HM Revenue & Customs

Modernisation of the Stamp Taxes on Shares Framework

Call for Evidence

Publication date: 21 July 2020
Closing date for comments: 13 October 2020

Subject of this call for evidence:	The principles and design of a new Stamp Duty and Stamp Duty Reserve Tax (SDRT) Framework. This will inform a longer-term modernisation of Stamp Duty and SDRT.
Scope of this call for evidence:	We are interested in your views on what should be the principles and design of a new framework for taxing shares and securities, and what should be prioritised in any modernisation programme. We are not seeking views on detailed policy or legislative proposals.
Who should read this:	We would like to hear from companies, partnerships, legal firms, accountants and other interested parties.
Duration:	12 weeks, from 21 July 2020 until 13 October 2020.
How to respond or enquire about this consultation:	Please send responses to: sts.consultation@hmrc.gov.uk
Additional ways to be involved:	If you would like to discuss the issues raised in the call for evidence, please email: sts.consultation@hmrc.gov.uk
After the consultation:	The responses will inform the government's thinking on possible changes to the Stamp Duty and SDRT frameworks. If the government decides to take forward any potential changes, it is expected that a consultation on these changes would be undertaken and that the response document for that consultation would refer to this call for evidence.
Getting to this stage:	The Office of Tax Simplification (OTS) published a report in July 2017 "*Stamp duty on paper documents: a way forward to reform, digitise and simplify"* recommending modernising Stamp Duty. In November 2018 the government published a consultation *"Stamp Taxes on Shares Consideration Rules"* on changes to the stamp taxes on shares consideration rules including alignment of the Stamp Duty and SDRT definitions of consideration and the rules on contingent consideration. Following consultation, the government acknowledged in the "*Stamp taxes on shares: Consideration Rules Summary of Response*s" document published in July 2019 that such changes in isolation without wider reform and modernisation of Stamp Duty would create significant negative impacts on certain sectors.
Previous engagement:	HMRC worked in conjunction with the OTS on their report on the modernisation of Stamp Duty.

Contents

1. Executive Summary

1.1 The government has launched a call for evidence to build upon the OTS review of Stamp Duty with a view to longer-term modernisation of the Stamp Duty framework.

1.2 The government is aware that Stamp Duty, as a paper-based regime, is often regarded as an anachronistic feature of an otherwise high performing UK tax system. SDRT has to be considered in the context of Stamp Duty modernisation as the two taxes are interdependent, with SDRT relying on elements of the Stamp Duty regime for its operation. The government's view is that the time is right to explore options for fundamental redesign of the Stamp Duty and, where necessary, SDRT frameworks.

1.3 The Stamp Taxes on Shares (STS) framework is the legislation, guidance and administrative processes that allow HMRC to administer Stamp Duty and SDRT effectively. It defines the obligations on HMRC and taxpayers, including:

- when and how taxpayers must notify an obligation to pay tax
- how liability is calculated and agreed, including determining eligibility for reliefs and exemptions;
- how tax is collected (for example compliance powers, penalties and interest) and
- how disputes are managed.

1.4 This Call for Evidence asks for views on:

- what the principles and design of a new framework for STS should be and
- prioritising changes within the overall modernisation programme.

It includes reference to temporary changes to STS processes which have been made as a response to measures put in place to stop the spread of coronavirus (COVID-19).

2. Introduction: Background to Stamp Duty and SDRT

2.1 Stamp Duty is a charge on (paper) instruments that transfer the beneficial interest in “stock” or “marketable securities”. It is also charged on instruments that transfer interests in land if the transfer took place prior to 1 December 2003 or transfers at any point further to an agreement entered into on or before 10 July 2003. Stamp Duty is mainly charged on a specific form known as a stock transfer form (STF) but is also charged on any other instrument that transfers the beneficial interest in “stock” or “marketable securities”

2.2 SDRT was introduced on agreements to transfer uncertificated (paperless) shares and other securities in 1986 and, with the growth of paperless transactions, SDRT rather than Stamp Duty now applies to most transfers of shares and securities. It is charged on agreements to transfer “chargeable securities”. Most securities are settled through the CREST settlement system and are known as “dematerialised” as they are held in electronic rather than “materialised” paper form.

