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SECURITIES TRANSACTIONS TAXES

Australia, Belgium, France, Germany, Greece, Hong Kong, Ireland, Japan, South Korea, Taiwan, and the United Kingdom

This report addresses whether securities transactions taxes are imposed in the above listed countries.

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COMPARATIVE SUMMARY
SECURITIES TRANSACTIONS TAXES IN SELECTED FOREIGN COUNTRIES

Country	Existence of a Tax	Type of Securities Taxed	Rates
Australia	(1) Tax on transfer of shares or units on the Australian Stock Exchange was abolished in every state and territory as of July 1, 2001. (2) Stamp duty in three states (New South Wales, South Australia & the Australian Capital territory). As per an Intergovernmental Agreement on Federal Financial Relations, these stamp duties need to be abolished by July 1, 2013.	--- (2) Unlisted marketable securities.	--- (2) 0.6% in South Australia, 0.6% per AU$100 or part thereof in New South Wales with a minimum of AU$10, and 0.6% per AU$100 or part thereof in the Australian Capital Territory with a minimum of AU$20.
Belgium	(1)Tax on purchase or sale concluded or executed in Belgium; (2) Tax on delivery of bearer securities; (3) Tax on issuance of securities repealed in 2004, as European Court of Justice found tax violated EU Directive 69/335, as amended by EU Directive 85/303.	(1) Belgian or foreign government stocks; (2) Belgian or foreign government stocks.	(1) €1.70 per €1,000 worth of securities with a cap of €500 per transaction; (2) 0.6%.
France	Repealed as of Jan. 1, 2008. Tax viewed as counterproductive to Paris's attractiveness as a major financial center.		

Germany	Repealed by Act of Feb. 22, 1990, to conform to the spirit of EU Directive 69/335, as amended by EU Directive 85/303, which discouraged such taxes by allowing for large-scale exemptions.		
Greece	Tax has existed since 1998. In 2008 the Ministry of Economy and Finance was considering eliminating the tax. Current tax reform, however, does not address the issue.	Greek Stock Exchange.	0.15%
Hong Kong	(1) Stamp duty assessed on both purchase and sale plus a fixed stamp duty to execute transfer instrument; (2) Stamp duty on transfer other than by way of sale.	(1) & (2) Hong Kong stock (stock the transfer of which is required to be registered in Hong Kong).	(1) 0.1% of the value of the shares bought or sold plus fixed stamp duty of HK$5; (2) 0.2% plus fixed stamp duty of HK$5.
Ireland	Stamp duty where the value of consideration is above €1,000.	Transfer of stocks or marketable securities of a company incorporated in Ireland.	1%
Japan	Repealed as of Apr. 1, 1999.		
South Korea	Tax assessed on transfer value.	Share certificates of a corporation. Stocks listed on overseas stock exchanges not subject to tax.	0.5% basic rate. Temporary rates may be set to boost the capital market. Currently temporary rate of 0.15% for stock market–listed stocks and 0.3% for the KOSDAQ-listed stocks.

Taiwan	Tax assessed on sellers of securities.	Securities traded in Taiwan with the exception of government bonds.	0.3% for shares and share certificates embodying the right to shares and 0.1% for corporate bonds and other securities.
United Kingdom	(1) Stamp duty on purchase of securities; (2) Stamp duty reserve tax for paperless transactions; (3) Stamp duty reserve tax for transfer of securities into depository receipt schemes and clearance services. Tax was struck down by the European Court of Justice as violating EU Directive 69/335, as amended by EU Directive 85/303.	(1) British shares and securities purchased through the stock market or a stock broker; (2) & (3) Shares in UK companies and shares in foreign companies with a register in the UK; interests in, rights arising out of and options to acquire shares; and units in most unit trusts.	(1) 0.5% for transfer of shares over £1,000; (2) 0.5%; (3) 1.5%.

