Office of
Tax Simplification

Stamp duty on paper documents:

a way forward to reform, digitise and simplify

July 2017

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Presented to Parliament pursuant to section 186(4)(b) of Finance Act 2016

July 2017

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at ots@ots.gsi.gov.uk

ISBN 978-1-912225-01-9
PU2081

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

Foreword

Stamp taxes on land transactions (Stamp Duty Land Tax) and share trading (Stamp Duty Reserve Tax) have been largely digitised for some years.

However, stamp duty itself is charged on the sizeable minority of certificated share transactions handled using paper stock transfer forms (outside the CREST settlement system), and is still administered by impressing those forms with physical stamps.

This procedure began as long ago as 1694 and is anachronistic and cumbersome, especially for transactions, such as those with an international dimension, where there are commercial imperatives to register title on the same day as the transaction.

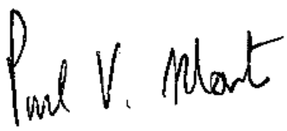
This report takes a wide-ranging look at the potential for 'paper stamp duty' to be reformed, digitised and simplified.

Some of the complexity results simply from the need to handle the practical issues that result from the time it can take to get a document stamped. Other complexities, which businesses and their advisers spend time working around, arise because stamp duty can potentially apply to a range of transactions that are not really intended to be in scope and where the tax is virtually never charged in practice.

This report's core recommendations address the main practical frustrations which taxpayers experience, pointing the way to digitising the tax and speeding up the process for all concerned, in particular to facilitate same day registration of documents where desired.

The OTS would like to thank the diverse and experienced team who have worked on this review. It has been project-managed by Olimpia Wojtyczko, supported by Daphna Jowell, and has benefitted from some specific assistance from Jon Woodall, an associate at Travers Smith LLP. The work has been guided by Head of Office David Halsey and (until 1 March 2017) the former Tax Director John Whiting. We are also grateful to our HMT and HRMC colleagues, our Consultative Committee members and others who have willingly given ideas and input.

Angela Knight



Paul Morton

Executive summary

Introduction

The OTS considers it is high time to reform, simplify and digitise stamp duty. Currently, the process continues to involve impressing documents with physical stamps.

Stamp duty is arguably the UK's oldest form of taxation. Today, the great majority of transactions are handled electronically, by Stamp Duty Land Tax (SDLT) in relation to land transactions or Stamp Duty Reserve Tax (SDRT) for most share transactions via the CREST settlement system. However there are still 103,000[1] transactions each year which involve impressing documents with physical stamps.

The OTS is therefore recommending that the process be digitised and modernised. This would be a natural development which we consider offers long-lasting benefits for taxpayers and HMRC.

An urgent case for modernisation

Two aspects of the current regime stand out as being particularly out of date.

First, the time consuming process of stamping a share transfer document

Currently, on execution, a stampable document must be posted to the Stamp Office in Birmingham, alongside a cheque or bank transfer for the duty, so that a physical stamp can be impressed on it. The stamped document is returned by post and then sent to the relevant company registrar.[2]

HMRC aims to process straightforward stock transfer forms within 5 working days, and more complex applications (for example claims for reliefs) within 15 working days.[3] These targets were met in 70% of cases[4] in 2016/17, so in that year over 30,000 documents were received by taxpayers after longer periods than this. In addition, delay can arise because documents go astray in the post, have to be sent back unstamped because of a mistake on the document, or need to be returned because of difficulties in matching up payments with the documents concerned.

For time-sensitive transactions, if it is accepted that it is business critical for the document to be stamped on the day it is executed, the Stamp Office offers a 'same day' stamping facility. To do this an agent must request an appointment and, if this is granted, travel to Birmingham to get the relevant document stamped on the same day it is executed. Fewer than 50[5] such requests are granted each year, yet it is very clear from our consultation that a far greater number of transactions would make use of a same day stamping service if it was readily available.

Currently, various well-established but time-consuming workarounds are used by solicitors and accountants to avoid the need to ask for 'same day' stamping. However, these are often complex and cannot be used in all circumstances.

[1] Figures are for the 2016-17 tax year; source: HMRC data.
[2] Or, in certain specific situations, to Companies House.
[3] Source: HMRC data (compiled from administrative sources by operational teams).
[4] Source: HMRC data (compiled from administrative sources by operational teams).
[5] Source: HMRC data (compiled from administrative sources by operational teams).

Timing is important because legal title to shares in a UK company does not pass until the register of members is updated. The registrar of a company cannot lawfully update the register unless the transfer document has been stamped (or is exempt). In the modern age, it is an anachronism that taxpayers are concerned about stamped documents being safely returned on time, and in relation to major transactions such hurdles are all the more significant.

Second, the scope of stamp duty is significantly broader in principle than it is in practice, in particular in relation to its theoretical reach outside the UK

Stamp duty applies primarily to transactions in UK shares, but its scope is not limited to such transactions.

At present this situation is mitigated by there being no legal obligation to pay the tax unless there is a reason to register title in the UK, or a need to rely on the document for another legal purpose in the UK (hence the tax often being described as 'voluntary').

So, for example, documents concerning only non-UK shares are often executed and retained offshore to ensure there is no theoretical risk of stamp duty becoming payable, or of any penalties for late stamping in the unlikely event that the document is required to be stamped. This is confusing and inefficient.

OTS recommendations

This report's **core recommendations** are intended to address the main practical frustrations which taxpayers experience by digitising the tax and speeding up the process for everyone, in particular to facilitate same day registration of documents. This involves a set of measures, which include:

- digitising the stamp duty process, providing taxpayers with a unique transaction reference confirming that the transaction has been notified to HMRC (thereby retiring the stamping machines)
- amending the terms of company registrars' legal obligations so that they can write up a company's books on sight of such a transaction reference or confirmation of notification
- making stamp duty an assessable tax, ending the sense in which it is 'voluntary' at present
- aligning the scope of stamp duty with SDRT to reflect its current application in practice (for example in relation to transactions in non-UK shares)

These changes are closely interconnected and so should be implemented as a package.

This report also makes **further recommendations** about how stamp duty could be simplified, either at the same time or as part of a future roadmap of change.

The areas recommended for further in-depth consideration are:

- simplifying and clarifying a range of important technical matters, not least the present archaic stamp duty consideration rules
- incorporating modernised stamp duty legislation within the umbrella of SDRT, and repealing the present stamp duty legislation (which is spread across many Acts of Parliament)
- ensuring that the digital process is developed in a way which will secure the fullest benefits for taxpayers and the best use of transaction information by HMRC to assist their compliance work

Summary of recommendations

	Chapter 2 recommendations
1	Digitise the stamp duty process, thereby retiring the stamping machines
2	Introduce an online system providing taxpayers with a unique transaction reference confirming that the transaction has been notified to HMRC
3	Introduce the group relief and the reconstruction reliefs directly into SDRT
4	Following digitisation, no longer round up stamp duty to the nearest £5
5	Amend company registrars' legal obligations so that they can write up a company's books on sight of a transaction reference or confirmation of notification
6	Make stamp duty an assessable tax, ending the sense in which it is 'voluntary' at present
7	Replace compulsory adjudication of relief claims with a short form notification
8	Narrow the territorial scope of stamp duty to exclude non-UK shares
9	Consider, as a policy matter, whether or not stamp duty should apply to instruments granting options for consideration
10	Consider, as a policy matter, the extent to which stamp duty should be payable on instruments transferring partnership interests
11	Consider, as a policy matter, the approach to documents relating to pre-2003 land transactions
	Chapter 3 recommendations
12	Adopt the 'money or money's worth' concept of consideration, coupled with specific rules and exemptions to address certain specific issues
13	In relation to the contingency principle, adopt the SDLT approach
14	Where debt forms part of the consideration, follow SDLT in clarifying that the charge is limited to the market value of the shares
15	Consider the various types of transactions presently franked by stamp duty exemptions and provide exemptions as appropriate
16	Consider increasing the £1,000 threshold as a policy matter
17	Clarify whether assignments of options are chargeable
18	Give serious consideration to combining stamp duty and SDRT, at least making this a clear direction of travel (taking into account the need to reframe the charging provisions)
19	Consider suggestions regarding further useful features of a digital system, to save time for taxpayers and enhance HMRC compliance capability

1 The current system and wider context

Background

1.1 Stamp Duty was first introduced in England in 1694, long before income tax (1799) and capital gains tax (1965), making it one of the UK's longest running taxes.