2.3 See Annex A for definitions of “stock” and “marketable securities” and “chargeable securities”, and for examples of instruments other than STFs.

2.4 Stamp Duty is normally charged at 0.5% of the amount or value of the consideration and is rounded up to the nearest £5. SDRT is also normally charged at 0.5% but is rounded up to the nearest 1p. A higher 1.5% Stamp Duty or SDRT rate can apply in certain circumstances where shares or other securities are transferred overseas.

2.5 SDRT is not payable where either a document has been stamped for Stamp Duty purposes, or is exempt from Stamp Duty.

2.6 Stamp Duty doesn’t normally apply where the consideration for shares is £1,000 or less. An exemption is claimed by self-certificating. This exemption prevents the administrative burden of having to notify low-value transactions.

3. Why do we need a review of the Stamp Taxes on Shares Framework?

3.1 HMRC is focused on becoming a trusted, modern tax and customs department - one that collects the tax due at minimal cost to customers and the Exchequer, in a way that makes it easy for customers to get tax right and operates in a way that is recognised as fair.

3.2 The government is aware that Stamp Duty, as a paper-based regime, is often regarded as an anachronistic feature of an otherwise high performing UK Tax system. It has been put to the government that this can cause uncertainty for investors, impede the policy objective of raising revenue while minimising burdens on businesses and reduce government flexibility in developing policy. Moves towards digitalisation in other areas have indicated that there is scope to update aspects of the regime based on the stamping of paper instruments and the OTS in their report “Stamp duty on paper documents: a way forward to reform, digitise and simplify”, recommended that the process be digitised and modernised.

3.3 The need to temporarily halt manual processes (see sections 6, 7 and 8 and Annex D) in response to COVID-19, has further highlighted these issues. The government’s view is that the time is right to explore options for fundamental redesign of the Stamp Duty and, where necessary, SDRT frameworks.

3.4 Unlike other taxes, Stamp Duty does not generally include any element of self-assessment. Instead HMRC must assess whether reliefs are due and what the amount of any liability is and must physically stamp documents accordingly. The only exception is for certain exemptions where the customer can self-certify.

3.5 HMRC aims to deal with 80% of stock transfer forms within 15 working days of receiving them but recommend that customers allow 20 working days. This does not include the time it takes for an instrument to reach the Stamp Office and be returned to the taxpayer. For very urgent transactions, the Stamp Office will usually agree to provide ‘same day’ stamping, enabling an agent to make an appointment to get an instrument stamped in person immediately.

3.6 Large corporate takeovers represent a significant share of annual Stamp Duty revenues. In certain circumstances very large value transactions can be subjected to an unwelcome delay. This is detrimental to the businesses affected and does not portray the UK in a favourable light as a location to invest.

3.7 There is no obligation for a purchaser to submit an instrument for stamping. However, except for cases where a STF can be self-certified, company registrars cannot register the share transfer without a stamped instrument, nor can the instrument be used in court to verify title unless it is stamped. Shareholders may find this confusing.

3.8 Stamp Duty can in theory apply to any instrument of transfer executed in the UK irrespective of the location of the company and its share register. In practice, HMRC does not collect Stamp Duty on transfers of shares in non-UK companies. However, this lack of legislative clarity remains a barrier for some risk-averse investors.

3.9 Stakeholders have also reported other areas of uncertainty which can act as a barrier to investment, for example:

- The legislation is dated and spread across a number of Acts with common terms in current-day business transactions not catered for.
- Some Stamp Duty definitions are not always consistent with equivalent provisions for SDRT or other taxes and certain common business terms or practices are not covered.
- Some reliefs exist only in Stamp Duty and not SDRT (and vice versa).