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2010-003606

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AUSTRALIA

SECURITIES TRANSACTIONS TAX

The Australian Federal Government does not impose a tax on securities transactions. Taxes on the transfer of shares or units on the Australian Stock Exchange (or other recognized stock exchanges) have also been abolished in every state and territory, effective July 1, 2001.[1] Transfers of unlisted marketable securities (such as shares, corporate debt securities, units in a unit trust scheme, government securities, and options to acquire marketable securities) are however, subject to a transaction tax (known as a "stamp duty") in New South Wales (NSW), South Australia (SA), and the Australian Capital Territory (ACT).[2]

The tax in all three jurisdictions is 0.6% per AU$100 (approximately US$88) or part thereof, with a minimum tax of AU$10 (approximately US$8.80) per transaction in NSW and AU$20 (approximately US$17.50) per transaction in ACT.[3] Generally, in NSW and ACT the transferee is responsible for paying the tax, while in SA all parties to the transaction are responsible for paying the tax.[4]

As part of the arrangements for the introduction of a Goods and Services Tax in Australia, the states and territories agreed to abolish a number of taxes.[5] The ultimate deadline for the abolition of taxes on transfers of unlisted marketable securities under the current Intergovernmental Agreement on Federal Financial Relations is July 1, 2013.[6] NSW and SA have agreed to abolish the tax effective July 1, 2012, and ACT effective July 1, 2010.[7]

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[1] AUSTRALIAN MASTER TAX GUIDE 1731 (43rd ed. 2008). The abolition of the tax on quoted marketable securities was agreed to in the 1999 Intergovernmental Agreement on the Reform of Commonwealth-State Financial Affairs, Part 2, *available at* http://www.coag.gov.au/intergov_agreements/docs/reform_of_comm-state_financial_relations.cfm.

[2] R.L. DEUTSCH ET AL., AUSTRALIAN TAX HANDBOOK 2094 (2009) and AUSTRALIAN MASTER TAX GUIDE 1731, *supra* note 1. The stamp tax on unlisted marketable securities was abolished in Tasmania and Victoria effective July 1, 2002; in Western Australia effective Jan. 1, 2004; in Queensland effective Jan. 1, 2007, and in the Northern Territory effective July 1, 2006.

[3] R.L. DEUTSCH ET AL. 2087-2088, *supra* note 2.

[4] *Id.* 2094.

[5] AUSTRALIAN MASTER TAX GUIDE 1733, *supra* note 1.

[6] Intergovernmental Agreement on Federal Financial Relations, Schedule B, *available at* http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/IGA_FFR_ScheduleB_Taxation_Reform.pdf. The agreement became effective Jan. 1, 2009.

[7] R.L. DEUTSCH ET AL. 2099, *supra* note 3.

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2010–003606

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BELGIUM

SECURITIES TRANSACTIONS TAX

I. Belgian or Foreign Government Stocks: Sale or Purchase

The Belgian Code on Various Stamps Duties and Taxes (*Code des droits et taxes divers*) provides that "any sale or purchase or more generally, any disposal or acquisition for valuable consideration, concluded or executed in Belgium in respect of Belgian or foreign government stocks shall be subject to the tax on stock exchange transactions."[1] The tax rate is €1.70 per €1,000 worth of securities[2] with a cap of €500 per transaction.[3] Reduced rates of €0.70 per €1,000 and €0.5 per €1,000 are applicable in certain cases.

The Code further states that:[4]

> Any delivery of bearer securities in respect of Belgian or foreign government stocks shall be subject to a tax on the delivery of bearer securities.
>
> Delivery means any physical delivery of the security that takes place following:
>
> (1) (repealed)
>
> (2) acquisition for valuable consideration;
>
> (3) conversion of registered securities into bearer securities; and
>
> (4) withdrawal of securities on deposit for safe custody and administration with a lending institution, a stockbroker, an asset management company or the Caisse inter-professionnelle de dépots et de virements de titres [Interprofessional Agency for Deposit and payment of Securities].

The tax rate on the delivery of bearer securities is 0.6%.[5]

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[1] CODE DES DROITS ET TAXES DIVERS [Code on Various Stamps Duties and Taxes] art. 120 (Ed. Larcier 2008, updated as of Jan. 1, 2009) (translation by the author, N.A.).

[2] *Id*. art. 121. At the current exchange rate, €1 is worth approximately US$1.43976.

[3] *Id*. art. 124.

[4] *Id*. art. 159 (translation by the author, N.A.).

[5] *Id*. art. 160.

