

EXPLANATORY NOTE**NEW CLAUSE 6: STAMP DUTY: GIFTS INTER VIVOS****SUMMARY**

1. New Clause 6 removes a statutory requirement for instruments transferring stock or marketable securities by gift inter vivos to be formally adjudicated as not chargeable with stamp duty. This requirement was inadvertently triggered by the removal of the certification provisions for instruments transferring stock or marketable securities otherwise than on sale set out in clause 96.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 82 of Finance Act 1985 by removing sub-sections (5) and (9). These sub-sections together provide that an instrument that is not certified under Treasury regulations as exempt from stamp duty needs to be adjudicated by HM Revenue & Customs under section 12 of the Stamp Act 1891 in order to be deemed to be duly stamped. Removal of both of these sub-sections ensures that an instrument that, as a result of the changes introduced by clause 96, will in future not need to be certified, will not need to be adjudicated either, in order for the change of ownership to be registered.

3. Subsection (2) makes a consequential amendment to Schedule 14 to Finance Act 1999.
4. Subsection (3) provides that the clause has effect in relation to instruments executed on or after 13 March 2008, other than instruments effecting a land transaction.
5. Subsection (4) provides that, for the purposes of section 14(4) of the Stamp Act 1891 (Production of Instruments in Evidence), the law in force at the time of execution of an instrument, in respect of instruments executed on or after 13 March 2008 will be the law as amended by this clause.

BACKGROUND NOTE

6. Stamp duty applies to instruments that transfer ownership of stock or marketable securities. Such instruments must be presented to the HMRC Stamp Office in order that a duty stamp can be physically impressed upon the document before the company registrar can amend the share register to reflect the change of ownership. Where the transfer is on sale, it is chargeable with stamp duty at the rate of 0.5% of the amount or value of the consideration for the sale, rounded up to the nearest £5.
7. Certain categories of transfer otherwise than on sale could previously be certified as exempt from stamp

duty under Treasury regulations. But in the absence of such a certificate, a £5 fixed stamp duty charge was imposed. Clause 96 abolished all £5 fixed duty charges and at the same time removed the certification requirement.

8. One category of instruments affected was those transferring stock or marketable securities by gift inter vivos. In future these instruments do not need to be certified nor will the £5 fixed duty charge apply. But removal of the certification requirement triggers a need for the instruments to be presented to HM Revenue & Customs for formal adjudication which runs counter to the aim of reducing the numbers of instruments that have to be presented for stamping.
9. New Clause 6 therefore makes a technical amendment to the stamp duty legislation to remove the need for instruments gifting shares to be adjudicated, thereby ensuring that the aim of the changes is met by enabling the instruments to be sent direct to the Company Registrar without them first having to be presented to HM Revenue & Customs.