3.10 Stamp Duty and SDRT are interdependent, with SDRT relying on elements of the Stamp Duty regime for its operation. Modernisation of the Stamp Duty framework will therefore also impact on SDRT and raises questions about the separate existence of the two taxes.

3.11 The government's view is that modernisation of the STS regime is not something that can easily be achieved through piecemeal change. This call for evidence is therefore envisaged as a first step in a longer-term project with potentially several stages of consultation and new legislation.

3.12 The following sections of this call for evidence set out areas where HMRC is aware that stakeholders may feel that the current regime needs to be modernised.

- Prioritisation of the Stamp Duty modernisation elements and potential amalgamation with SDRT as part of that modernisation.
- The scope of Stamp Duty and SDRT.
- The reporting and collection of SDRT including reliefs.
- Enforcement and payment.
- Legislative coverage.

4. Prioritisation of Stamp Duty modernisation elements and amalgamation with SDRT.

4.1 Following the call for evidence, the government envisages consulting further on specific policy and legislative changes to the STS framework, with sequencing of these determined by ongoing analysis (including this call for evidence) and stakeholder evidence. The government does not anticipate any major legislative redesign until Finance Bill 2021-22 at the earliest.

4.2 Respondents to this call for evidence might consider that certain issues need to be addressed more urgently than others and that certain modernisation strands will rely on the prior completion of other strands. Therefore to inform work on the modernisation of the framework, we are interested in hearing views on which elements should be prioritised over others.

4.3 SDRT is designed to cater for the electronic transfer of securities, so combining Stamp Duty and SDRT into one tax may still require some degree of separation because of the different ways in which the beneficial interest of the securities is transferred.

4.4 The OTS report noted that the question of whether Stamp Duty and SDRT ought to be combined under one 'umbrella' divided those consulted. 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 an instrument which triggers the Stamp Duty charge).

4.5 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. The report noted that such practitioners thought that the SDRT rules were clearer, more modern, and easier for practitioners to understand.

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?

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?

Question 3: What are your views as to the priority which should be given to elements in any modernisation programme? This will encompass any views on which areas currently cause most problems and which areas would rely on other elements being addressed first.

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.

5. The scope of Stamp Duty and SDRT

5.1 The territorial scope of SDRT is restricted to “chargeable securities” where an agreement is in place for the securities to be transferred (see annex A for the definition of “chargeable securities”). The term “chargeable securities” generally means securities issued by UK incorporated companies (the exceptions being shares issued by non-UK companies with a UK share register and non-UK company shares paired with UK shares). Therefore, although SDRT applies irrespective of where the agreement to transfer takes place or where the parties involved in the transaction are resident, it rarely impacts on transfers of non-UK securities.

5.2 The territorial scope of Stamp Duty covers:

- Instruments executed anywhere in the UK
- Instruments executed outside the UK that relate to UK property, or to ‘any matter or thing done or to be done’ anywhere in the UK

5.3 Foreign securities are therefore not exempted from Stamp Duty but in practice an instrument to transfer them would usually be executed and kept outside the UK and therefore not require stamping. The OTS report indicated that the need to carry out deals offshore or using an overseas custodian to ensure that the transfer of non-UK securities is not brought within the scope of UK Stamp Duty gives rise to confusion, complication and additional transaction costs.

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?

6. Reporting and Collection of Stamp Duty and SDRT (including reliefs).

6.1 SDRT has specific enquiry powers and the ability to enforce collection. An SDRT liability is created as soon as the agreement to transfer becomes unconditional, which, in most cases, will be the date of the agreement. The “accountable date” by which the transaction must be notified and tax paid depends on whether the transfer was capable of being made through the CREST settlement system (see annex A for further details).

6.2 Liability to an SDRT charge ordinarily falls on the purchaser of the shares. However, where an “accountable person” (normally a broker acting for the purchaser) is involved in a transaction, that person is required to give notice to HMRC and pay the tax.

