Autumn Statement 2023—Tax analysis

Expert reaction from Michael Quinlan, Temple Tax Chambers, and member of the LexisNexis Tax Consulting Editorial Board

Regarding stamp duty and SDRT: widening access to the growth market exemption:

"*From 1 January 2024, access to the growth market exemption in Finance Act 1986, s 99(4B), which excludes securities admitted to trading on such a market but not listed from the definition of chargeable securities for the purposes of SDRT, is to be broadened to include MTFs and lift the market capital condition. The measure allows those FCA regulated MTFs, run by investment firms, that are approved as recognised growth markets by HMRC to access the growth market exemption without needing to be recognised stock exchanges as presently required by FA 1986, s 99A(5). This measure also broadens the market capitalisation condition in FA 1986, s 99A(5)(a) by increasing the level up to which a majority of companies listed on the market or facility can be capitalised from £170m to £450m. The 20% growth condition in s 99A(5)(b) is unaffected.*

The policy objective is said to be to seek to ensure fairness in the application of the exemption, increase competition in the market leading to greater choice for small and medium enterprises seeking to access finance. I would envisage that the changes will attract interest from high growth/low market cap companies both in the UK and overseas."

Regarding stamp duty and SDRT: removal of the 1.5% charge on issues and certain related transfers:

"*Although the draft measure published on 14 September 2023 is clear in relation to the abolition of the charges on the issue of securities, concerns were raised regarding its implementation date and scope, principally about the efficacy of the legislation before the AFB 2023 receives Royal Assent and whether, in relation to the exemption for the transfer of securities, the term "capital-raising arrangements" used in new ss 72ZA and 97ZB (clauses 4 and 12) were as wide as Article 5(2) of the EU Capital Duties Directive, which includes admission on a stock exchange and making securities available on markets (this aspect of its*

predecessor having been applied to FA 1986, s 70 by the CJEU in Air Berlin [2017] Case C-573/16).

Concerns were also raised about the alternative basis for the exemption for transfers where a transferor acquires the securities before or in the course of capital-raising arrangements, the transferor is subject to a prohibition that prevents a transfer in the course of the arrangements and the transfer is made as soon as reasonably practicable after the prohibition ceases. The worry here being whether the word "prohibition" was too restrictive and would not cover impediments of a practical nature as well as those imposed by contractual and regulatory obligations.

HMRC had provided an assurance that the measure would take effect on 1 January 2024, seamlessly with the disapplication of the Directive, and indicated that any uncertainty prior to Royal Assent would be set aside by appropriate resolutions under the Provisional Collection of Taxes Act 1968 (for stamp duty) and FA 1973, s 50 (for SDRT).

The relevant resolutions have been moved and the draft has been amended (see resolutions 20 and 21). The original stamp duty and SDRT provisions for exempt capital-raising transfers have been split out into separate provisions:

(1) exempt capital-raising transfers—ss 72ZA and 97AB—which amends and rewords the original draft provisions to, in effect, substitute "delay" and "restrictions" for "prohibitions", and

(2) exempt listing transfers—ss 72ZB and 97AC—which are new and exempt a transfer in the course of qualifying listing arrangements and those arrangements do not affect the beneficial ownership of the chargeable securities. The term "listing arrangements" means arrangements pursuant to which chargeable securities, or depositary receipts for chargeable securities, are listed on a recognised stock exchange. Listing arrangements are "qualifying" if, immediately before the first transfer of chargeable securities in the course of the listing arrangements, no chargeable securities in the company or depositary receipts for chargeable securities in the company are listed on the recognised stock exchange to which the listing arrangements relate. The provision relating to delay due to restrictions for exempt capital-raising transfers is repeated for listings.

Exceptions for transfer of shares held by issuing company—ss 67(9ZA), 70(ZA) and 97AD—there is to be no charge to tax under the higher rate provisions in respect of a transfer of shares in a company which are held by the company (whether in accordance with section 724 of the Companies Act 2006 (treasury shares) or otherwise.

Clause 1 of the original draft of 14 September 2023 states that the measure makes provision for and in connection with ensuring that it continues to be the case that no 1.5% charge to stamp duty or stamp duty reserve tax arises in relation to issues of securities or transfers of securities made in the course of capital-raising arrangements and therefore exhibits an intention that the status quo will be maintained. That the above changes have been made reinforces that intent. This suggests to me that the case law will continue to be instructive and ought to inform HMRC guidance. Such "arrangements" should encompass the overall transaction with regard to the raising of capital, as the Directive does now."