II. Belgian or Foreign Government Stocks: Issuance

Until recently, Belgian tax law imposed a stock exchange tax on the remittance of securities to subscribers and a tax on the physical delivery of bearer securities when bearer securities were remitted to the subscribers. On July 15, 2004, the European Court of Justice ruled in Commission v. Belgium that "the Kingdom of Belgium infringed upon Article 11 of EU Directive 69/335 as amended, which prohibits the Member States from subjecting to tax, in any form whatsoever, among other things, the issues of securities."[6] Accordingly, as confirmed in the Program Law of December 27, 2004, the tax on stock exchange transactions and the tax on the physical delivery of bearer securities, both due upon the subscription to newly issued securities, are no longer in place.[7]

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[6] European Court of Justice, Commission of the European Communities v. Kingdom of Belgium, Case C-415/02, 2004 O.J. (C228) 7.

[7] Loi-Programme du 27 Decembre 2004 [2004 Program Law], Moniteur Belge [Belgium Official Gazette] Dec. 31, 2004, at 87,006, art. 358.

2010–003606

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FRANCE

SECURITIES TRANSACTIONS TAX

France's 2008 Finance Law repealed the securities transactions tax as of January 1, 2008.[1] According to Christine Lagarde, Minister of the Economy, this tax was counterproductive to Paris' attractiveness as a major financial center. The tax, which applied to all transactions accomplished by financial intermediaries established in France, encouraged the relocation of the transactions to the benefit of financial intermediaries located abroad, as those were not liable to the tax.[2] This tax was previously assessed on both the purchase and sale of securities. The tax rate was 0.3% for transactions under €153,000.00[3] and 0.15 percent for those above this amount, with a €610.00 ceiling.[4]

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[1] Loi 2007-1822 du 24 décembre 2007 de finances pour 2008 [2008 Finance Law of Dec. 24, 2007], Journal Officiel [France's Official Gazette], J.O. Dec. 27, 2007, at 21,211.

[2] Rachida El Mokhtari, *Christine Lagarde favorable à la suppression de l' impôt de bourse*, LE FIGARO, Oct. 22, 2007, *available at* http://www.lefigaro.fr/impots/2007/10/05/05003-20071005ARTWWW90318-christine_lagarde_favorable_a_la_suppression_de_l_impot_de_bourse.php (last visited Dec.28, 2009).

[3] At the current exchange rate, €1 is worth approximately US$1.43976.

[4] Code General des Impôts [General Tax Code] art. 978 (Dalloz 2007).

2010-003606

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GERMANY

SECURITIES TRANSACTIONS TAX

Germany abolished all securities transaction taxes in 1990.[1] Prior to 1990, Germany had two types of taxes for securities transactions. Of these, the Companies Tax was imposed on companies when they issued new stock,[2] and the Exchange Turnover Tax was imposed on the acquisition of stocks and bonds, irrespective of whether they were listed or traded on an exchange.[3] The rate for the company tax was 1% of the fair market value of the shares or of the consideration given for their acquisition[4] and the rates for the securities transfers ranged from 0.1% to 0.25% of the purchase price.[5] Many types of securities were exempt.[6]

Germany abolished its securities transaction taxes after the European Economic Community had discouraged such taxes through a Directive of 1985[7] that amended the 1969 Directive Concerning Indirect Taxes on the Raising of Capital.[8] Both Directives aimed at harmonizing securities transfer taxes so that they would not unduly hamper the raising of capital with the European Economic Community. The 1985 Directive pursued this goal by allowing for large-scale exemptions from the tax. Given this state of community law, Germany found it more expedient to abolish the securities transfer taxes altogether.[9]

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[1] Finanzmarktförderungsgesetz, Feb. 22, 1990, BUNDESGESETZBLATT [BGBL., official law gazette of the Federal Republic of Germany] I at 266, art. 4 para. 1 no. 1.

[2] Kapitalverkehrsteuergesetz [KVStG] Nov. 17, 1972, BGBl. I at 2129, §§ 1-9.

[3] KVStG §§ 17-19.

[4] HENRY GUMPEL ET AL., TAXATION IN THE FEDERAL REPUBLIC OF GERMANY §§ 4/3.2d (CCH, 1987).

[5] *Id*. at 4/3.3d.

[6] KVStG §§ 20-25.

