Consultation Response

Consultation: Stamp Taxes on Shares Modernisation

3 August 2023

Introduction

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Our Tax Law sub-committee welcomes the opportunity to consider and respond to the HM Revenue & Customs Consultation: *Stamp Taxes on Shares modernisation*.[1] The sub-committee has the following comments to put forward for consideration.

General Comments

We welcome the consultation and the modernisation of this area of tax practice. We support the aims of the proposals to streamline the processes in this area and the simplification of the tax regime for taxpayers.

As noted below, there are a number of points raised in the proposals which require consideration of the distinctive operation and requirements of Scots Law in these transactions. In particular, we would highlight the need for any proposals to accommodate the challenges raised by issuing share pledges in Scotland as a means of taking security over shares.

As a general point, we understand that HMRC is considering a number of options for what the name of the new single tax would be called. Whilst we appreciate that this is a matter of semantics, in order to avoid taxpayer confusion, our preference would be that the tax does not include the word "stamp". Although Scotland has separate regime from England and Wales in relation to property taxes – Land and Building Transaction Tax ("**LBTT**") – this is often informally referred to as "stamp duty" or "stamp tax" by taxpayers and practitioners. We understand that the same applies in the rest of the UK where SDLT (which applies in England and Northern Ireland) and the Land Transaction Tax (LTT) which applies in Wales, are also still referred to by many as "stamp tax" or "stamp duty", or even just as "stamp".

If it would be helpful to discuss any of these points in more detail or if we can be of any further assistance, we would be pleased to do so.

[1] Consultation: Stamp Taxes on Shares modernisation - GOV.UK (www.gov.uk)

Consultation Questions

Question 1: Do you agree that the government should pursue a single tax on securities instead of maintaining two separate taxes?

We agree that a single tax on securities ("**STS**") should be adopted for a number of reasons. For example, we understand that in practice there is a risk that Stamp Duty Reserve Tax (“**SDRT**”) can be overlooked due to the assumption that any Stamp Duty being paid will also account for the SDRT due (even though, strictly speaking, the timing of the taxes may not always align). Many clients and indeed practitioners may not even be aware that there is a possibility of SDRT arising at all.

In our responses to the Consultation Questions we refer to the proposed new single tax on securities as the STS.

Question 2: Do you agree that any new single tax should be self-assessed with transactions that are not processed through CREST being reported and paid via a new HMRC online portal?

We agree that the STS should be self-assessed and we support the introduction of a new HMRC online portal for the reporting of transactions and the payment of STS. A portal has the advantage of being able to provide taxpayers with a reference showing they have filed the return. If this is able then to be used to write up the transaction in the register of members without delay, this would be a positive change (see also our comments at Question 4 regarding when the UTRN should be issued).

We would stress the requirement that the portal operates in a manner which is user-friendly and is not too rigid. For example, there should be room for dealing with the more unusual cases by filing an explanation of the course adopted – e.g. the option chosen from a drop down or a blank space field where further information can be provided – as part of the return. An ability to contact the relevant team within HMRC to discuss cases which are not straightforward would also be desirable, as would an ability to request HMRC’s view on difficult cases and to deal with these by letter (outside of the portal process) if the portal does not readily deal with the transaction in question.

More generally, we would welcome the opportunity to be involved in the design or testing of the new STS online portal.

Question 3: Do you agree that having a non-statutory pre-clearance system is an appropriate approach? If not, why not?

We do not agree that having a **non-statutory** pre-clearance system is the correct approach in the case of STS reliefs – as more certainty is needed.

We note the current process for making an application for Capital Gains Tax (“**CGT”**) or transactions in securities (“**TIS**”) clearance. This has the effect of HMRC accepting that the transaction is being carried out for bona fide commercial reasons and not for the avoidance of tax. In many corporate transactions, the HMRC CGT/TIS clearance is then used to support adjudication of the Stamp Duty reliefs, as it is a confirmation that HMRC accept that the transaction is being carried out for bona fide commercial reasons and not for the avoidance of tax, which is a requirement for the Stamp Duty reliefs.

We consider that it would be helpful and result in a more streamlined process to have a **statutory** pre-clearance for STS reliefs, in particular reliefs claimed to be claimed under section 75 and 77 of the Finance Act 1986. We would propose that this could be obtained at the same time as the CGT clearance, i.e. one clearance application would be made which is then routed as necessary internally by HMRC so that the taxpayer receives a single clearance back covering both the CGT bona fide test and the expected availability of the STS relief.