6.3 In practice, most SDRT is collected and reported centrally through CREST. SDRT reliefs and exemptions can be self-assessed and reported by the CREST member through the appropriate input into the system.

6.4 CREST does not settle unlisted securities. There is no prescribed form of notice for the notification of securities which cannot be reported through CREST (sometimes referred to as “residual” securities) for SDRT purposes. Unlisted securities and any other residual securities will normally be settled by the completion and stamping of a STF subject to Stamp Duty. If such a document is not stamped then SDRT (which is enforceable) will generally apply.

6.5 Unlike SDRT and other taxes, Stamp Duty does not generally include any element of self-assessment. HMRC must decide whether any reliefs are due and what the amount of any liability is and must physically stamp documents accordingly. Therefore, any delay in stamping a document can delay transactions. The only exception is for certain exemptions where the customer can self-certify (so the completed instrument can be sent directly to the Company Registrar to update the share register).

6.6 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) is subject to a penalty of up to £300 if they register an instrument which has not been duly stamped.

6.7 Registrars are interested in registering changes in legal title whereas Stamp Duty charges transfers of beneficial ownership. This creates a disjunction between the registration conditions and Stamp Duty compliance. Beneficial ownership and legal ownership are usually transferred together but are sometimes separated to speed up the registration of shares. The OTS report mentioned that such arrangements can increase costs for undertaking reorganisations.

6.8 Unlike SDRT reliefs (which are self-assessed), Stamp Duty reliefs are subject to the “adjudication” process. An adjudication is a formal HMRC opinion as to whether Stamp Duty is chargeable and, if so, in what amount, whether any penalty is payable and what penalty is correct and appropriate. Once the adjudication process is complete and the instrument is stamped, the validity of the stamp impressed cannot be challenged by anyone including HMRC.

6.9 While adjudication can be undertaken on any instrument on request from a customer, it is mandatory when a relief from Stamp Duty is to be claimed.

6.10 Some of the most common Stamp Duty reliefs which customers claim relate to companies: intra-group relief; acquisition relief and reconstruction relief. Because the reliefs exist only in Stamp Duty and not in SDRT, anyone subject to SDRT who wants to claim those reliefs has to convert the share certificate into paper form from electronic form and submit that instrument for stamping under Stamp Duty. This creates administrative costs for both the customer and HMRC.

6.11 It is routine for taxpayers to use well-established 'workarounds' for time-sensitive transactions. These facilitate same day registration, without affecting the amount of Stamp Duty paid. However, these workarounds are regarded as complex, time-consuming and costly, and do not provide certainty in getting an instrument stamped when desired.

6.12 The OTS report recommended amending company registrars' legal obligations so that they could write up a company's books on receipt of an HMRC unique transaction reference (UTR) or confirmation of notification in situations where it is not possible to produce the UTR immediately. It was envisaged that, under this system, HMRC would have the ability to pursue any unpaid duty in any cases where a transfer was inappropriately registered.

6.13 In 2019, Stamp Duty legislation was amended to provide flexibility in the method by which Stamp Duty is denoted, in terms of how an instrument is marked. This flexibility provides scope for the use of modern mechanisms or machinery for stamping.

6.14 Temporary changes to the processing of STFs and other instruments of transfer were introduced in March 2020 in response to COVID-19. Whilst these temporary Stamp Duty processes are in place, instruments of transfer are not being stamped, and customers are requested to email electronic copies (e.g. scanned/ pdf) instead of posting them.

6.15 Under the temporary process a confirmation letter is issued to the customer. This letter confirms receipt of Stamp Duty and details the transactions we are confirming receipt for and the reference codes. It also gives assurance that HMRC will not pursue a penalty against the Registrar for registering the new ownership of the shares in the absence of a duly stamped instrument.