[7] Council Directive 85/303/EEC of 10 June 1985 amending Directive 69/335/EEC concerning indirect taxes on the raising of capital, 1985 OFFICIAL JOURNAL OF THE EUROPEAN ECONOMIC COMMUNITIES [O.J.] (L 156) 23.

[8] Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, 1969 O.J. (L 249) 25.

[9] ANGELA BARDENHEWER-RATING ET AL., KOMMENTAR ZUM VERTRAG ÜBER DIE EUROPÄISCHE UNION art. 93 n. 95 (Baden-Baden, 2003).

2010-003606

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GREECE

SECURITIES TRANSACTIONS TAX

Since 1998, when Greece introduced the tax on securities transactions in the Greek Stock Exchange at the rate of 0.3 %, the tax rate has fluctuated.[1] In 1999, the rate was increased to 0.6%,[2] and in 2000 the tax was reduced to 0.3%.[3]

As of January 1, 2005, the tax rate was reduced to 0.15% by Article 12 of Law 3296/2004.[4] In 2008, the former government of Greece contemplated the possibility of eliminating the tax on securities transaction altogether.[5] The current government has unveiled plans to reform the tax system; however no information could be found on the fate of the transactions tax.

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[1] Law 2579/1998, Ephemeris tes Kyverneseos tes Hellenikes Demokratias [EKED], Part A, No 31.

[2] Law 2703/1999, EKED, Part A. No. 72.

[3] Law 2874/2000, EKED, Part A, No. 286.

[4] Law 3296/2004, EKED, Part A, No. 283.

[5] *FinMin Sees New Growth*, ATHENS NEWS AGENCY, Feb. 2008, *available at* http://www.hri.org/news/greek/apeen/2008a/08-02-27_1.apeen.html (last visited Dec. 30, 2009).

2010–003606

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HONG KONG

SECURITIES TRANSACTIONS TAX

In Hong Kong, a securities transaction tax is imposed in the form of a stamp duty.[1] The tax is assessed on both the purchase and sale of Hong Kong stock[2]. The tax rate has been decreasing in recent years. The current rate to execute a contract note, in effect from September 1, 2001, is 0.1% of the consideration or the value of the shares bought and sold.[3] A stamp duty in the fixed amount of HKD5 (approximately $.65) is levied to execute an instrument of transfer.[4] In the case of transfers of Hong Kong stock other than by way of sale, a stamp duty at the rate of 0.2% may apply, plus the fixed stamp duty of HKD5.[5]

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[1] STAMP DUTY ORDINANCE, (1997) CAP. 117 § 19.

[2] "Hong Kong stock" means stock the transfer of which is required to be registered in Hong Kong (*id.* Cap. 117 § 2).

[3] *Id.* Sch. 1, Head 2.

[4] *Id.*

[5] *Id.*

2010-003606

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IRELAND

SECURITIES TRANSACTIONS TAX

Transfer of stocks or marketable securities of a company incorporated in Ireland are generally liable to a stamp duty at the rate of 1% of the consideration paid.[1] However, the Finance (No. 2) Act, 2008 introduced an exemption for transfers where the value of the consideration is €1,000 or less.[2] In these cases, the Act requires the instrument transferring stock or marketable security to state that:

> It is hereby certified that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to stocks or marketable securities exceeds €1,000.[3]

Gifts of stocks or marketable securities having a value of less than €1,000 are also exempt from Ireland's stamp duties.

Ireland's 1% stamp duty applies to stocks and marketable securities that are transferred in either a paper or electronic form.[4]

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[1] Revenue: Irish Tax and Customs, Stocks and Marketable Securities, *available at* http://www.revenue.ie/en/tax/stamp-duty/stocks-marketable-securities.html (last visited Dec. 29, 2009).

[2] Stamp Duties Consolidation Act, 1999, Act No. 31/ 1999, sched. 1, *available at* http://www.irishstatutebook.ie/1999/en/act/pub/0031/index.html (last visited Dec. 29, 2009), *as amended by* the Finance (No. 2) Act, 2008, § 87, Act. No. 25/2008 (Ir.), *available at* http://www.irishstatutebook.ie/2008/en/act/pub/0025/sec0087.html (last visited Dec. 29, 2009). At the current exchange rate, €1 is worth approximately US$1.43976.

[3] *Id*.

[4] Revenue: Irish Tax and Customs, Stocks and Marketable Securities, *supra* note 1.