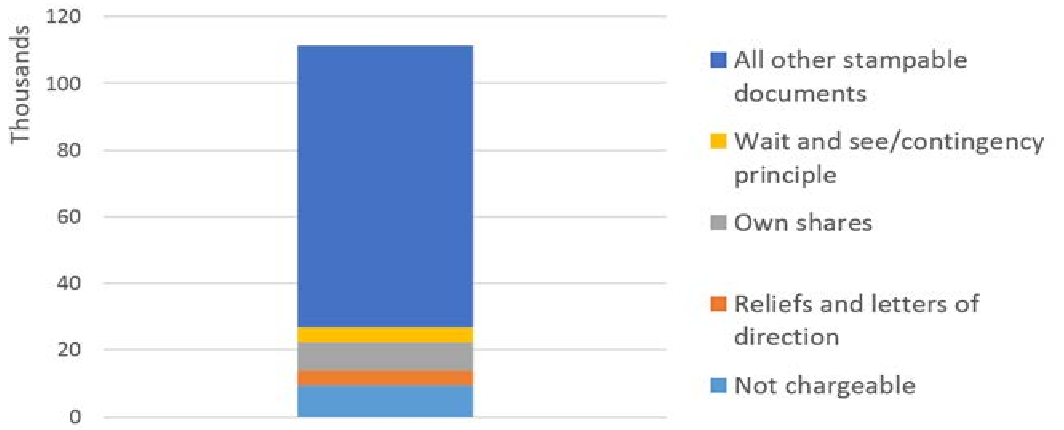
1.2 Many of the stamp duty rules in use today, even after the consolidating changes made by Finance Act 1999, are in the Stamp Duties Management Act and the Stamp Act, which both date from 1891. Much of the language in these acts, while familiar to stamp taxes experts, does not reflect the modern world. In addition, the stamp duty legislation is spread across a very large number of acts, making it challenging to work with.

1.3 During the 18th and early 19th centuries, stamp duties were extended to cover a number of documents, including newspapers, lottery tickets and patent medicine labels. However, their scope has now long been steadily decreasing.

1.4 The two biggest steps were in 1986 when SDRT was introduced for the majority of (on-market) share transactions, and then in 2003 when transactions in land were taken out of stamp duty in favour of SDLT. As a result, there are now only a limited range of circumstances in which physical documents are stamped, of which only a small proportion involve high values (see charts 1.A and 1.B).

1.5 In the 2015/16 tax year, stamp duty raised £700 million,[1] which was almost one quarter of the total stamp taxes on shares that year. This was a substantial increase on 2014/15, when £300m was raised.[2] One reason for the increase was a change to company law, which brought public takeovers carried out via schemes of arrangement[3] within the scope of stamp duty.

Chart 1.A: Breakdown of documents received in tax year 2016/17



Source: HMRC operational teams

[1] Source: HMRC annual report and accounts: 2015 to 2016.
[2] Source: HMRC annual report and accounts: 2015 to 2016.
[3] A scheme of arrangement is a court-approved agreement between a company and its shareholder or creditors. It may effect compant takeovers and may alter shareholder or creditor rights. The change prohibited cancellation schemes of arrangement, which could be carried out free of stamp duty.

Chart 1.B: Breakdown of stamp duty payments received by value (in tax year 2016/17)

Source: HMRC operational teams

A 'voluntary' tax overseen by registrars

1.6 Stamp duty is unique amongst UK taxes in being, in a sense, a 'voluntary' tax. HMRC does not have enquiry powers for stamp duty, or the ability to enforce collection. Although it is a near-universal practice that it is the purchaser who pays the tax, there is nothing in legislation to say who is liable to pay.

1.7 So, why do people pay stamp duty? The three key reasons are:

- an unstamped transfer instrument cannot be used to update the company's register of members, and so the purchaser cannot establish their legal title to the shares concerned (unless the document is exempt)
- if such a document is not stamped then SDRT (which is enforceable) will generally apply; paying stamp duty generally removes (or 'franks') this liability
- if one wishes to rely on a stampable document in civil court proceedings, it must be stamped

1.8 The voluntary nature of stamp duty is most apparent in situations where, despite there being a tax charge in principle, very little tax is collected. Examples are transfers of certain non-UK shares, option grants and transfers of partnership interests and each of these is discussed in further detail in chapter 2. The wider point is that this is not a simple feature of the system.

1.9 As discussed below, it is the requirement to have documents stamped (where this is necessary) before legal title can be established, together with the time delay involved in the current stamp duty process, which underlies particular dissatisfaction with the current system.

1.10 This requirement flows from the fact that under UK law, establishing legal title to shares depends on the transfer being written up in the company's register. A person whose office it is to register any instrument (typically a registrar or company secretary[4]) is subject to a penalty of up to £300 if they register an instrument which has not been duly stamped.

1.11 This means that the role of the registrar is integral to the operation of stamp duty.

1.12 It is difficult to obtain data from unlisted companies, since they are less likely to use professional company secretaries or registrars. In relation to listed shares, in one sample week,

[4] Listed companies use large professional corporate registrars to maintain their registers. Unlisted companies may use a company secretary or some other person. For ease of reference we will refer to the person writing up a company's register of members as a 'registrar', whether or not the company in question is listed.

the three largest company registrars[5] received 3,386 stock transfer forms (STFs) in total. Of these no more than 50 were stamped. The remaining documents were exempt, either because the consideration was £1,000 or below or because an exemption applied.[6] Registrars routinely reject STFs where necessary. In a comparable week 124 STFs were rejected for stamp duty reasons, either because no exemption was claimed, no consideration was shown or no appropriate stamp was impressed.

Stamping a document

The stamping machines

1.13 The current stamping press machines with coloured inks for the dies were first introduced in the 1870s. These machines 'close down' at 2pm every day, so they can be carefully cleaned, maintained and prepared for the next day, including manually changing the date stamp.

1.14 The machines have stamps of different values, ranging from £5 up to £1,000,000. There is only one machine with that highest value stamping die. Where the stamp duty payable is higher than this, multiple impressions are required.

1.15 Should the Birmingham Stamp Office be inaccessible for any reason, transfer instruments must be sent elsewhere to a 'back up' machine which has a highest value stamp of £50,000.

The process

1.16 On execution, the transfer instrument (usually a STF or letter of direction) must be posted to the Stamp Office, alongside a cheque or bank transfer for the duty.

1.17 When post arrives it is opened by staff in a dedicated post room and the document is logged and sent to the stamp duty team. Once the document has been inspected, it is stamped by a person authorised to operate the stamping machines. The stamped document is then returned to the taxpayer so that it can be sent to the relevant company registrar (or Companies House).

1.18 HMRC aims to process straightforward STFs within 5 working days, and more complex applications (for example claims for reliefs) within 15 working days. The time it takes for a document to reach the Stamp Office and be returned to the taxpayer is not included in this, so another 5 working days should be added to get the overall time from a taxpayer's perspective. So even if HMRC's target is met, taxpayers must wait 20 working days – nearly a month – for a more complex document to be returned.

1.19 HMRC have told us that these targets are met in 70% of cases; so out of the 103,000 documents received in tax year 2016/17, it's likely that 30,900 taxpayers waited more than 2 weeks (for straightforward STFs) or over a month (for more complex documents).

1.20 For very urgent transactions, the Stamp Office will agree to provide 'same day' stamping, enabling an agent to make an appointment in Birmingham to get a document stamped in person immediately. This is only allowed if a taxpayer provides sufficient evidence that there is a business critical reason for same day stamping.

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[5] Capita, Computershare and Equiniti.

[6] The averages quoted come from data provided by Capita, Computershare and Equiniti. The figures need to be interpreted with caution – '124 STFs rejected' figure is based on a weekly sampling exercise conducted by registrars, at different time periods (one registrar completed the exercise recently, two in early 2016) but the discrepancy in figures recorded was not significant enough to suggest any major change. '10 to 50 stamped STFs' is an estimate based on registrars' experience – no record of stamped STFs is kept.

1.21 Additionally, the need for the stamping machines to close at 2pm limits their capacity to handle urgent matters. This is especially relevant for London-based matters relating to schemes of arrangement, where the transfer instrument must be stamped in Birmingham later on the same day as the London court proceedings, and where HMRC would normally need payment to have been cleared the day before - at which time the amount of duty may not be known.[7]

1.22 In practice, fewer than 50 requests for same day stamping are granted per year.[8]

Business feedback about the stamping process

1.23 General views about the process were divided.

1.24 Those dealing with straightforward, non-urgent transactions, found the process to be slow but did not advocate any major changes to the system.

