Consultation response

Modernisation of the Stamp Taxes on Shares Framework

13 October 2020

Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to respond to HMRC's consultation on *Modernisation of the Stamp Taxes on Shares Framework*[1]. We have the following comments to put forward for consideration.

Consultation questions

Question 1: If you were designing a STS regime from scratch what would your top design principles be? What would you like a new STS regime to deliver?

If a system was being designed from scratch, we suggest that there is a need for same-day stamping to be carried out by digital systems.

Scots law differs from English law in that it does not recognise a separation between legal and beneficial title. Ownership does not transfer under Scots law until the purchaser's formal legal title to the share is finalised by having their name entered into register of members. As a result, it is much more important in Scotland to have a stock transfer form stamped, returned and the register of members updated timeously. Any delay in stamping can have a significant impact, particularly in a chain of transactions.

While electronic processes have improved the process to some extent, there remains challenges. It is increasingly difficult to justify same-day stamping and while there are some workarounds (for example, paying SDRT instead of Stamp Duty and declarations of trust for reliefs), paying SDRR has to be set-up with HMRC and using declarations of trust has some complexities. There are differing views among advisers as to whether use of a declaration of trust is competent. It is also important to note that there are issues in relations to securities in Scotland as share pledges work differently in Scotland to elsewhere. In Scotland, the shares

[1] https://www.gov.uk/government/consultations/call-for-evidence-modernisation-of-the-stamp-taxes-on-shares-framework

have to be transferred to the bank by completing a stock transfer form in favour of the bank in order to grant a share pledge.

A same-day digital stamping system would be of significant benefit to overcome these difficulties. The same day stamping would need to include the use of a self-assessment system, including for reliefs, such as the systems already in place for stamp duty land tax (SDLT) and Land and Buildings Transaction Tax in Scotland (LBTT). The introduction of a formal pre-completion clearance mechanism could help to provide certainty, otherwise we recognise that there is a risk of inquiries being raised.

At present, there is a complex myriad of legislative provisions covering the STS regime, as well as general Scots law. It is important that the STS system is workable for taxpayers and advisers and we suggest that the system should be consolidated with an aim to tax simplification. It is important to recognise that in practical terms, it would likely be challenging for all parts of the industry to move to digital or paper-light processes easily and a suitably lengthy transition period would be needed which would require to be managed carefully.

It would be desirable to avoid the current territoriality issues which arise with stamp duty. This could be achieved by either moving to a single tax or having one territorial principle. Dealing with stamp duty and SDRT can be challenging for advisors and the current arrangements are not helpful in the context of international transactions.

We consider that it would be appropriate to replicate the reliefs which currently exist under stamp duty but which do not exist under SDRT, for example, group relief.

Options which could be considered in order to streamline the current processes are:

- Issuing of a reference number by email acknowledgment when STFs are submitted electronically and allowing the Registrar to use the reference number to write up the books before the claim has been considered and relief granted;
- Raising the threshold for stamp duty – this would help to keep some smaller transactions out of scope; and
- Arrangement which could allow for payment in advance or on account.

Question 2: Do you have experiences of how tax on securities is implemented/collected in other (overseas) tax systems? Do you consider any of these other ways of collecting tax on securities to be more efficient or easier to use?

No comment.

Question 3: What are your views as to the priority which should be given to elements in any modernisation programme?

We suggest that the introduction of a digital system with the ability to report and pay electronically should be a key priority.

Question 4: Taking into account the areas discussed in this call for evidence (and any other areas you think are relevant) we would be grateful for any views on the impacts, benefits or drawbacks of combining (as far as possible) Stamp Duty and SDRT as part of modernising the Stamp Duty regime.

We note that there are many advisers who do not deal with SDRT and therefore are likely to have limited knowledge and understanding of the tax. The complexities and differences between the taxes may point towards a benefit in keeping them separate.

We note that stamp duty and SDRT are very different taxes – stamp duty needs to be able to exist in the 'rough and tumble' of mergers and acquisitions whereas SDRT is not suited to that framework. As such, it may be difficult to have single tax to cover all matters. In addition, there are different tax points in stamp duty (when instrument is completed) and SDRT (when agreement for sale is being signed).

If there was a move to a single tax, we suggest that this would need to be on the basis of a transactions tax, rather than a document tax. This could be more complex for some advisers – for example, for a corporate lawyer dealing with a transfer of shares is currently fairly simple but moving to a transactional tax approach would likely make such transactions more complex. Similar challenges were experienced when SDLT replaced stamp duty on property, and the complexities of a full blown transaction based self-assessment tax regime continues to present difficulties even after a number of years of familiarity with SDLT (and LBTT and LTT). We suggest that the impacts on those who are dealing with the relevant taxes as incidental to corporate and commercial transactions (rather than tax specialists) should not be underestimated.

We consider that it is important that a wide range of stakeholders including corporate lawyers are involved in consultation on any modernisation of the regime throughout the process. The practical impacts of changes on transactions are vast.