Question 4: Do you agree that the need for a UTRN to be presented to registrars is an appropriate assurance and detection measure to have in place?

We have detailed below a particular challenge that arises in this area as a result of the application of the rules in the context of Scots Law.

In order to grant security over shares in Scotland it is necessary to transfer the shares to the chargee (i.e. the bank or other lender) by means of a stock transfer form. This is referred to as a “share pledge”. Stamp Duty is not payable on the transfer as there is no consideration. However, the existence of share pledges can make transactions in the shares which are the subject of the share pledge more difficult to carry out under current Stamp Duty rules. For example, where there is a Scottish share pledge over shares, and the shares are being transferred to a third party, it is normally necessary for the following steps to take place:

(i) the share pledge is taken off which would involve the bank transferring the shares back to the borrower;

(ii) the borrower transfers the shares to the new owner; and then

(iii) the share pledge is put back on, i.e. the new owner transfers the shares to the bank in security.

This can be difficult to organise given current stamp duty procedures. The situation is even more complicated if there are a series of consecutive transfers, i.e. not just a single transfer from a borrower company to a new owner. It is therefore common in Scottish transactions for declarations of trust to be used in transactions where there are share pledges in place and/or where there are consecutive steps either where Stamp Duty is paid or where a relief is claimed. Although the legal efficacy of this approach under Scots Law is debated by some practitioners, HMRC have generally accepted that the use of declarations of trust in Scottish transactions is effective.

It was hoped that the need to grant share pledges in this way over shares in Scottish companies would be removed by the Moveable Transactions (Scotland) Act 2023, which makes changes to the way security is granted over corporeal moveables (analogous to chattels under the laws of England and Wales). Unfortunately, security over shares is excluded from the Moveable Transactions (Scotland) Act 2023, on the basis that matters involving shares in companies is a reserved issue, and so cannot be dealt with in legislation passed by the Scottish Parliament. So it currently remains the case that in order to grant security over the shares in Scotland, it is necessary to transfer the shares to the lender in security. We note that an order under section 104 of the Scotland Act 1998 has now been sought which effectively involves seeking the agreement of the UK Government to include share pledges in the Moveable Transactions (Scotland) Act 2023, so the position as discussed above has the potential for change. We understand the request has been relatively positively received by the UK Government.

The Consultation document currently proposes that the Unique Taxpayer Reference Number ("**UTRN**") would not be issued, and therefore the register of members could not be written up, until any Stamp Duty had been paid. If this feature is retained, it will make it very difficult to carry out transactions in Scotland where the shares are subject to Scottish share pledges. We believe it is important that any new Stamp Duty regime will accommodate the carrying out of transactions in Scotland where share pledges are in place. Therefore, we consider that it is necessary that the UTRN is issued on the filing/submission of the return through the portal (i.e. prior to the payment of any Stamp Duty).

Question 5: Do you agree with the proposed approach in respect of the liable and accountable persons? If not, why not and what would you suggest instead?

We agree with the approach proposed in the Consultation paper.

Question 6: Do you agree that a single charging point as outlined can work and is the correct approach in any new single tax? If you do not think it is the best approach, what would you propose and why?

We note that the proposals provide for a single charging point at the relevant date for STS. The relevant date is either the point of agreement, or where there are conditions on the agreement the relevant date is when those conditions are fulfilled, with an overall two-year time limit. We consider that the proposed approach raises practical difficulties in many commercial transactions. Our preference would be that the chargeable point is the completion of the transaction, and query what the driver is for the change to a different date. We have set out some of these challenges below by way of illustration.

Firstly, the ability of parties to a transaction to pay the relevant tax at the charging point will often depend on the financing structure used for the transaction. The proposals raise the risk that as the charging point will crystalise before completion of the transaction, this will mean that parties will not yet have access to the funding for the transaction (which would include not having access to the funds required to meet the STS ability).

Secondly, transactions can also be subject to delays between the point of agreement (exchange of contracts) and formal completion or becoming unconditional. Factors such as the timing of funding being made available, regulatory approval, and the availability of authorised signatories can all delay transaction timescales. The consideration can also change during this process for a number of reasons, which practitioners in this area regularly encounter which means that any STS paid when an agreement is entered into would have to be "trued up" to reflect changes in the consideration which are agreed between the parties in the period between the date of the agreement and the date of completion.