1.25 There is, however, significant dissatisfaction with the system among agents dealing with time sensitive transactions. This stems from the commercial difficulties that can be caused by the time it can take to get documents stamped and the register of members updated. Some even suggested the re-opening of a counter service in London, which mitigated these issues until this office was closed in 2005/6.

1.26 Both groups of practitioners noted the inconvenience involved in the postal process, in particular the risk of documents going astray, and the confusion that can arise in matching up payments with the documents concerned (see table 1.A). Based on responses to an online survey,[9] over 50% of agents dealing with stamp duty transactions experience at least one stamp duty processing issue a month.

Table 1.A: The most common processing issues causing delays

Processing issue	Documents involved[10]
Documents lost in the post on their way from HMRC to the taxpayer	252
Documents sent back to the taxpayer for correction before stamping because of a mistake (e.g. missing signature or date)	5,064
Payment matching (and related) issues e.g. bounced cheques, or difficulties in finding the payment in HMRC's records	888
Source: HMRC operational teams	

1.27 Feedback we have had from advisers and businesses is that the turnaround time is often longer than the expected 10 working days, with even straightforward documents sometimes taking as long as 5-6 weeks to be returned by the Stamp Office. This suggests that if the 10 day target is missed, it can be by a substantial margin.

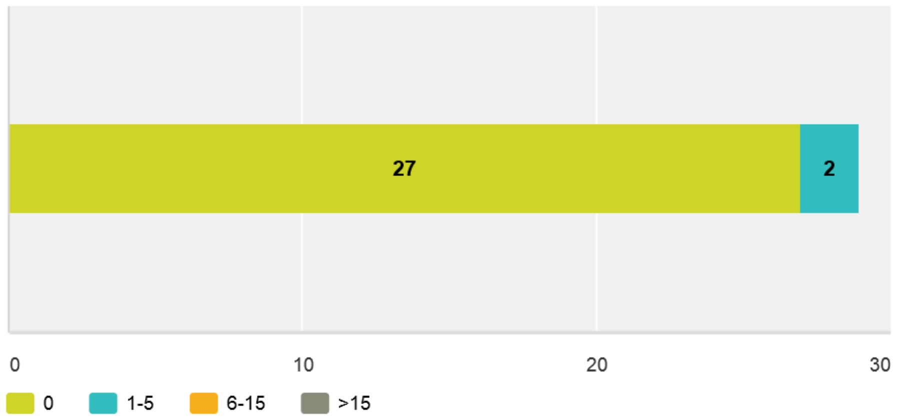
Same day registration of share ownership

1.28 It is clear from many conversations we have had with advisers that if a same day stamping service were readily available, it would be used far more often than it is currently. At present only 2 of the 30 advisers who responded to our online survey ever request same day stamping

[7] The Institute of Fiscal Studies paper "The case for the abolition of stamp duty" by Sara Luder (Report R123) provides a detailed case study of a situation of this kind.
[8] Source: HMRC data (compiled from administrative sources by operational teams).
[9] The OTS devised and ran an online survey, publicised to stamp duty practitioners with the help of professional bodies including STPG, CIOT, Law Society, ACCA, ICAS, ICAEW, AAT and the Chartered Accountants in Ireland. The survey was available from 18 April to 31 May 2017 on surveymonkey.com. (https://www.surveymonkey.co.uk/r/OTS_SD). The 30 respondents represented small to large clients (with 1 to 250+ employees).
[10] Tax year 2016/17.

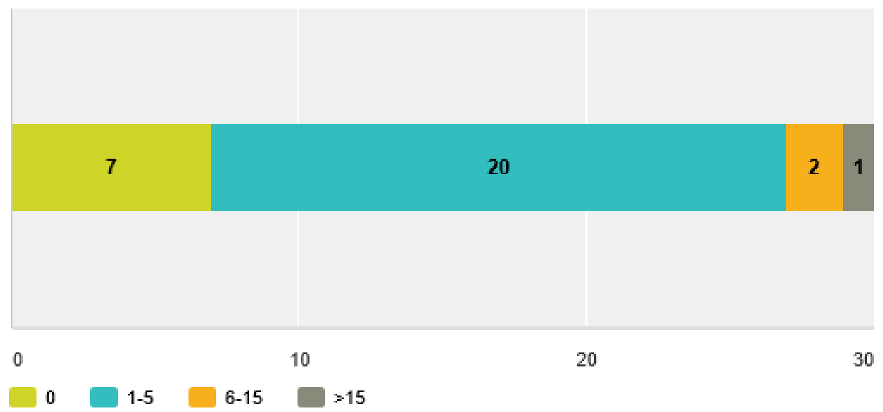
(see chart 1.C), although 23 of them would do so at least once a month if it was easily accessible (see chart 1.D).

Chart 1.C: How many times a month (on average) practitioners request same day stamping



Source: OTS survey

Chart 1.D: How many times a month practitioners would use same day stamping if it was easily accessible



Source: OTS survey

1.29 The delay that the stamping process can create was the most widespread administrative concern about the stamp duty system to come up in our consultation.

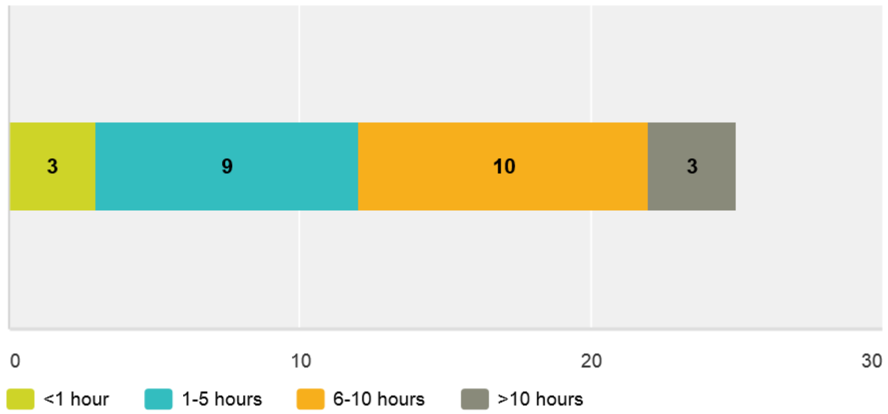
1.30 In particular, problems arise where shares are the subject of more than one transfer in one day, or there is a need for legal title to pass for other company law reasons, for example, in relation to voting rights or dividend payments.

1.31 There is a clear consensus that such issues would not be solved merely by shaving a few days off the stamping process. The only change that could make a real difference is to make it easy for the company register to be updated on the same day as the share transfer.

1.32 At present, as practitioners explained to us, it is routine to use well-established 'workarounds' (commonly involving a declaration of trust[11]) to get over this problem. These facilitate same day registration, without affecting the amount of stamp duty paid.

1.33 However, these workarounds are complex for business people (and sometimes legal advisers) to understand, time-consuming (see chart 1.E) as well as costly, and they do not change the fact that one cannot rely on getting a document stamped when desired. Respondents have estimated the cost of these workarounds to vary from £1,000 to as much as £50,000 per transaction.

Chart 1.E: Time that agents need not spend on 'workarounds' if same day stamping was easily accessible



Source: OTS survey

1.34 We consider it revealing to learn that overseas lawyers who come across 'declaration of trust' documents can mistakenly think that they are intended to implement some sort of UK tax avoidance scheme (because they cannot understand what other purpose they may have).

1.35 In addition, these workarounds are not always effective. This is either because they are not properly implemented, their use is not possible (for example in relation to schemes of arrangement) or, in some cases relating to reliefs (such as those under section 77 Finance Act 1986), because their use may cast doubt on whether the conditions for the relief are met.

1.36 However, there is no evidence that difficulties in obtaining same day registration of share transfers have prevented transactions from being effected altogether, although there is anecdotal evidence of reputational harm to the UK as a jurisdiction in which to carry on business, especially in relation to large international transactions.

The future of physical stamping

1.37 While other countries have transaction taxes, and in particular, tax the transfer of unlisted shares, many of them have replaced physical stamping procedures with electronic processes, such as the issue of a unique number confirming the payment of the duty (e-stamping). E-stamping was first introduced in Singapore as long ago as 1999, in Hong Kong in 2004 and in Ireland in 2009, amongst others.

