Clause 19: Stamp Duty: exemption for financial institutions in resolution

Summary

1. This clause ensures that Stamp Duty is not charged following the exercise of certain resolution powers under the special resolution regime in the Banking Act 2009 for managing failing financial institutions. The clause will be introduced in Finance Bill 2018-19 and will have effect for instruments executed on or after Royal Assent. A related change is made in respect of Stamp Duty Land Tax by clause 20.

Details of the clause

2. Subsection 1 inserts new section 85A into Finance Act 1986.

Section 85A Resolution of financial institutions

3. New subsection 85A(1) provides that Stamp Duty is not chargeable on a qualifying transfer of stock and marketable securities.

4. New subsection 85A(2) explains the meaning of a qualifying transfer. This is a transfer of stock or marketable securities which is made by or under an instrument listed in new subsection 85A(3) and is a transfer which would (apart from this new section) be chargeable to Stamp Duty at the rate under Paragraph 3, Part 1 of Schedule 13 to the Finance Act 1999 (0.5%).

5. New subsection 85A(3) contains a list of instruments made under the Banking Act 2009.

6. New subsection 85A(3)(a) refers to mandatory reduction instrument made under section 6B of the Banking Act 2009 (mandatory write-down, conversion of capital instruments).

7. New subsection 85A(3)(b) refers to a share transfer instrument or property transfer instrument made under section 12(2) of that Act (transfer to a bridge bank).

8. New subsection 85A(3)(c) refers to a property transfer instrument made under section 12ZA(3) of that Act (transfer to asset management vehicle).

9. New subsection 85A(3)(d) refers to a resolution instrument made under section 12A of that Act (bail-in).

10. New subsection 85A(3)(e) refers to a share transfer order made in accordance with section 13(2) of that Act (temporary public ownership).

11. New subsection 85A(3)(f) refers to a supplemental share transfer instrument made under section 26 of that Act, where the original instrument was made under section 12(2) of that Act.

12. New subsection 85A(3)(g) refers to a supplemental share transfer order made under section 27 of that Act.

13. New Subsection 85A(3)(h) refers to a property transfer instrument made under section 41A(2) of that Act (transfer of property subsequent to the resolution instrument).

14. New subsection 85(3)(i) provides for a supplemental property transfer instrument made under section 42(2) of that Act where the original instrument was made under section 12(2), 12ZA(3) or 41A(2) of that Act.

15. New subsection 85A(3)(j) provides for a bridge bank supplemental property transfer instrument made under section 44D(2) of that Act.

16. New subsection 85A(3)(k) provides for a property transfer order made under section 45(2) of that Act (temporary public ownership: property transfer), or

17. New subsection 85A(3)(l) provides for a supplemental resolution instrument made under section 48U(2) of that Act, or

18. New subsection 85A(3)(m) provides for an order under section 85 of that Act (temporary public ownership: building societies).

19. New subsection 85A(4) provides that references in new section 85A(3) to a provision of the Banking Act 2009 include references to that provision as applied by or under any other provision of that Act (including where it is applied with modifications or in a substituted form).

20. Subsection (2) sets out the commencement provisions. The amendment made by new section 85A has effect in relation to instruments that are either within new subsection 85A(1) or are made under an instrument within new subsection 85(1) which are executed on or after the day of Royal Assent of Finance Bill 2018-2019.

Background note

21. Under the Banking Act 2009, the Bank of England has various resolution stabilisation powers to manage a failing financial institution in an orderly way. These ensure that an institution's operations can be maintained to protect financial stability, depositors and the taxpayer. Upon exercise of certain stabilisation powers the Bank of England may arrange a transfer of the failing institution's issued share capital to a temporary holding entity appointed by the Bank of England, or a transfer of property which may include securities held by the failing institution to a temporary holding entity appointed by the Bank of England or to a temporary public body.

22. Where shares in UK companies are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or Stamp Duty Reserve Tax (SDRT) on electronic transfers. The rate is 0.5% in both cases.

23. This clause ensures that Stamp Duty at the rate of 0.5% is not charged on certain qualifying shares and property instruments or orders following exercise of a resolution stabilisation power. Where a transfer of shares is not chargeable to a 0.5% Stamp Duty charge under new section 85A, this will also cancel a charge to SDRT at

the rate of 0.5% by virtue of section 99(5) and section 99(5ZA) to Finance Act 1986.

24. This clause reduces the need for specific regulations to be made under section 74 of the Banking Act 2009 to provide an exemption from a Stamp Duty and SDRT charge on each exercise of certain resolution stabilisation powers under the Banking Act 2009. Moreover, by reducing the need for making specific regulations, this clause will strengthen and simplify the process of resolving a failing financial institution and help to uphold the 'no creditor worse off' principle by ensuring an exemption from a 0.5% Stamp Duty and SDRT charge is available at the time of resolution announcement.

25. If you have any questions about this change, or comments on the legislation, please contact Simon English on 03000 585 446 or Stephen Roberts on 03000 585 455 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).