

TAMD 2023—Consultation: Stamp taxes on shares

A consultation on proposals to modernise the stamp taxes on shares framework, including the introduction of a single self-assessed stamp tax on securities, was published on Tax Administration and Maintenance Day (TAMD) on 27 April 2023. Michael Quinlan (Barrister at Temple Tax Chambers and a member of the Lexis+® UK Consulting Editorial Board) considers the detail of the proposed changes.

What are the key changes in the government's latest proposals to reform stamp duty and stamp duty reserve tax into a single self-assessed stamp tax?

Essentially, stamp duty would disappear and the new tax would retain most of the features of SDRT, supplemented by exemptions and limitations in scope to mirror the existing tax base for stamp taxes on securities (STS). SDRT functionality for transactions in CREST would be the same. For transactions outside CREST (and possibly for the corporate reliefs to apply in CREST), the purchaser would have to access a new portal to pay the tax or claim a relief.

The principal concerns are perhaps:

- the removal of adjudication—so useful with due diligence—without a statutory clearance procedure (see question 3 of the consultation document)
- the efficacy of exclusions and exemptions designed to avoid collateral damage because the formulation of chargeable consideration for the new tax would be that for SDRT (money or money's worth, rather than cash, stock and debt)
- what appears to be a two year limit to pay tax on conditional contracts (in line with the SDLT contingency rules to be adopted but odd in this context: more of which below) (see questions 10-12, 28, 32-33 of the consultation document), and
- the practical difficulties of a short 14-day accountability date from the agreement; and some ambiguity in the narrative with in-kind contributions and distributions to funds and mergers (see questions 7, 16-18 of the consultation document)

New exclusions or exemptions are proposed for:

- security interests (see questions 13–15 of the consultation document)
- partnership interests (see question 23 of the consultation document)
- the payment of pension benefits and life insurance policies (questions 29–31 seek views on whether they are adequate and complete), and

- exempt loan capital and non-marketable debentures (which would be taken out of scope, for which see questions 10-12 and 38)

The tax point would be that for SDRT in CREST, the accountable date being universally 14 days from the date of an unconditional agreement to transfer—the 7th day of the following month for transfers outside CREST would go, as would the accountability rules outside CREST where liability will simply be with the purchaser who would be obliged to use the new online portal (see questions 5-7 of the consultation document).

For conditional agreements, the tax point would (as with SDRT now) be when the condition is fulfilled, but alarmingly with mention of 'an overall two-year time limit' (see question 6 of the consultation document), begging the questions why is that necessary when it never has been for SDRT. Why should tax be payable if no transfer has resulted and why is no mention made of a mechanism (unfairly absent from SDRT but applicable to SDLT (FA 2003, s44(9)) to cancel the tax if an agreement is rescinded or frustrated before transfer? Hopefully this is a slip and the new proposal for the two-year limit would be confined to the contingency rules on settlement.

The obligation of registrars to monitor payment would remain (see questions 2-4 of the consultation document). The intention is that the online portal will enable the processing of the tax to be much faster, with the ability to input the transaction, claim relief or pay the tax and for a Unique Transaction Reference Number (UTRN) to be issued immediately, permitting same day registration of stock transfers. It is not clear whether exemptions for transaction in CREST must be claimed through the portal.

The penalty and compliance regime would be that currently for SDRT (see questions 46 and 47 of the consultation document). Redundant provisions will not be incorporated (eg, transfers in contemplation of sale) with views sought on whether there are any others that have no work to do (see questions 48-50 of the consultation document).

It is proposed that the transitional rules for stamp duty on land transactions be retained (see question 22 of the consultation document).

What do you think of the proposal to reframe the scope of the new stamp tax?

Notwithstanding that the initial proposal appears to be to adopt the SDRT rules regarding geographical scope (basically securities issued or registered in the UK) (see question 8 of the consultation document), immediately after that it is proposed that the scope would be confined to non-government equities and loan capital with equity like features issued by UK companies (see questions 10-12 of the consultation document) obviating concerns about the location of electronic registers (see questions 9 and 10 of the consultation document).

Putting what is now exempt loan capital out of scope seems sensible: the devil will be in the drafting given the obscurity of the present definition of loan capital and certain aspects of the exemption.

What do you think of the proposals relating to other reliefs and exemptions from stamp duty and SDRT?

The proposal not to incorporate the £1,000 de minimis threshold for stamp duty (see question 34 of the consultation document) with the new tax will be an additional burden for public company registrars but I would imagine that their electronic processes will adapt. Small shareholders may have to access the portal to pay pennies.

Group and reconstruction reliefs for corporates would be adopted and clarified to the extent possible (see questions 41-45 of the consultation document). The growth markets exemption would be retained.

The reliefs for intermediaries and stock lending would remain unchanged (see questions 35-37 of the consultation document). HMRC has declined to extend intermediary and stock lending relief to financial firms outside the UK, EU and Gibraltar (again, see questions 35-37), which is hardly surprising given the problems they may already face monitoring the conditions for relief within the far reaches of the EU. The call for suggestions on how intermediary relief might be made easier to apply or not to apply to particular transactions also surprised me as the CREST process is quite simple now and, presumably, there will be coding in the new portal for it.

What are the other proposals relating to consideration?

It is proposed to adopt the SDLT rules for contingent, uncertain or unascertained consideration, but with a new 2-year deferment limit, at which point the tax will have to be paid on the basis that the contingency will occur or a reasonable estimate of the consideration that remains uncertain. An additional notification and payment would then be required when matters become certain or tax reclaimed if overpaid (see questions 32 and 33 of the consultation document). Estimates can be problematic.

Given that stamp tax reform has been discussed and abandoned before, what is your view on the likelihood that it will go ahead this time?

I think reform has been deferred and delayed, rather than abandoned. The preliminaries include the statement: 'The scope of this consultation does not include the 1.5% charge. If modernisation is taken forward then the 1.5% charge will be dealt with separately.' Personally, I was disappointed about the former, an easy win you would think as the specific

stamp duty and SDRT rules are effectively the same. This may be because the policy around whether to disapply the EU Capital Duty Directive and restate the 1.5% charges on the issue of securities is in a state of flux.

As to 'if modernisation is taken forward...', this may simply be because HMRC cannot commit to legislative change without ministerial approval. My sense remains that this will happen, albeit that it is some years away.

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