[11] The exact mechanics of the 'declaration of trust' route vary but the essence of it is to separate legal and beneficial ownership of the shares. The legal interest can be transferred for nil consideration without stamp duty being payable, and so the company's register can be written up immediately on the basis of that transfer document. A separate document transferring the beneficial interest (often, the declaration of trust) is sent off for stamping.

1.38 Also, in the company and commercial law arena there is a continuing trend towards dematerialisation of share transfer processes both in the UK and internationally. Such dematerialisation (replacing paper share certificates with an electronic process), has already been completed in France (in 1984), Finland (1992), Sweden (1993) and The Netherlands (2012) amongst others. In the EU, the Central Securities Depository Regulation (CSDR) requires dematerialisation of all shares by 2025.

1.39 Following the trend, fewer UK banks now offer certificated share dealing services. For example, this service is no longer provided by Barclays, Nationwide, HSBC, Santander or NatWest.

1.40 While some still choose to hold shares in certificated form, there are more instances of holdings being dematerialised than re-materialised. Euroclear UK & Ireland has supplied an analysis of 'stock deposits' (effectively share certificates being dematerialised) and 'stock withdrawals' (dematerialised stock being converted back into paper – see box 1.A) for 2016. For the FTSE 100, there were 199,797 stock deposits and 96,035 stock withdrawals. Figures for other security types appear to mirror this, albeit with smaller numbers.

Box 1.A: Main reasons for 'stock withdrawals'

- purchases for certificated clients
- re-certification of holdings as a result of deaths or gifts to children etc.
- situations when a client deposits a certificate, sells some of the shares and asks for the balance to be reissued in certificated form
- clients moving out a broker nominee account back on to the share register

Source: Euroclear UK & Ireland

1.41 Any proposal for the future of stamp duty therefore needs to take account of the slow trend towards full dematerialisation of shares.

1.42 As regards the market for unlisted shares, advances in cloud storage and digital signing will also prompt calls for dematerialisation and electronic STFs. The current stamp duty process inhibits such advances, since a wet signature on a physical instrument is required.

1.43 Having said this, it is clear that the market for unlisted shares via private mergers and acquisitions continues to be a large and economically important component of the UK economy. For this market, as well as for intra-group reorganisations, there is no indication that full dematerialisation of share certificates or STFs will be possible in the near future.

1.44 Digitising will bring stamp duty into the 21st century, a change that is arguably long overdue. Given the technological trends outlined above, the time is right to take this step now, to facilitate business transactions and ensure that tax does not hold up the benefits of technological developments in this area.

2 Core recommendations

2.1 To address the concerns identified above and put stamp duty on a modern digital footing, **we recommend a core package of process and legislative changes, consisting of a number of connected elements**:

- digitising the stamp duty process, providing taxpayers with a unique transaction reference confirming that the transaction has been notified to HMRC (thereby retiring the stamping machines)
- amending the terms of company registrars' legal obligations so that they can write up a company's books on sight of such a transaction reference or confirmation of notification
- making stamp duty an assessable tax, ending the sense in which it is 'voluntary' at present
- aligning the scope of stamp duty with SDRT to reflect its current application in practice (for example in relation to transactions in non-UK shares)

Our approach

2.2 We have taken account of feedback both from those dealing with time sensitive transactions, who urgently want change - in particular to enable easy same day registration, and from others for whom the timing of registration is not critical but who would welcome a reduction in the processing glitches outlined in Chapter 1.

2.3 These core recommendations, taken together, are the basic steps necessary to address these issues. In chapter 3, we present further recommendations to overhaul the tax more fully.

Digitising the stamp duty process

2.4 To achieve the twin objectives of both speeding up and modernising the process, **we recommend digitising the stamp duty process and therefore retiring the stamping machines**.

2.5 We propose that the new digitised process includes at least the range of features below, being the minimum we consider required to replace physical stamping. We offer an outline of possibilities for fuller, or more advanced digitisation in Chapter 3.

Online submission – transfer instruments

2.6 Today, a paper STF or other transfer instrument must be sent to the Stamp Office to notify HMRC of the transaction. We suggest that uploading a scan of the transfer instrument may be the easiest and quickest form of online submission to introduce initially, along with suitable legislation to support this. Transferees would continue to present the original transfer instrument to registrars before they write up the register.

2.7 We suggest the online system should also allow relevant information about the parties to the transaction to be submitted to HMRC, for example a company tax reference number, a national insurance number (or other means of identification for taxpayers not based in the UK).

Online submission – unique transaction reference

2.8 **We recommend that the online system, immediately on receipt of a submission, produce a unique transaction reference** (UTR), which can be printed or saved by the person submitting the information. The UTR would serve as a confirmation that the transaction has been notified to HMRC. Together with the original transfer instrument, it would then be sent to the relevant company registrar to enable the company's records to be updated. The UTR would also be used as a reference number when making the stamp duty payment.

2.9 It has been suggested to us that physical stamps may be more secure and less likely to be forged than a UTR printed by a taxpayer, and we recognise this is something HMRC will need to consider. One option would be for a UTR to be in a specified format, with the code behind it not being generally disclosed (like the unique transaction reference number (UTRN) used in relation to SDLT).

Online submission – reliefs from stamp duty and SDRT

2.10 At present the commonly used stamp duty reliefs (that is, group relief and the reconstruction reliefs[1]) must be applied for via compulsory adjudication. Online submission (together with ending adjudication, discussed below) should allow taxpayers to upload a scanned document giving basic transaction details to notify HMRC that the relief is being claimed[2] rather than submitting a full adjudication claim by post.

2.11 These stamp duty reliefs are not directly available in SDRT at present. To claim them in relation to securities in CREST, a paper transfer instrument must be created and stamp duty relief claimed, which then franks the SDRT. A flag in CREST is then selected to stop SDRT from being collected, on the basis that a paper instrument has been stamped exempt.

2.12 The need to create paper instruments purely in order to be able to claim these reliefs adds an unnecessary administrative cost for business.

2.13 **We therefore recommend that group relief and the reconstruction reliefs stamp duty reliefs are introduced directly into SDRT.**

2.14 We suggest that consideration be given to how the CREST flags could be best used to facilitate the process for claiming the reliefs in relation to transfers of securities in CREST, and to support HMRC compliance processes, with a view to minimising the need for any separate reporting to HMRC by the taxpayer.

2.15 One possibility would be for the use of a flag in CREST to constitute a claim for relief. Another would be for the taxpayer to notify HMRC of a relief claim at the same time, via the new digital system, in the same way as the equivalent stamp duty relief would be claimed.

Benefits of digitisation

2.16 A digital approach along these lines could provide the following benefits:

- round-the-clock availability and convenience – can 'stamp' at any time, from anywhere
- no time consuming physical stamping, or the need for machine maintenance, expensive stamps and backup stamping facilities

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[1] Section 42 Finance Act 1930 and sections 75 and 77 Finance Act 1986.

[2] See 2.32 below for our recommendation around ending adjudication and reducing the information required to claim stamp duty reliefs.

- improved security – documents and private information won't get lost in the post
- the ability to simplify the handling of transactions such as schemes of arrangement, takeovers or tender offers
- easy same day registration of share transfers (combined with changing the terms of registrars' obligations)
- faster processing of STFs for the relatively small number of so-called 'inversion issuers'[3]
- there would no longer be a need for HMRC to provide 'free stamping' where an original stamped instrument is lost and HMRC agrees to stamp a duplicate without further payment if evidence of the original payment is supplied; this would save HMRC and the taxpayer time - around 200[4] such requests are made a year

2.17 Another key benefit of digitising is that information about transactions could be more easily exchanged between the Stamp Office and other parts of HMRC. This would be valuable because the Stamp Office is often the first part of HMRC to be informed of a transaction. A more streamlined information sharing process could potentially bring timing benefits for HMRC in countering avoidance, as well as supporting more 'run of the mill' enquiry work.

2.18 A further benefit of digitising and ending the use of stamping machines is that it will be possible to end the need to round up the amount of duty payable to a multiple of £5 (as one would no longer be using stamping dies with pre-determined values). This would simplify calculations especially for transactions where there are multiple purchasers. **We recommend that the rules rounding up stamp duty to the nearest £5 are repealed following digitisation.**

Registrars' obligations

2.19 Digitising the process for paying stamp duty would not by itself be sufficient to address business concerns about updating company registers on the date of the transaction. A change is also needed to registrars' obligations,[5] to bring these into line with the new system.