Thirdly, the distinction between conditional and unconditional agreements can be difficult to clearly determine, particularly in the context of complex corporate transactions. It is often a point of contention between legal advisors for parties in such transaction whether a provision is a "condition precedent" or not. This, for example, arises in the context of the CGT treatment of transactions as the date of disposal for CGT purposes is the date of an unconditional contract, or where a contract is conditional, the date on which the conditions are satisfied.

We would recommend that the current regime of stamp duty being paid on completion rather than on the contract date should be retained for the STS.

As a further observation on the application of the proposals for transactions governed by Scots Law, the concept of beneficial (or equitable) ownership is not recognised under Scots Law. As such, where in England and Wales there may be transactions that have not yet completed (but contracts have exchanged), the purchaser may have an equitable interest in the shares. This can afford the buyer certain protections in the event of an insolvency event of the seller. However, such protections would not exist under Scots Law as the buyer would instead only have a personal (contractual) right against the seller (and not any beneficial or equitable interest in the shares themselves). As such, we do not anticipate that there would be any incentive or commercial rationale in transactions involving the shares in Scottish companies to delay the completion of a transaction – and in turn to delay the tax payment due for Scottish transactions. In other words, it is less likely in Scots Law that a purchaser would be content to rest on contract and not complete taking ownership of the shares in order to avoid paying the STS.

However, we also consider it is unlikely in any case (Scots Law or not) that a party would not wish to complete the acquisition of shares and have the title to the shares transferred by execution of a stock transfer form. Of course transactions involving "resting on contract" were very common in relation to the purchase of land before the introduction of SDLT (although far more so in England than in Scotland). Accordingly, we can see the rationale in SDLT for a charging point that does not depend on completion (i.e. in SDLT the charging point can be substantial performance of the contract), but we do not see the need for it in the STS.

More generally, any changes to the proposed charging point will need to be supported by detailed guidance and awareness raising to ensure that taxpayers are well informed, as taxpayers and agents are very accustomed to paying Stamp Duty at completion and not when an agreement is entered into.

Question 7: Do you agree that a single accountable date of 14 days from the charging point would work and is the correct approach? If not, what would you do differently and why?

We do not think that this is the correct approach. Further to our comments on Question 6, we consider that the proposed charging point raises challenges for transactions and practitioners. However, should HMRC and the Government be minded to retain the current proposals, we would suggest that a longer period than the proposed 14 days would be more appropriate, e.g. a period of three months. This allows for greater flexibility given the number of variables involved in complex deals that can lead to delays in completion of deals.

Question 8: Do you agree that the current SDRT geographical scope rules should apply to any new single tax on security transactions? If not, what would you suggest and why?

We agree that the current SDRT geographical scope rules should apply to the STS. In particular, shares in companies incorporated outside the UK should be outside the scope of the STS as should shares which are held on an overseas branch register.

Question 9: Do you agree it is not necessary to define where an electronic share register is kept under any new single tax on securities? If not, why not?

We believe that the scope of the STS should be based on where companies are incorporated and there should be no charge on the transfer of shares in non-UK incorporated companies. Therefore where any electronic share register is kept would be irrelevant. In any event, it is difficult to establish where an electronic share register is "kept".

If there were to be any rules about where electronic share registers are kept, which we do not support, any such provisions should be capable of addressing proposed new developments in ways in which dematerialised share "registers" are maintained.

Question 10: Do you agree that the proposed scope is appropriate, captures what you would expect it to capture and excludes what you would expect it to exclude?

Subject to the point raised below, we support the idea of a narrower scope for the STS which would include only non-governmental equity and stocks and bonds with equity like features. We believe this would be a welcome simplification as compared to the current very complex position where loans are included but then excluded if they do not have equity like features.

Some of our members have raised concerns that where there is a transfer of a large portfolio of loans, these would currently fall within the exemption for non-marketable debentures, and so it would not be necessary for the characteristics of all of the loans to be examined to determine whether they have equity like characteristics such that stamp duty could apply. Similarly debt issued by small and medium sized enterprises would currently be exempt because of the non-marketable debentures exemption. If a carve out for non-marketable debentures is not included in the STS legislation, there would be a requirement to consider the equity characteristics of all loans to determine whether they were within scope, rather than relying on the non-marketable securities exemption to take them out of scope.