Question 5: What would be the benefits and drawbacks of Stamp Duty replicating the territorial scope aspects of the SDRT definition of chargeable securities and/or fully adopting the SDRT definition of chargeable securities? Are there any other options for aligning the scope of Stamp Duty and SDRT and if so what is your reasoning?

No comment.

Question 6: How would you like the Stamp Duty notification framework to operate? In particular, should there be a greater element of self-assessment?

No comment.

Question 7: Is it now redundant for the Stamp Duty to be tied to registration of title of shares? Do you think that registrars' obligations in respect of Stamp Duty should be amended and, if so, in what way?

Question 8: What would be the benefits and drawbacks of making changes to the notification framework before Stamp Duty is digitised (see also section 8 below)?

No comment.

Question 9: Can you think of improvements other than digitisation that can be made to the current process for collecting Stamp Duty and SDRT?

No comment.

Question 10: What are your views on the desirability of having the company reliefs applicable to SDRT as well as Stamp Duty? What other Stamp Duty reliefs should also be applicable to SDRT?

As noted above, we consider that it would be appropriate to replicate the reliefs which currently exist under stamp duty but which do not exist under SDRT.

Question 11: What is your experience of dealing with "residual securities"? Would you normally expect these securities to be settled by the completion of a STF?

Question 12: What has been your experience of the COVID-19 temporary changes to the processing of STFs and other instruments of transfer? Which elements of the temporary processes do you think HMRC should retain?

Our members welcome the digital processes which were introduced as a result of COVID-19 in relation to stamping stock transfer forms and other documents and dealing with claims for the various stamp duty reliefs. These processes have been working well and we consider that they should be retained.

We would welcome clarity as to whether there will be a need to submit hard copy form for stamping in the future. It is also important to note that if this is a long-term change, there are implications for ongoing transactions (for example, M&A transactions) as some businesses have hard copy forms in the Stamp Office which have not been returned.

In relation to adjudications, we note that the acknowledgements issued by HMRC state that a relief has been claimed but not that it has been adjudicated. It would be helpful if there could be grater finality in this process although we recognise that it is possible that changes may be needed to legislation in order for HMRC to be able to adjudicate in this manner.

Question 13: Is there anything you would particularly like to see or not see in a redesign of payments and enforcement for STS?

No comment.

Question 14: Do you think the current Stamp Duty payment and enforcement framework is appropriate? If not, what do you think would be appropriate?

No comment.

Question 15: Should any of the Stamp Duty and SDRT processes in relation to payments and enforcement be aligned? If so, what would be the most effective means of aligning these processes (e.g. charging point, notification, payment, repayment, appeals etc.)?

No comment.

Question 16: Registration of share title is currently conditional on having the relevant instrument appropriately stamped for Stamp Duty. Is this current conditionality effective as a means of incentivising compliance? If so, is it the most effective means of achieving that? If the answer to either question is "no", then what would be more effective?

No comment.

Question 17: Has the fact that HMRC is only able to accept payments and make repayments for Stamp Duty and SDRT electronically rather than by cheque while the temporary processes are in place caused any issues for you or your clients?

No this has not been a problem.

Question 18: What are your views on the digitisation of Stamp Duty? Do you think that this is vital for the modernisation of the tax? Do you have any views as to the best method of achieving this?

We welcome a move towards digitisation of Stamp Duty. However, it is important to recognise that not everyone will be able to use digital processes and a suitable alternative will be needed.

Question 19: How would you or your clients envisage holding and transferring shares in future?

No comment.

Question 20: In your view, is the STF a necessity? Could you and your clients do without a STF? What other documents could be used, for example, an agreement to transfer?

No comment.

Question 21: Would an electronic STF be beneficial?

Yes. Please see our comments above. If the STF is to be retained, we would support this being electronic.

Question 22: Would it be beneficial for HMRC to continue to allow the use of electronic signatures after the COVID-19 measures have ended?

Yes. Please see our comments at question 12.

Question 23: Are there any additional electronic processes which you and/or your clients would like to see after the COVID-19 measures have ended?

We believe it would be helpful to be able to communicate with HMRC electronically on all stamp tax related matters.

Question 24: Do you or your clients envisage using distributed ledger technology to hold records of ownership?

No comment.

Question 25: Do you or your clients envisage making use of smart contracts?

No comment.

Question 26: What terms and business practices are not adequately covered in current Stamp Duty and SDRT legislation?

There should be greater harmonisation between stamp duty reliefs and capital gains tax reliefs in relation to reconstructions. The CGT reliefs are generally more flexible and more appropriate for genuine commercial transactions options.

Taxpayers should not have to deal with two similar but different regimes for reconstructions and other commercial transactions.

Question 27: Do you have any further comments or thoughts on the current STS regimes and modernisation of Stamp Duty? To what extent have the COVID-19 temporary changes impacted your thinking?

No comment.

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