2.20 **We recommend that registrars be permitted to update shareholder registers on sight of evidence that HMRC have been notified of the share transfer or that stamp duty on the relevant transfer has been paid.**

2.21 The UTR could provide this evidence if sent to the registrar alongside the transfer instrument.

2.22 However, we consider that other evidence should also be acceptable, at the discretion of registrars, provided there are sufficient safeguards for HMRC, to cover situations where it is not possible to produce the UTR immediately (for example in the event of a system failure). The evidence could, for example, take the form of a declaration from a lawyer confirming the position together with a copy of the notification or evidence of payment.

[3] Inversion issuers are companies whose principal share register is in the UK but have a primary share listing in the USA and so their share register is administered there. Customised STFs are used to meet both UK and US requirements. Currently the transfer process is complicated by the need to send physical documentation between the UK and US for stamping.
[4] Source: HMRC data (compiled from administrative sources by operational teams).
[5] "If any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with duty, enrols, registers, or enters any such instrument not being duly stamped, he shall incur a penalty not exceeding £300." Section 17 Stamp Act 1891.

2.23 We believe that such changes should not lead to a significant change to the administrative burdens faced by registrars or the effectiveness of their role in relation to stamp duty. The current system relies heavily on registrars' scrutiny of STFs, which would continue as now in the vast majority of cases, and under these proposals HMRC would have the ability to pursue any unpaid duty in any cases where a transfer was inappropriately registered.

2.24 In addition, we would note that giving registrars discretion to amend the registers if provided with suitable evidence that HMRC has been notified of the transaction, could potentially be a simple and effective first step towards implementing the core package of recommendations in relation to transactions where HMRC would at present – if necessary - have recourse to an SDRT charge.

Making stamp duty an assessable tax and ending adjudication

2.25 Once stamp duty is digitised, instead of checking every transaction and confirming payment before issuing a stamp, HMRC will receive a notification and issue a UTR prior to receiving payment of the stamp duty owed from a taxpayer. So HMRC will need the power to follow up any cases where there appears to be insufficient payment.

2.26 **We therefore recommend making stamp duty an assessable tax.**

2.27 Stamp duty would no longer be 'voluntary' and HMRC would have information and enquiry powers as well as the ability to impose interest and penalties if the right amount of tax is not paid within specified time limits (the purchaser being the assessable person). This would bring stamp duty into line with other stamp taxes.

2.28 Based on feedback we've received, we would suggest that administrative and enquiry procedures are modelled on those for SDLT as these are modern and generally understood by taxpayers and advisers.

2.29 There would no longer be a need for the Stamp Office to review some 103,000 documents a year as only those considered higher risk need be selected for an enquiry.

2.30 There would be additional advantages both for taxpayers and HMRC in making stamp duty assessable. HMRC would be able to follow up on 'wait and see' applications where the consideration is unknown at the time of the transaction, and where there is additional stamp duty to pay. For taxpayers, the process of finalising the position of such transactions, simply by following up an existing return, would be much simpler, saving time and related costs.

2.31 Making stamp duty assessable would, in addition, remove the need for the current adjudication procedure. **We recommend that compulsory adjudication of relief claims is replaced with a short form notification** giving basic transaction details only. This would bring stamp duty more in line with direct taxes where detailed information around relief claims is generally only provided on an enquiry.

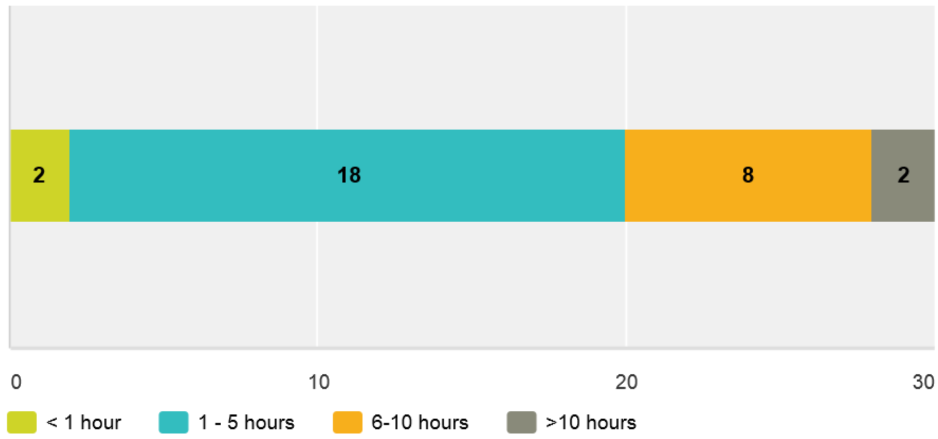
2.32 We did not hear significant objections to this idea. Some practitioners liked the certainty that adjudication provides, but were willing to forgo it, if need be, in return for a digital regime. In cases where adjudication presently provides certainty of treatment, one would expect the non-statutory clearance arrangements that apply in relation to other taxes to be sufficient. A few respondents also noted that they would actually prefer to have an enquiry during which all relevant aspects could be discussed and negotiated before the final decision is made.

2.33 Those who would like to see adjudication retained have noted that Ireland has retained adjudication while having an assessed, digital stamp tax. The downside is that the adjudication process requires resource in all cases, without the application of any risk assessment process.

Provided HMRC develop an appropriate risk assessment process, there is little benefit in retaining adjudication.

2.34 One significant effect of this would be in relation to relief claims. Currently a significant amount of time is needed to prepare the set of documents required by HMRC (see Chart 2.A). Taxpayers would still need to ensure they meet the conditions of the relief, but the time spent preparing the evidence in every case as a matter of routine would be saved.

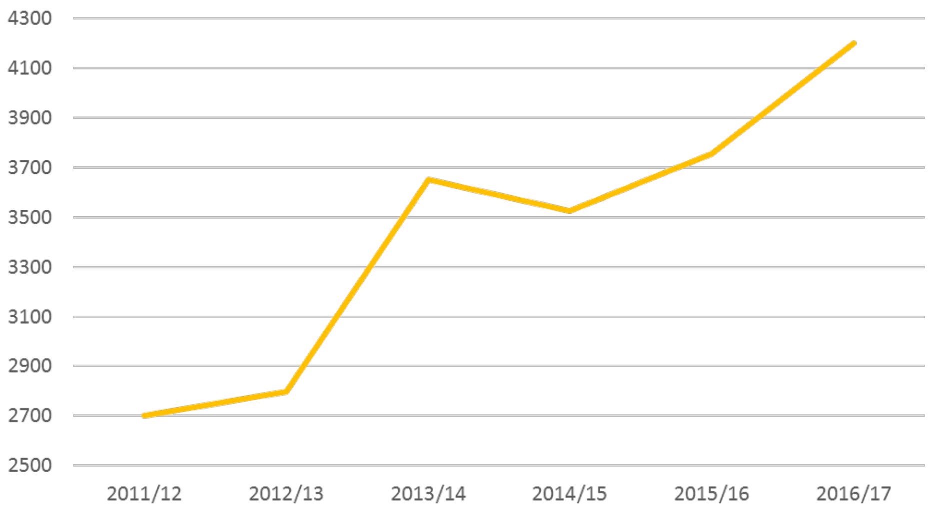
Chart 2.A: Time spent on the practical aspects of preparing and submitting the relief claim



Source: OTS survey

2.35 At the moment only a small proportion of those claims are rejected, but the total number of them is on the increase (chart 2.B). This is further evidence suggesting that relief claims would benefit from the facility for HMRC to operate a risk profiling approach.

Chart 2.B: Total number of relief claims a year



Source: HMRC operational teams

2.36 Making stamp duty assessable would have knock on effects on certain areas where the 'voluntary' nature of the tax is currently relied on. These include, in particular, the grant of options, partnership interests and pre-2003 land transactions and these are discussed below.

Fixing the scope of stamp duty

Territorial scope and non-UK shares

2.37 Currently, the territorial scope of stamp duty is very wide. It applies in principle to transfer instruments relating to shares in a non-UK company (even if executed outside the UK) if they relate to something done or to be done in the UK.

