

Certain financial services instruments. FA 1992 s207 90.—(1) In this section—

“American depositary receipt” means an instrument—

(a) which acknowledges—

(i) that a depositary or a nominee acting on such depositary's behalf, holds stocks or marketable securities, and

(ii) that the holder of the instrument has rights in or in relation to such stocks or marketable securities including the right to receive such stocks or marketable securities from the depositary or such depositary's nominee,

and

(b) which—

(i) is dealt in on a recognised stock exchange which is situated in the United States of America or Canada, or

(ii) represents stocks or marketable securities which are so dealt in;

“commodities” means tangible assets (other than currency, securities, debts or other assets of a financial nature) which are dealt in on a recognised commodity exchange;

“debt factoring agreement” means an agreement for the sale, or a transfer on sale, of a debt or part of a debt where such sale occurs in the ordinary course of the business of the vendor or the purchaser;

“depositary” means a person who holds stocks or marketable securities in trust for or on behalf of holders of depositary receipts and who maintains a register of ownership of such depositary receipts;

“financial futures agreement” means a forward agreement which is for the time being dealt in on a recognised futures exchange or a recognised stock exchange;

“forward agreement” means—

(a) an agreement under which a party to the agreement agrees—

(i) to buy or sell commodities, currency, stocks or marketable securities, or

(ii) to pay or receive a sum of money, whether or not such money is actually paid or received,

at a specified date or within a specified or determinable period of time and pursuant to which the price or currency exchange rate concerned or, in the case of a sum of money, the interest (if any) payable, or expressed to be payable, on such sum of money is determined or determinable at the time of the execution of the agreement, or

(b) an agreement conferring the right to receive certain payments and imposing the liability to make certain payments, the receipt and making of the payments being dependent on and related to certain movements in a specified stock exchange index or specified stock exchange indices;

“option agreement” means an agreement under which a right is conferred on a party to the agreement to do, at the party's discretion, either or both of the following, that is—

(a) to buy from or sell to or buy from and sell to another party to the agreement—

(i) specified stocks, marketable securities, commodities or currency,

(ii) an agreement conferring the right to receive certain payments and imposing the liability to make certain payments, the receipt and making of the payments being dependent on and related to certain movements in a specified stock exchange index or specified stock exchange indices,

on or before a specified date at a price that is determined or determinable at the time of the execution of the agreement,

(b) to borrow money from or lend money to another party to the agreement for or within a specified period in consideration of the payment of interest by the party by whom the money is borrowed or to whom it is lent to the other party concerned at a rate that is determined or determinable at the time of the execution of the agreement;

“swap agreement” means an agreement under which the parties to the agreement exchange payments or repayments of money in respect of which such parties have obligations or rights and which are denominated in a specified currency or are subject to the payment of a specified rate of interest or relate to the price of specified commodities, stocks or marketable securities, for payments or repayments of the same kind which are denominated in another specified currency or are subject to the payment of a specified different rate of interest or relate to the price of other specified commodities, stocks or marketable securities.

(2) Stamp duty shall not be chargeable on any of the following instruments:

(a) a debt factoring agreement;

(b) a swap agreement;

(c) a forward agreement;

(d) a financial futures agreement;

(e) an option agreement;

(f) a combination of any 2 or more of the instruments specified in paragraphs (a) to (e);

(g) a transfer of, or an agreement to transfer—

(i) any instrument specified in paragraphs (a) to (e), or a combination of any 2 or more such instruments,

(ii) a lease, other than a lease to which any heading in Schedule 1 applies, or

(iii) an American depositary receipt.

(3) Subsection (2) shall not apply if the instrument, other than an instrument which is a transfer of, or an agreement to transfer, an American depositary receipt relates to—

(a) immovable property situated in the State or any right over or interest in such property, or

(b) the stocks or marketable securities of a company, other than a company which is a collective investment undertaking within the meaning of section 734 of the Taxes Consolidation Act, 1997 , which is registered in the State.

(4) Notwithstanding that, in respect of any particular provision it contains, an instrument is exempt from stamp duty under this section, if the instrument is liable to stamp duty in respect of any other provision it contains under any heading in Schedule 1, the instrument shall be chargeable with the latter stamp duty.