We would therefore suggest that an exemption from STS should be included for non-marketable debentures. We would also suggest that the definition of non-marketable for STS purposes could be simplified as compared to the current position, so that it was only necessary to consider whether such securities were listed on the Main Market of the London Stock Exchange. At present, to benefit from the non-marketable debentures exemption, it is necessary to consider all of the UK exchanges on which the debenture could be listed.

Question 11: Is there anything that is currently captured by Stamp Duty and SDRT that would not be captured through this approach to scope?

We believe that the proposed scope of the STS does include everything currently captured by Stamp Duty and SDRT.

Question 12: Do you agree that the government should explore a different approach to the loan capital exemption? Do you foresee any issues with such an approach?

As set out in our answer to Question 10 above, we believe that an exemption should be included for non-marketable debentures.

Question 13: Do you agree that the granting of security interests is currently out of scope?

We agree with this.

Question 14: Do you think that the government should specify that the granting of security interests is out of scope in legislation and that it wouldn't open up any route for avoidance?

The new legislation should specify that the granting of security interests is out of scope. We do not believe this would open up routes for avoidance, since the arrangements for the granting of security is generally scrutinised very closely by lenders and their advisers. Generally in commercial transactions the lenders will be represented by a separate firm of lawyers, and ensuring that all necessary steps have been/will be taken to perfect the granting of securities is of paramount importance to lenders and their advisers. Often it is the requirements of lenders which dictate that share pledges or other securities are only taken off for a very short time period.

Question 15: If we chose not to specify that the granting of security interests is out of scope, can you share how much time you would expect to spend establishing and showing the correct tax position for lenders and how often you would be likely to do this.

If the new legislation does not specify that the granting of security interests is out of scope, our members would have to explain the tax position to lenders in every commercial transaction where lending was involved. Because of the way in which security is currently granted over shares in Scotland (see our answer to Question 4 above), establishing the correct tax position where shares in Scottish companies are involved can be even more problematic than it is in relation to transactions carried out involving shares in companies registered in England.

This is compounded by the fact that to carry out transactions where Scottish share pledges are involved, and/or where there are a series of consecutive transfers, most legal firms in Scotland rely on the use of declarations of trust, which have generally been accepted by HMRC. However it could be said that using declarations of trust to complete transfers of shares in Scotland is a pragmatic approach which is not supported by the underlying legal position, but since HMRC accept the practice, it can be used here. Some legal firms in Scotland, however, take the view that declarations of trust are not actually effective in Scotland, because of the different legal position in relation to legal and beneficial interest here, which means that there can be very difficult discussions between advisors on what practical steps should be taken to complete transactions.

Where clients from overseas jurisdictions are investing into the UK, it can be extremely difficult to explain why the current Stamp Duty regime just does not seem to take into account the way in which commercial transactions are structured. A lot of time has to be spent explaining to overseas investors how Stamp Duty works, and the fact that it is based on the stamping of documents, particularly now that most transactions can be completed electronically.

We urge HMRC to ensure that the new legislation makes it clear that the granting of security interests is out of scope and that the practical arrangements relating to the new tax do take into account the different legal position in Scotland. We would be happy to contribute to further discussions on these Scottish points if that would be helpful.

Question 16: Do you agree that non-UK fund equivalents should have an equal statutory footing to UK funds? What are the benefits and disadvantages of doing so in your view?

We agree that the legislation should seek to put non-UK fund equivalents on an equal statutory footing to UK funds.

We recognise that dealing with all possible overseas equivalents in legislation could be extremely challenging. We would favour an "enabling" approach in legislation, perhaps with a list of funds which had been accepted by HMRC/HMT as being equivalent being added by statutory instrument as and when they had been reviewed and considered. Including the tax treatment of overseas funds in legislation would give greater certainty to taxpayers and their agents.

Question 17: Do you have any alternative suggestions for how the government might deal with in specie contributions and redemptions, bearing in mind the need to guard against significant losses to the Exchequer?