2.38 In practice this is mitigated by the voluntary nature of stamp duty (as there is no legal obligation to submit such documents for stamping), by the fact that penalties are deferred until the document is brought onshore and, most importantly, because SDRT has a narrower territorial scope and does not generally catch transfers of non-UK shares.

2.39 It's clear from the conversations we've had that the breadth of stamp duty's territorial scope gives rise to confusion, complication and additional costs.

2.40 It is common for deals to involve completion being carried out offshore or for an overseas custodian to be instructed, sometimes at significant cost, to ensure that the transfer of non-UK shares is not brought within the scope of UK stamp duty. Moreover, consultees have told us that they have sent transfer instruments relating to non-UK shares in to HMRC for stamping or adjudication, only to have these sent back with a note stating that they are not stampable or open to adjudication, indicating some confusion on both sides of the fence.

2.41 **We therefore recommend that the territorial scope of stamp duty be narrowed, in particular to exclude transfers in non-UK shares.** Even if stamp duty were not to be made an assessable tax, this would still be a valuable simplification. However, if the tax becomes assessable this is essential.

2.42 There are two readily available ways to narrow the scope of stamp duty.

2.43 The first is to replicate the territorial scope aspects of the SDRT definition of chargeable securities. The second would be to adopt the full SDRT definition of chargeable securities.

2.44 We suggest the second approach because it would have the simplifying effect of bringing the bases of the two taxes into closer alignment.

2.45 Leaving aside territorial scope, there is currently a large degree of overlap between the SDRT definition of 'chargeable securities' and the stamp duty concept of 'stock or marketable securities'. However, these terms are not identical. So it will be important to work through the differences between 'chargeable securities' and 'stock or marketable securities' and address any unintended consequences of applying the 'chargeable securities' definition to stamp duty.

Grants of Options

2.46 A document under which an option is granted (or, in certain cases, released) is in principle chargeable with stamp duty on any amount paid if the option relates to stock or marketable securities.[6] However stamp duty on such instruments remains essentially voluntary, as there is no need to update the company's register, and the grant of options is generally outside the scope[7] of SDRT, so SDRT does not currently serve as a practical way of enforcing stamp duty on such instruments.

[6] It has been suggested to us that the current scope of the charge is in fact unclear - as HMRC have been known to take the view that option grants are only stampable if the option is itself marketable (as well as being over stock or marketable securities) but this is not consistent with the guidance at STSM 113010.
[7] Except for certain specific situations involving clearing systems or depository receipts.

2.47 On that basis it is perhaps not surprising that few instruments granting options are submitted for stamping. So making stamp duty an assessable tax would, as things stand, lead to an increase in the tax collected in relation to documents under which options are granted for consideration, or to behavioural change. (For options granted electronically without a written instrument, or granted for no consideration, the position would remain unchanged.)

2.48 It is also worth noting that the stamp duty charge on option grants, stemming from the George Wimpey[8] case, is considered by some to be something of a policy anomaly, because it is rare for there to be a stamp duty charge in the absence of an actual transfer of shares.

2.49 It is against this background that, as a policy matter, **we recommend that HMRC consider whether or not stamp duty should in principle apply to instruments granting options for consideration.**

Partnerships owning stock or marketable securities

2.50 Stamp duty applies in principle to the transfer of interests in partnerships which own stock or marketable securities.

2.51 There is no general distinction between UK and foreign stock or marketable securities for this purpose (although, of course, reforming the territorial scope of stamp duty would change this).

2.52 However, as with the grant of options, we understand that transferees of partnership interests often do not submit documents for stamping. This may be because they rely on the voluntary nature of stamp duty or take the view that such transfers do not attract SDRT. Or it may be because transferees are simply unaware of the possibility of a charge. As in relation to option grants, all this is possible because such transfers do not give rise to any requirement to write up company registers.

2.53 HMRC data[9] indicates that less than 50 instruments transferring partnership interests are submitted for stamping each year. However, 16 of the 30 agents who responded to our survey indicated they come across transfers of partnership interests at least once a year (chart 2.C). This may simply point to a difference between the number of such documents in circulation and the number that are actually submitted for stamping.

2.54 If no other changes were made in this area, making stamp duty an assessable tax could increase the amount of tax collected in relation to partnership interests.

2.55 So, **we recommend the policy in this area is considered taking into account the impact of this and the potential for behavioural change** such as a reduction in the use of written documents to effect transfers of partnership interests.

2.56 One possibility would be to exclude transfers of shares in partnerships holding only non-UK shares from charge (a natural consequence of reducing the territorial scope of stamp duty), and for any remaining charge to relate only to the UK shares involved. However, this should not replace a proper consideration of the underlying policy in relation to the transfer of partnership interests.

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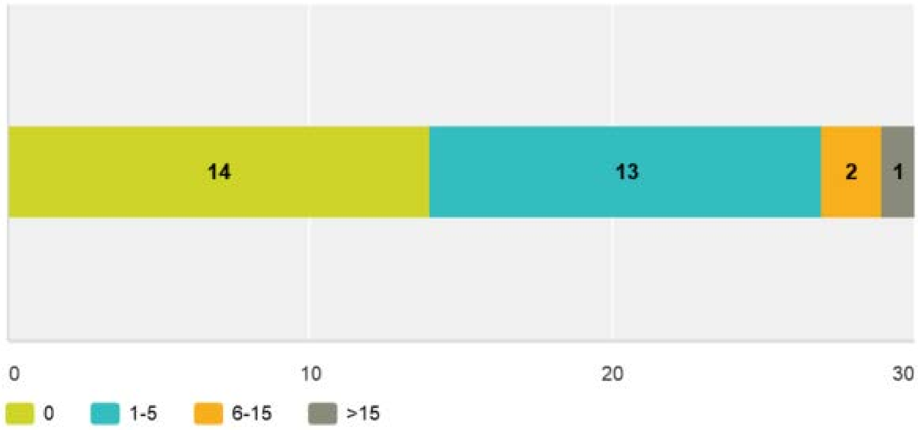
[8] George Wimpey & Co Ltd v IRC [1975] 2 All ER 45.
[9] Source: HMRC data (compiled from administrative sources by operational teams).

Chart 2.C: The number of times practitioners came across transfers of partnership interest over the last year



Source: OTS survey

Pre-2003 interests in land

2.57 At present, stamp duty continues to apply to interests in land that were beneficially transferred before the introduction of stamp duty land tax in 2003, but where the transaction was not completed and no document has yet been created and stamped.

2.58 Very few such documents are stamped – only 156 in 2014/15, and 103 in 2015/16.[10] They fall into two categories.

2.59 The larger category of documents concerns cases where the situation has probably arisen in error. These tend to be low value (for example, the average amount of stamp duty paid on such documents in 2014/15 was £1,300[11]) and come to light where the property is to be sold and the new purchaser wishes to register title.

2.60 The other category is transactions that were deliberately not completed ('resting on contract' in the jargon) to avoid stamp duty needing to be paid at the time. It is difficult to estimate how many of these remain outstanding, or the total amount of stamp duty at stake, but we have been told of some surprisingly valuable portfolios in this position.

2.61 In both these categories, HMRC currently has no ability to enforce payment until a document is created and presented.

2.62 The minimum necessary, if stamping is to come to an end, is an administrative change to bring the occasions in relation to which documents are presently stamped within the scope of the assessable tax (albeit charged at the rate applicable to such transactions) – with the person liable being the person wishing to register legal title to the property.

2.63 If stamp duty becomes an assessable tax and physical stamping is ended, **we recommend that the approach to these transactions be considered as a policy matter.**

[10] Source: HMRC data (compiled from administrative sources by operational teams).
[11] Source: HMRC data (compiled from administrative sources by operational teams).

3 Further recommendations

3.1 **This chapter presents further recommendations that could be taken forward either at the same time as the core recommendations, or subsequently, concerning:**

- simplifying and clarifying a range of important technical matters, not least the present archaic stamp duty consideration rules
- incorporating modernised stamp duty legislation within the umbrella of SDRT, and repealing the present stamp duty legislation (which is spread across many Acts of Parliament)
- ensuring that the digital process is developed in a way which will secure the fullest benefits for taxpayers and the best use of transaction information by HMRC to assist their compliance work

Further technical changes

3.2 In this section we consider the further technical stamp duty issues where our consultation indicated the most pressing call for simplification. This is not intended to be a complete list of all of the technical issues around the current stamp duty legislation.