2010-003606

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JAPAN

SECURITIES TRANSACTIONS TAX

Japan does not have a securities transaction tax. Japan's Securities Transaction Tax Act (Law No. 102 of 1953) was abolished on April 1, 1999.

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2010-003606

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SOUTH KOREA

SECURITIES TRANSACTIONS TAX

In South Korea, the Securities Transaction Tax (STT) Act provides that STT is imposed on the transfer of the share certificates of a corporation.[1] The transfer of stocks listed on overseas stock exchanges is not subject to STT. The tax base is the transfer value of the share certificates. In cases where the transfer value was lower than the market value, the market value will be the tax base.[2] The basic tax rate is 0.5% as provided by the Act, but temporary tax rates may be set by a decree if it is deemed necessary to boost the capital market.[3] Currently, the STT Act Enforcement Decree provides for a temporary rate of 0.15% for the stock market-listed stocks and 0.3% for the KOSDAQ-listed stocks.[4]

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[1] Securities Transaction Tax Act, Act No. 3104 (Dec. 5, 1978), *last amended by* Act. No. 9274 (Dec. 26, 2008), arts. 1 – 2. The English translation of the Act is *available in* THE STATUTES OF THE REPUBLIC OF KOREA, Vol. 9, pt. 2, 681 (1997, *last updated by* supp. 44 (Dec. 31, 2008)).

[2] *Id*. art. 7.

[3] *Id*. art. 8.

[4] Securities Transaction Tax Act Enforcement Decree, Presidential Decree No. 9236 (Dec. 30, 1978), *last amended by* Presidential Decree No. 21286 (Feb. 3, 2009), art. 5.

2010–003606

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TAIWAN

SECURITIES TRANSACTIONS TAX

According to the Securities Transaction Tax Act, as last amended on July 30, 1993, securities that are traded in Taiwan, with the exception of government bonds, are subject to this tax. The tax is assessed on the sellers of the securities. The tax rates are 0.3% for shares and share certificates embodying the right to shares, and 0.1% for corporate bonds and other securities.[1]

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[1] Zhengquan Jiaoyi Shui Tiaoli (promulgated on Sept. 12, 1946, last amended July 30, 1993), arts. 1 &2. For an English translation, *see* LAWBANK, http://db.lawbank.com.tw/Eng/FLAW/FLAWDAT01.asp?lsid=FL006079 (last visited Dec. 26, 2009).

2010–003606

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UNITED KINGDOM

SECURITIES TRANSACTIONS TAX

Executive Summary

The United Kingdom imposes a 0.5% tax on the purchase of British securities, known as Stamp Duty, or for paperless securities, Stamp Duty Reserve Tax. There is another Stamp Duty that imposed a 1.5% tax on the transfer of securities into depository receipt schemes (programs) and clearance services; however, this is currently not in application to these securities in the European Union as a result of an adverse ruling from the European Court of Justice.

I. Stamp Duty Tax

The United Kingdom taxes the purchase of British shares and securities purchased through the stock market or a stock broker. This Stamp Duty tax on securities is levied at a rate of 0.5% on the purchase price of, or the valuable consideration given for,[1] the transfer of shares over £1,000 (approximately US$1,600), rounded up to the nearest £5 (approximately US$7), which are transferred using a stock transfer form.[2]

II. Stamp Duty Reserve Tax

For paperless transactions[3] the applicable tax is the Stamp Duty Reserve Tax, levied at 0.5% on the purchase price of, or the valuable consideration given for, the transfer of "chargeable securities,"[4] rounded up to the nearest penny.[5]

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[1] This valuable consideration can include: cash, other stocks and shares, or debt. Her Majesty's Revenue and Customs, *Stamp Duty on Shares*, http://www.hmrc.gov.uk/sd/shares/sharetransfers.htm#1 (last visited Dec. 29, 2009).

[2] *Id*.

[3] *I.e.*, cases where the transfer of shares is not made "by a stock transfer form stamped with ad valorem duty." Her Majesty's Revenue and Customs, *Stamp Taxes Manual*, http://www.hmrc.gov.uk/so/manual.pdf (last visited Dec. 29, 2009).