It would be helpful if the treatment of pro rata in-specie contributions to unit trusts and OIECs could be dealt with in the new legislation. At present it is necessary to obtain advance clearance from HMRC in relation to in-specie contributions to unit trusts and OIECs. We note that Finance Act 1986 section 90(1)(b) applies to distributions from a unit trust or OEIC to a unit holder. We recommend that the new legislation includes an exemption for the pro rata in-specie transfer of assets both to and from a unit trust or OIEC.

We also consider that greater flexibility is required in relation to the meaning of pro rata in-specie contributions, so that instead of a strict pro rata contribution being required, the legislation made it clear that the new tax would not apply where the contribution was "pro rata" "as nearly as practicable" taking into account other commercial requirements of the fund managers and the operation of the fund (see the arguments advanced for the taxpayer in *Henderson Investment Funds Limited v HMRC* ([2017] UKUT 0225 (TCC)).

Question 18: Do you agree this is the correct approach to mergers? If not, why not and what would you propose? If you are proposing an alternative what are the benefits and disadvantages of that option?

We agree that the new legislation should make it clear the new tax would apply to mergers to the extent that there was consideration for the transfer of shares or securities. To the extent that the treatment of certain types or mergers has been established through case law or HMRC practice, this should be reflected in the new legislation.

Question 19: Do you agree that this is the correct way to deal with call options and warrants?

We agree with the proposed treatment of call options and warrants, i.e. that the grant of call options and warrants would not be subject to the STS, but the transfer of them would be chargeable to STS.

Question 20: Do you think that this treatment of options and warrants may open up any routes to avoidance?

The difference in treatment of grants and warrants as compared to the transfer of them could lead to avoidance activity, and we note the various SDLT mitigation schemes did involve the use of options. We recommend that the SDLT/LBTT and LTT treatment of options is closely scrutinised to ensure that the new STS legislation addresses any potential for the introduction of STS avoidance schemes.

Question 21: If you do not think the government's proposal is the correct way to deal with options and warrants, what would you do differently and why?

See above.

Question 22: Is there any reason why you think the government should not retain the existing treatment of land transactions that are currently in the scope of Stamp Duty rather than SDLT?

We would highlight the risk of taxpayers and advisers failing to appreciate that the STS, which would be introduced presumably in 2024, still applies to transfers of interests in land before the relevant deadlines in 2003 (over 20 years ago). In Scotland the potential for taxpayers and agents failing to appreciate this is even greater, as not only has stamp duty been replaced by SDLT in 2003, SDLT has also been replaced by LBTT.

Whilst we appreciate that there are many transactions which were carried out before 2003 where matters are still "resting on contract", we do recommend that the position of including within legislation relating to transfers of interests in securities provisions which relate to transfers of interests in land should not be perpetuated in the new STS legislation.

We note that in relation to legislation of the Scottish Parliament, there is a requirement that the name of an act should clearly reflect what the act refers to. So taxpayers and agents in Scotland are more likely to assume that an act the name of which refers to a tax on securities would only deal with a tax on securities, and would not also include a tax on transfers of land. We believe that the UK Government's simplification agenda would be best be served by not including provisions relating to the transfer of interests in land in the new STS legislation. If a way could be found of including any necessary provisions in the SDLT/LBTT and LTT legislation this would be very welcome.

Our members report that in many transactions where arrangements were put in place for "resting on contract" it is generally possible to unwind such arrangements without crystallising a charge to stamp duty.

Nonetheless, our preference would be that this aspect of taxation would instead be dealt with under the SDLT and LBTT regime.

Question 23: Do you agree that taking partnership interests out of scope and dealing with any potential avoidance issues through anti avoidance legislation is the correct approach? If not, what approach do you think we should take, why, and how would that approach deal with any potential abuse?

We agree with the proposed approach of taking the transfer of partnership interests out of scope and dealing with avoidance issues through anti avoidance legislation such as a TAAR.

Question 24: Do you agree with this view on the payment of pension benefits and agree with the proposed approach?

We agree with the proposal to include a relief or exemption in the STS legislation to ensure that the obligation to pay pensions benefits does not become liable to an STS charge.

Question 25: Do you think there is any potential for avoidance with the government's proposed approach to the payment of pension benefits?

We do not believe there is a risk of avoidance arrangements involving pension benefits being developed.

Question 26: If you don't agree with the government's view on the payment of pension benefits and the proposed approach please explain why?

See above.