Consideration

3.3 The consideration on which tax is calculated is determined differently for stamp duty and SDRT. For SDRT, consideration is 'money or money's worth'. This is a broad concept capturing both cash and any sort of non-cash consideration that could be bought and sold in the open market. For stamp duty purposes, consideration is narrower. It comprises only cash, stock or marketable securities, and debt.

3.4 Almost everyone we have spoken to has suggested adopting 'money or money's worth' across the board, on the basis that this is a more modern concept and simpler to understand than cash, stock, marketable securities and debt.

3.5 Broadly, we agree and **we recommend that a digitised stamp duty adopts the 'money or money's worth' concept of consideration as its starting point. As discussed below, we recommend this is coupled with specific rules and exemptions to address certain issues.**

Contingent, uncertain and unascertained consideration

3.6 In SDRT, 'money or money's worth' does not include specific rules to cover situations where the consideration is not known on the date on which the transaction takes place. So any non-cash consideration has to be valued at the date of the transaction.

3.7 At present this does not appear to cause problems because nearly all SDRT transactions take place in CREST and the value of the consideration is very easy to determine. However, outside CREST, many share purchase transactions provide for the consideration to be finalised after the date of the transaction, either following the production of completion accounts or by way of an earn out related to future profits.

3.8 The stamp duty rules address these issues in different ways depending on whether the consideration is ascertainable or unascertainable at the date of the transaction.

3.9 Where the amount of consideration is ascertainable but not ascertained (typically because it depends on the preparation of completion accounts) HMRC operate a 'wait and see' practice.

This allows taxpayers to top up or request a refund of stamp duty paid, when the final consideration is determined.

3.10 Where consideration is not ascertainable at the date of the transfer (because it depends on future events), the contingency principle applies, which determines the amount payable by reference to the greatest of any known amounts which could arise under any contingency, such as a cap, or a floor. So the stamp duty paid may bear little relationship to the final consideration.

3.11 Many who spoke with us noted that the contingency principle represents an unfortunate trap for the unwary (for example if a cap is set that is significantly in excess of what it is realistic to expect, perhaps to ensure there is no need for the seller to obtain shareholder consent). The contingency principle can also lead to the manipulation of the consideration for stamp duty purposes by inserting a low minimum consideration.

3.12 However, simply adopting the SDRT concept of consideration could lead to the unknown part of the consideration needing to be valued for stamp purposes only, to determine the value of the 'money's worth' part of the consideration as at the date of the transaction. Clearly this would not be a simplification.

3.13 A natural approach to addressing this problem can be found in the SDLT legislation.

3.14 Like SDRT, SDLT provides for consideration to be money or money's worth. However, in SDLT there are further specific provisions[1] addressing the issue of unknown consideration by permitting a reasonable estimate of the value of the consideration to be made at the date of completion, and for this to be adjusted once the contingency ceases or the consideration is ascertained. It also permits the taxpayer to apply to defer payment of the tax where the contingent or uncertain consideration falls to be paid more than six months after completion. Incorporating similar provisions into stamp duty should prevent the need for unnecessary valuations, while allowing the contingency principle to be removed.

3.15 **As noted above, we recommend this SDLT approach is adopted.**

Debt

3.16 In addition, a specific rule may be required where debt forms part of the consideration.

3.17 For stamp duty purposes, where property is conveyed in consideration of, or subject to, a debt, that debt constitutes consideration for stamp duty purposes.[2] Where stock or marketable securities are transferred in consideration of a debt, the stamp duty is limited to the market value of the assets being transferred.[3] However, this is not the case where such transfers take place 'subject' to a debt, for example, where shares are transferred that have been used as security for the debt of a parent.

3.18 It has been suggested to us that this can give rise to commercial inconvenience, for example, in the context of commercially driven debt restructurings where the size of the debt can greatly exceed the value of the shares being transferred. In the SDLT context, this issue has been dealt with by adopting the concept of 'money's worth', as discussed above, together with a specific provision around debt as consideration[4]. This limits the SDLT to the market value of the property, where the satisfaction, release or assumption of debt forms part of the chargeable consideration.

[1] Sections 51, 80 and 90 Finance Act 2003.
[2] Section 57 Stamp Act 1891.
[3] Section 102 Finance Act 1980.
[4] Paragraph 8 Schedule 4 Finance Act 2003.

3.19 **We recommend that the stamp duty rules are similarly clarified so that the charge is limited to the market value of the shares.**

Specific transactions presently franked by stamp duty exemptions

3.20 Another area of concern is the position of certain transactions involving consideration in money's worth, but which currently use the narrower definition of consideration in the stamp duty rules to ensure that there is no charge.

3.21 This is achieved by such transactions being carried out by way of letters of direction on which no stamp duty is payable because the consideration is outside the scope of stamp duty. These documents then frank any SDRT charge that might otherwise arise.

3.22 Examples cited to us include:

- transfers in return for the issuance of rights under a contract, such as a reinsurance contract
- contributions to a partnership in return for a membership interest
- distributions in specie out of a partnership in return for a redemption of partnership capital
- contributions of assets to a fund vehicle in consideration for an issue of units in the fund that do not comprise stock
- distributions in specie from a fund in consideration for the redemption of units in the fund that do not comprise stock

3.23 If the money or money's worth definition of consideration were adopted, such transactions would require a specific exemption to preserve the present position. In considering this it would be advisable to work through all the types of transaction that rely on the current stamp duty definition of consideration.

3.24 **We recommend that the best approach for these and any similar transactions be considered as a matter of policy and, where considered appropriate, exemptions provided.**

£1,000 stamp duty exemption

3.25 Stamp duty doesn't normally apply to an instrument where the consideration is £1,000 or less. There is no need for a taxpayer to tell HMRC about such a transaction; the exemption is claimed by completing the first exemption certificate on the back of the STF (unless the amount of consideration was nil). The completed STF is then sent, together with the share certificate, to the relevant registrar to update the shareholder registers.

3.26 Many people we spoke to said that increasing the £1,000 stamp duty exemption would reduce the administrative burden, both for HMRC and taxpayers by decreasing the number of documents on which duty is paid. The threshold was set in 2008 and so is arguably due for a review.

3.27 Others suggested there is no reason to continue exempting such low value transactions as the £1,000 threshold was designed to reduce the burden of dealing with paper applications, and because of limitations of the stamping process – which would no longer be relevant if stamp duty operates digitally.

3.28 However, given the kind of transactions covered by £1,000 exemption (see box 3.A), and having spoken to practitioners representing both individual investors and large multinationals we believe removing the £1,000 exemption would put an undue burden on individuals and smaller businesses, as it would mean a payment of even £0.01 would require an online return (since £5 rounding would be abolished in a digital system), which would not be cost effective.

3.29 **We recommend that the possibility of increasing this threshold be considered as a policy matter.**

Box 3.A: Which situations tend to be covered by the £1,000 exemption in practice?

- transfers of shares between family members for a low value
- purchase of shares in companies with low net asset values
- dividend in specie for nil consideration where it is part of a reorganisation
- employee benefit trusts
- shares held under Employee Shareholder Status

Source: OTS review

Assignment of options

3.30 Changing the scope of stamp duty from instruments relating to 'stock or marketable securities' to 'chargeable securities' may broaden the tax base in relation to written assignments of options. At present, HMRC practice is not entirely clear as regards stamp duty on assignments of options where this is done via a written instrument.

3.31 However, all options to acquire stocks, shares or loan capital are currently 'chargeable securities' for SDRT purposes and therefore their assignment is within the scope of SDRT.

3.32 **We recommend that the policy in this area be considered and clarified.** In particular, one might expect stamp duty to be payable only where the underlying subject matter of an option is a chargeable security.

Incorporating modernised stamp duty legislation within SDRT

3.33 The question of whether stamp duty and SDRT ought to be combined under one 'umbrella' divided those we consulted.

3.34 Generally, practitioners handling simpler transactions were in favour of keeping the two taxes separate, as they considered this would give rise to the least change to the well-understood rules used in their practice, and in particular the fact that it is the completion of a document which triggers the stamp duty charge.

3.35 However, many practitioners handling more complex transactions considered that keeping the taxes separate would be a missed opportunity, as in such transactions the interactions between stamp duty and SDRT can give rise to additional complexity.

3.36 The practitioners who favoured combining the taxes also noted that the SDRT rules are clearer, more modern, and easier for practitioners to understand.

