation will mean that shares transferred to a depositary receipt issuer or clearance service as a result of the exercise of an option will be charged the 1.5% higher rate of Stamp Duty or SDRT based on either their market value or the option strike price whichever is higher.
3. Draft legislation has been published on 9 December 2015 together with a technical consultation.
4. The measure will apply to options which are exercised on or after Budget day 2016 but only where they are entered into on or after 25 November 2015.

## Chapter 2: Technical background

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### **Options**

5. An equity option is a financial contract between the issuer of an option and the ultimate option holder which gives the holder the right, but not the obligation, to buy (a 'call' option) or sell (a 'put' option) a stock or share at an agreed price per share (referred to as the 'strike' price) on or before a given future specified date. In order to acquire the rights, the buyer of the option will usually have to pay the issuer of the option a fee (the premium).

### **Issue or grant of an option**

6. The granting of an option over UK shares by the option writer is exempt from SD (unless an instrument is formally executed granting the option) and SDRT.

Further guidance on the issue or grant of an option can be found here:

<http://www.hmrc.gov.uk/manuals/stsmanual/STSM113010.htm>

### **Secondary trading of an option**

7. A subsequent transfer to another person of rights to an equity option for consideration prior to the expiry of the option can be chargeable to SDRT if the terms of the option provide for a transfer of shares on exercise of the option. No SDRT charge arises on the transfer of rights to an equity option where the terms of the option provide only for cash settlement upon option exercise.

Further guidance on secondary trading of an option can be found here:

<http://www.hmrc.gov.uk/manuals/stsmanual/STSM113020.htm>

### **Exercise of an option**

8. The transfer and physical delivery of the underlying UK shares for consideration following the exercise of an option is subject to SD or SDRT at the rate of 0.5% on the strike price. The higher 1.5% charge is payable based on the strike price where, upon option exercise, the underlying shares are transferred and delivered to a depositary receipt system or operator of a clearance service (or to their appropriate nominees).

### **Depositary receipts**

9. A depositary receipt is in effect a substitute for the share itself and is issued by a bank whose business includes the issuing of receipts against the deposit of the actual shares concerned. Depositary receipts are often referred to as American Depositary Receipts (ADRs). In Europe the issuing of receipts is often known as EDRs (European Depositary receipts) and GDRs (Global Depositary Receipts) when issued outside of Europe. In essence EDRs and GDRs are similar to ADRs.

### **Clearance Services**

10. A clearance service is a system for holding securities which allows onward trading in those securities by an investor to be settled by book entry in that system. Once deposited into a clearance service, shares can remain there indefinitely, regardless of any changes in beneficial ownership. Because the shares are held by the company operating the clearance service (or its nominee) the shares can be onward traded electronically without the use of transfer instruments.

### **1.5% Stamp Duty or SDRT charge**

11. Sections 67 and 70 Finance Act 1986 provide for a higher 1.5% SD charge where securities are transferred on sale or otherwise than on sale to a nominee or agent acting for a person who issues depositary receipts for relevant securities or whose business is or includes the provision of clearance services. The charge is levied on the amount or value of the consideration for the sale, or (if the transfer is not on sale) the market value of the securities at the time the instrument is executed.

12. Sections 93 and 96 Finance Act 1986 provide for a higher 1.5% SDRT charge where securities are transferred on sale or otherwise than on sale to a depositary receipt issuer or a nominee or agent acting for a depositary receipt issuer or to a recognised clearance service or its nominee. The charge is levied on the consideration in money or money's worth paid for the shares. In all other cases, the charge is levied on the open market value of the securities at the time of the transfer.
13. A list of companies accountable for SD or SDRT at 1.5% can be found here:  
<http://www.hmrc.gov.uk/manuals/stsmanual/STSM056040.htm>

### **Changes made by this legislation**

14. The SD and SDRT rules will be amended so that shares transferred to a depositary receipt issuer (or its nominee) or clearance service (or its nominee) as a result of the exercise of an option will be charged the 1.5% higher rate of Stamp Duty or SDRT based on either their market value or the option strike price, whichever is the higher.
15. The change will apply to both call and put options where the option is exercised and the underlying shares are purchased, transferred and delivered to a depositary receipt issuer or clearance service (or to their respective nominee).
16. Shares which are transferred and delivered to a depositary receipt issuer (or its nominee) or clearance service (or its nominee) other than as a result of the exercise of an option will not be affected.
17. Where an option is exercised, but the underlying UK shares purchased are not transferred and delivered to a clearance service or depositary receipt issuer (or to their respective nominees) the transfer will be subject to a 0.5% Stamp duty or SDRT charge based on the option strike price. Therefore, there will be no change to the current rules.
18. Similarly, the new legislation will not affect options which are exercised and where the underlying purchased shares are delivered to an operator of a clearance service (or its nominee) who has an approved HMRC election in place under section 97A Finance Act 1986 to account for the alternative 0.5% stamp charge. In this situation, shares delivered to

an elected clearance service are chargeable to stamp at 0.5% based on the option strike price.