Question 27: Do you agree that life insurance policies would fall into scope and do you agree with the proposed approach? If not, why not?

We agree with the proposed approach.

Question 28: Do you support the proposal to use money or money's worth for consideration under any single STS tax?

We agree with the proposal to use money or money's worth as the definition for consideration for STS purposes.

Question 29: Are there any further instances that are not captured where transactions would be brought into scope where adding a charge would be disruptive that you think we should consider? When telling us of further instances, please illustrate the impact of adding a charge and the extent of the disruption.

No further comments.

Question 30: Are there any further instances where transactions would be brought into scope by using the SDRT definition of consideration that wouldn't naturally fit into the system as outlined that government needs to consider?

No further comments.

Question 31: Is there anything proposed in this section on consideration that could open up a route for avoidance?

We do not believe that there is a risk of avoidance here.

Question 32: Do you agree with the government's proposals for dealing with uncertain and unascertainable consideration?

We support the proposals for dealing with uncertain and unascertainable consideration – the current stamp duty regime involving the contingency principle is both complex and open to abuse.

We agree with the approach of following the SDLT treatment of contingent, uncertain and unascertainable consideration with the following provisos:-

1. A two year time limit for deferment is not long enough – in many transactions the period of time before consideration is known is much longer than two years. In LBTT there is no time limit on the period of time for which payment of LBTT on contingent or uncertain consideration can be deferred.

2. The interaction between contingent and uncertain consideration should be made clearer than it is in SDLT. For example the general understanding amongst practitioners and, we believe, HMRC is that "uncertainty" trumps "contingency", i.e. the rules relating to contingent consideration are to be followed where the consideration is purely contingent on future events, in which case the whole of the consideration has to be included in the SDLT return (subject to any deferment application). Where the consideration is both contingent on future events and also uncertain, the rules for uncertain consideration can be followed, and an estimate of the consideration may be included in the SDLT return. The SDLT legislation itself does not make this clear, however.

3. The STS should include provisions for making a deferment arrangements, and we recommend that there should be a form which taxpayers or their agents can use to seek a deferment of LBTT (see the link to the Revenue Scotland Deferral Application Form on LBTT4016 - Application to defer payment of LBTT)

4. In designing any Deferral Application form care should be taken to ensure that the information requested reflects the arrangements that are commonly found in transactions where the consideration for the sale of shares is subject to an earn out or is otherwise deferred to ensure that the application form is fit for purpose and is easy to complete.

Question 33: If not, how do you think we should deal with uncertain and unascertainable consideration for any single tax on securities?

No further comments.

Question 34: Do you agree with the reasoning behind the proposal to remove the de minimis? If not, what justification can you give for retaining it?

Whilst we welcome the aim of streamlining the process for notifying exempt transactions which are de minimis, we note that the current process (of completing the certificate on the back of the Stock Transfer Form) already works well and is straightforward for practitioners. We would highlight our concerns as to whether the process proposed in the Consultation paper will also work as efficiently in practice – in particular in lower value/exempt transactions where legal advisers may not be involved and the company secretary may be dealing with Stock Transfer forms without external (or indeed internal) legal advice.

We would also welcome the ability to file a “bulk return” covering multiple transactions in shares in the same company if they are all exempt/low value, including where they have been entered into on different dates. This may be relevant, for example, where such transactions come to light at a later date (such as on the company being sold) and there is a desire to regularise the historic position/ transactions before sale. An ability to submit an Excel document including the details of the different buyers/sellers/transaction dates would also be useful. Alternatively, in these scenarios a clear statement that HMRC did not expect this and penalties were not relevant if there was no/low STS owing would be useful.

Similarly we agree that there should be the facility to submit bulk returns involving the transfer of shares by multiple transferors on a single date in connection with the sale of the shares in a company. Care should be taken in the design of the new STS portal to ensure that the portal can accommodate the number of shareholders that might be involved in some sale transactions.

Question 35: Is there anything that you do not think has been sufficiently considered in relation to the geographical application of intermediary relief?

No further comments.

Question 36: Do you think that the government should explore whether there is an easier way for intermediaries to apply or not apply intermediary relief to particular transactions?

No further comments.

Question 37: Is there any reason why you think the government should change the geographical application of Stock lending and repurchase relief that it may not be aware of?

No further comments.