3.37 If the core recommendations are implemented both SDRT and stamp duty will be charged by reference to chargeable securities. It would then make sense to bring them together as far as possible. This would also be an opportunity to 'tidy up' and streamline the taxes - and repeal much of the old stamp duty legislation.

3.38 This could also significantly simplify present complexities in the interactions between SDRT and stamp duty. Specifically, it enables the complex franking mechanism to be dispensed with.

3.39 And, as it is likely over time that more and more transactions will take place in dematerialised form, it makes sense to take the opportunity presented by the reform of stamp duty processes to prepare the way for such developments.

3.40 However, moving to a fully combined tax would present some challenges. It would be a significant legislative exercise and involve operational change. It would also only benefit a small proportion of those who engage with stamp duty, while involving everyone in at least some degree of change and familiarisation.

3.41 While mindful of the need to weigh the balance of the potential benefits and impacts of this, **we recommend that HMRC give serious consideration to the potential for combining stamp duty with SDRT in the way outlined above. In particular we recommend that this be regarded as the roadmap or direction of travel, and that the other areas we cover in this report are pursued in such a way as to facilitate this.**

3.42 We set out below our initial thoughts as to how a combined tax could work.

3.43 To bring the two taxes together one would need to reframe the charging provisions.

3.44 At present, stamp duty applies to transfers on sale,[5] and in particular, to executed transfer instruments. Stamp duty generally has a very clear charging point – which is on completion, when an STF is executed.[6] This is a point in its favour and one that would ideally be preserved in a combined tax. In addition, in relation to company acquisitions, purchasers often draw down the necessary funds by reference to the completion date, rather than any earlier.

3.45 SDRT applies to agreements to transfer[7] chargeable securities. Its charging point is, in theory, less clear, because it is not always easy to determine when the parties have reached an unconditional agreement. However, this does not tend to give rise to problems in practice because almost all SDRT transactions take place via CREST, where the date of the agreement is easy to determine.

3.46 On the basis of what we have heard and an initial analysis, our preferred approach would be for the combined charge to be triggered when there is substantial performance of an agreement to transfer securities for money or money's worth.

3.47 It would be important that the practical effect of this be that:

- for transactions settled using a STF, the charge to tax on ordinary share transactions continues in practice to be triggered on the completion of that document
- no changes to CREST procedures are required (we don't think any would be because paper transactions could continue to be managed via the digital solution described in chapter 2)
- the £1,000 threshold for non-CREST transactions is retained
- the existing anti-avoidance role of SDRT as a tax on agreements is preserved

[5] Paragraph 1 Schedule 13 Finance Act 1999.
[6] Although technically the charging point for SDRT can arise prior to the executed transfer instrument being stamped, we understand HMRC practice is that it is not generally necessary to pay SDRT on the unconditional agreement, where an STF is shortly to be submitted for stamping.
[7] Section 87(1) Finance Act 1986.

3.48 However, this need not prevent there being different accountable dates by which the tax has to be paid, for CREST and non-CREST transactions. And it would make it natural to treat the few existing non-CREST transactions where SDRT is paid in the same way as transactions where a document is used, which would help simplify things.

3.49 For such an approach to work, it would need to address all the situations where franking is presently relied on as a workaround for all stamp duty reliefs being available in SDRT. This would in any case be a natural part of bringing the two taxes together.

3.50 Changes to integrate the taxes would also assist in resolving situations where a double charge to both SDRT and stamp duty can arise at present.

3.51 In the event government decides not to combine stamp duty with SDRT, we suggest that the franking provisions are reviewed to ensure that there are no double charges and only one charge can arise per transaction. In addition, consideration should be given to ensuring that no charge arises where a contract does not complete, there being no substantial performance, by analogy with the SDLT rules.

3.52 Earlier in this report we suggested that stamp duty adopt the SDLT assessment provisions rather than the SDRT ones. We note here that this need not be inconsistent with a combined stamp duty, which could also take on these assessment provisions, either just for non-CREST transactions or, possibly, suitably amended, for CREST transactions as well.

Designing a digital process

3.53 We list below a number of other suggestions that were made to us during the review.

3.54 We believe these would help to reduce significantly the time spent on stamp duty compliance and could be introduced as part of developing the digital approach to stamp duty:

- an online return so that scanned STFs or other documents would not need to be uploaded; careful consideration would be required to ensure this did not simply become a data-gathering exercise
- allowing for online payments and using UTR as a reference would help to reduce the number of situations when ‘matching’ is an issue
- there could be an option to set up an account for regular users so personal details don’t have to be entered more than once, and UTRs could be stored, enabling current claims followed up on and refunds handled more easily
- the system ought also to be able to see when payment is made late, and manage this, including calculating the interest and penalties due
- an option to check if a UTR is valid
- an easy way to follow up electronically on applications where the consideration is not initially known – there would be no need to send all the documents again, as information would already have been logged and accessible
- an enhanced database for HMRC to store relevant details of the transactions to allow for administrative processes (such as refunds) and to take a full advantage of taxpayers providing their tax reference numbers

3.55 **We recommend that these suggestions are considered by HMRC when developing a digital system.**

A Terms of reference

Stamp duty: Simplification review of residual paper duty on shares etc.

A.1 Stamp duty, involving the impressing of physical stamps on documents to (in effect) validate them, has a long and fascinating history, but has now very largely been overtaken, first in 1986 by SDRT (in relation to most shares) and then in 2003 by SDLT (in relation to interests in land). There are now only a limited range of circumstances in which physical documents need to be stamped and, in some cases at least, the process appears disproportionately unwieldy for the 21st century.

A.2 The number of documents stamped each year is a little under 100,000, raising £714 million in the year 2015/16. Half the total yield comes from a few dozen major corporate transactions. The great majority of documents are processed without enquiry within 5 days.

A.3 The Office of Tax Simplification (OTS) has agreed with the Chancellor and the Financial Secretary to carry out a review of stamp duty. The aim of the review will be to develop recommendations about how to reform and simplify the stamp duty system from both a tax technical and administrative stand point. This will include considering the possibility of transforming or replacing it so as to entirely remove the need for physical stamping.

A.4 In conducting the review the OTS will provide a report in the summer of 2017 that:

- provides analysis and evidence of ways in which simplification could be achieved, and specific steps that could be taken to this end
- considers and offers an initial evaluation of the benefits and costs for businesses and other taxpayers, HMRC and the Exchequer

Terms of reference

A.5 The review will consider how the current stamp duty system could be simplified, including the possibility of its being transformed or replaced to such an extent as to bring the practice of physically stamping documents to an end.

A.6 This will include consideration of a combination of technical and administrative questions and related non-tax issues such as:

- the inter-relationship between SDRT and stamp duty on shares
- situations where reliefs are administered by way of adjudication, such as group relief
- situations where the consideration is uncertain or contingent
- specific situations such as company purchases of own shares or demutualisation, or where stamp duty may currently be paid in contemplation of a sale
- the position of chargeable assets other than shares or land, such as partnership interests and certain debt securities which have equity characteristics
- transitional issues relating to existing stampable documents which have not yet been stamped or extant transactions in relation to which no stampable document yet exists

- in relation to any possible replacement stamp duty (for example, by way of SDLT or SDRT)
    - how this could operate electronically
    - tax administration issues such as returns, interest and penalties
    - how to preserve effective registration requirements
- non-tax legislation which refers to stamp duty
- the position of company registrars, and shareholder voting rights

Further guidance for the review

A.7 In carrying out its review and developing its recommendations, the OTS should:

- research widely among all stakeholders
- involve HMRC's Administrative Burdens Advisory Board
- consider whether devolution of tax powers within the UK has implications and especially whether the Scottish legal system impacts any recommendations
- consider the likely Exchequer implications of recommendations
- be consistent with the principles for a good tax system, including fairness and efficiency

A.8 For the avoidance of doubt, this review will not consider any aspects of Stamp Duty Land Tax.

B Consultative Committee

B.1 We are very grateful for the time and support of our Consultative Committee members.

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C.1 We are very grateful to the wide range of bodies, businesses and individuals who gave their time to meet with us, and for the submissions we have received. We have listed them below and apologise to any that we have inadvertently omitted.

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Euroclear UK & Ireland
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Freshfields
Gary Richards
Grant Thornton
HMRC
HM Treasury
ICAEW
ICSA
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KPMG
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London Stock Exchange
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PIMFA (formerly WMA)
Pinsent Masons
PwC
Quoted Companies Alliance
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This document can be found in full on our website at:
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