[4] "Chargeable securities" are defined in section 99 of the Finance Act 1986, c. 41 to "include shares in UK companies and shares in foreign companies with a register in the United Kingdom, interests in, rights arising out of and options to acquire shares, and units in most unit trusts." *Id*. ¶ 1.23.

[5] Finance Act 1986, c. 41, § 87 & sched. 19. These provisions were repealed by the Finance Act 1990, § 132, sched. 19, pt. VII, but from a date to be appointed. This date was never appointed, as the Conservative government at the time had proposed the abolishment of Stamp Duty and Stamp Duty Reserve taxes for securities, but it was not implemented.

For the issue or transfer of securities into depository receipt schemes and clearance services the tax rate is 1.5%, rounded up to the nearest penny.[6] This 1.5% charge is commonly referred to as a type of "season ticket," as the subsequent transfer of any depositary receipts within these schemes are not liable to tax.[7] The 1.5% tax was introduced in 1986 because the use of depositary receipts was increasingly being used as a way to avoid paying stamp duty on the transfer of shares.[8]

The Stamp Duty Reserve Tax applies to paperless transactions of:

- shares in a UK company
- shares in a foreign company with a share register in the UK
- an option to buy shares
- rights arising from shares already owned
- an interest in shares, like an interest in the money made from selling them.[9]

The Stamp Duty and Stamp Duty Reserve Tax connected to securities generated £4.16 billion for the Inland Revenue in 2008.[10]

III. Exemptions from Stamp Duty Reserve Tax and Stamp Duty

Foreign shares are typically exempt from Stamp Duty in the UK. Shares that are gifted or received free of charge are not charged Stamp Duty Reserve Tax.[11] These include those left in a person's will; shares transferred during the course of divorce proceedings or when a person marries; or shares held in a trust that are transferred from one trustee to another.

IV. Recent Developments

In October 2009, the UK was subject to an adverse ruling from the European Court of Justice (ECJ) in the case of HSBC Holdings Plc. and Vidacos Nominees Ltd. v. Commissioners for Her Majesty's Revenue & Customs. The ECJ ruled that a Council Directive[12] prohibited the

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[6] Finance Act 1986, c. 41, §§ 93, 96.

[7] Her Majesty's Revenue and Customs, *Stamp Taxes Manual*, *supra* note 3.

[8] *Id*.

[9] Her Majesty's Revenue and Customs, *Stamp Duty Reserve Taxes*, http://www.hmrc.gov.uk/sdrt/intro/basics.htm (last visited Dec. 29, 2009); Finance Act 1986, c. 41, § 99.

[10] Harry Wallop, *Stamp duty revenue falls as investors flee stock market, HMRC figures show*, TELEGRAPH (LONDON), Jan. 31, 2009, *available at* http://www.telegraph.co.uk/finance/financetopics/financialcrisis/4400434/Stamp-duty-revenue-falls-as-investors-flee-stock-market-HMRC-figures-show.html (last visited Dec. 30, 2009).

[11] Her Majesty's Revenue and Customs, *Stamp Duty Reserve Taxes*, *supra* note 9.

[12] Council Directive 69/335/EEC of 17 July 1969, art. 11(a), *as amended*.

taxation of the issue of shares in a clearance service.[13] As a result of this judgment Her Majesty's Revenue and Customs announced that it would "not seek to apply a 1.5 per cent SDRT on the issue of shares into a clearance service within the European Union to which a 1.5 per cent charge would have previously applied."[14]

The government is concerned that the effect of this judgment is that individuals will route securities intended for the U.S. market through a clearance service within the EU to avoid stamp duty or stamp duty reserve tax, and has announced that it will bring forward legislation to prevent these securities from benefiting from exemptions that would have prevented a double charge of tax.[15]

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[13] HSBC Holdings Plc. and Vidacos Nominees Ltd. v. The Commissioners of Her Majesty's Revenue & Customs (Case C-569/07), 2009 O.J. (C 282) 6.

[14] Her Majesty's Revenue and Customs, *Stamp Duty and Stamp Duty Reserve Tax: Implications of the ECJ Decision in HSBC Holdings Plc and Vidacos Nominees Ltd V Commissioners for Her Majesty's Revenue & Customs (C560-07)*, http://www.hmrc.gov.uk/so/sdrt-ecj-ruling.htm (last visited Dec. 29, 2009).

[15] *Id*.