Question 38: Do you agree that this is the correct approach to debentures? If not, why not and what would you do differently?

See our comments in response to Question 10.

Question 39: Do you agree that this is the correct approach to share buybacks? If not, why not and what would you do differently?

We believe there may be a case for considering a different approach since the fact that there is currently a charge for the buyback of shares in a company incorporated in the UK, whereas there would not be a charge for a buyback of shares in a non-UK incorporated company, can be taken into account in the decision as to where to incorporate a vehicle which is to be listed. It is not desirable that the use of UK as a jurisdiction for listing companies should be disadvantaged by the differing treatment of share buybacks.

Question 40: If outlining an alternative approach to share buybacks, what are the benefits and disadvantages of that approach?

We believe there should be no charge to STS on the buyback of shares in a listed company, so as to promote the use of the UK companies as listing vehicles.

Question 41: Do you agree that we should include group relief in any new single tax?

We strongly agree.

Question 42: Do you agree that the government should include reconstruction and acquisition reliefs in any new single tax?

We strongly agree.

Question 43: Is there anything you would like to highlight with regards to making the legislation for reconstruction and acquisition reliefs clearer?

There are currently differences between the conditions for the Stamp Duty reconstruction and acquisition reliefs as compared with the Capital Gains tax (CGT) provisions relating to reconstructions and reorganisations such as capital reduction demergers and share for share exchanges.

We believe the provisions in STS should be aligned with the CGT rules, so that where there is a favourable CGT treatment there should be equivalent STS reliefs. Taxpayers find it incredibly confusing that a transaction which can be carried out without CGT charges (subject to HMRC clearances) such as a partition demerger will attract a charge to stamp duty. This mismatch has often led to innovative workarounds being put in place to try and mitigate these stamp duty costs. It would make far more sense if transactions which the Government accepted should be able to be carried out without any CGT charges should also attract exemptions from STS.

We do not consider that it would be appropriate to carry forward these anomalies, many of which arise from the previous history of stamp duty, into the new STS. Instead the STS should cater for way in which transactions are structured and carried out in the modern world, and those transactions which the Government believe should not be subject to CGT should have equivalent exemptions from STS.

Question 44: Do you agree that the growth market exemption should be retained under any new single tax? If not, why not?

We do not have any comments in response to this question.

Question 45: In light of the consideration of reliefs and exemptions and their continued functionality, are there any market developments that should be considered?

The continuing development of new funds vehicles should be taken into account in the STS and relevant exemption provisions should be future proofed where possible. It should also be accepted that where new funds vehicles are being proposed and developed, the STS implications should be considered when consultation is taking place on the new structures. Reliefs and exemptions in this area are by definition complex, but it would be helpful if the Government would bear in mind that the future success of the UK as a domicile for private equity, infrastructure and real estate funds depends to a large extent on ease of operation. This means that STS reliefs and exemptions need to be carefully crafted and also amended swiftly where it becomes clear that the relief or exemption as originally introduced is not achieving its objective. The UK is more likely to become a destination of choice for fund managers if the Government can be nimble in making changes to tax and STS legislation which are required to facilitate the development of different types of fund structures.

Question 46: Do you agree that the compliance regime as outlined above is appropriate and proportionate for any new single tax on shares?

No further comments.

Question 47: If not, what do you think should be different, how would you change the proposed compliance regime and why?

No further comments.

Question 48: Do you agree that these provisions are now redundant and no longer needed? If not, can you explain why not including them in legislation for any new single tax would be an issue?

No further comments.

Question 49: Are there any other existing provisions that are now redundant and no longer needed?

No further comments.

Question 50: Are there any other existing provisions that do not work in practice?

We note that the Retained EU Law (Revocation & Reform) Bill has now received Royal Assent.

We understand that unless the Government takes action, this will effectively reinstate the 1.5% stamp duty/SDRT charge on deposits of securities into overseas clearance services (who have not made an election under 97A Finance Act 1986) or depositary receipt issuers as from the end of this year (2023).

We would refer you to a letter from the Stamp Taxes Practitioners Group to HMRC (Morris Graham Deputy Director/Head of Stamp Taxes) dated 30 June 2023 which sets out the various issues.

We would point out that the new STS will need to reflect whatever policy position is adopted by HMRC in relation to the above issues.

For further information, please contact:
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