6.16 Likewise, customers should temporarily submit applications for relief via email, enclosing electronic copies of instruments of transfer and supporting documents. If the claim is approved, a confirmation letter is issued to the customer via email.

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

Question 7: Is it now redundant for 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)?

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

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?

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?

7. Enforcement and Payments

Stamp Duty

7.1 The Stamp Duty enforcement and administration framework differs from that for SDRT and other taxes. For example, the charging points and the notification, payment and repayment timeframes are different for Stamp Duty than they are for SDRT. The Stamp Duty appeals process also differs from the general tax appeals process. The government is therefore interested in your views as to how the current enforcement and administration system works and what you would like a new framework to look like.

7.2 Stamp Duty is unique amongst UK taxes in that HMRC does not have enquiry powers or the ability to enforce collection. Although it is a near-universal practice that it is the purchaser who pays Stamp Duty, there is nothing in legislation to say who is liable to pay. An unstamped instrument cannot be relied upon nor can it be used for legal purposes, such as registering a transfer of ownership or production as evidence in court, except in a criminal case. Since the new owners of shares will want to demonstrate their title to the property, they are effectively required to send the instrument to HMRC for stamping together with any relevant payment of Stamp Duty if they want anyone, including a court, to take notice of it.

7.3 Although Stamp Duty is not directly enforceable, an instrument upon which Stamp Duty is payable (or a relief from Stamp Duty is to be claimed) has to be presented to HMRC within 30 days of the execution of the instrument. Interest and penalties can be imposed for late submission of an instrument for stamping. If the full amount of Stamp Duty is not paid on time, interest is charged from the day payment should have been made until the day payment is made. This is on top of any penalty for late submission of instruments. The penalty timeframes, amounts and reasonable excuse provisions are set out in annex B.

7.4 An application for a refund (partial or whole) of overpaid Stamp Duty can be made to HMRC provided the claim is made within 2 years of the date of the instrument.

7.5 An appeal solely in relation to a late stamping penalty can be made to the First-tier Tribunal in accordance with procedure which applies to other taxes (see annex B). Any other matter (for example the correct amount of Stamp Duty chargeable) can only be appealed to the High Court. The appeal is instituted by the appellant requiring HMRC to state a case for the opinion of the High Court. The view has been put forward that the cost of proceeding to the High Court may be problematic for appellants.

SDRT

7.6 SDRT has specific enquiry powers and the ability to enforce collection. An SDRT liability is created as soon as the agreement to transfer becomes unconditional, which, in most cases, will be the date of the agreement. Interest and penalties can be imposed where the notice or payment are not made by the “accountable date”, or if either is incorrect. The “accountable date” by which the transaction must be notified and tax paid depends on whether the transfer was capable of being made through the CREST settlement system (see annex A for further details).

7.7 There is a 4 year time limit for claiming a refund (in whole or part) of SDRT. However, the time limit for an SDRT refund is extended to 6 years where Stamp Duty has also been paid (or the instrument is not chargeable to Stamp Duty).

7.8 A notice of determination is the mechanism by which HMRC may recover tax (or over-repaid tax). HMRC may not recover tax or over-repaid tax unless the amount has been agreed in writing or determined by a notice of determination. There is a 4 year time limit for making such a determination. This is extended to 6 years where the underpayment or over-repayment was brought about carelessly and to 20 years where it was brought about deliberately.

7.9 An appeal from an SDRT determination and any penalty payable for late notification is to the First-tier Tribunal. Payment of the tax is not a precondition of an appeal. There is no right of appeal against interest charged when SDRT is paid late.

7.10 The SDRT penalty regime for failure to notify and failure to pay mirror a number of other taxes but differ from the Stamp Duty regime (see annex B).

7.11 Where Stamp Duty and SDRT are paid on the same transaction, an application can be sent to HMRC for a refund of the SDRT.

7.12 See Annex D for further information on the temporary COVID-19 processes. In particular, 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.

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

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

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.?

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?

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?

8. Moves towards Digitisation

8.1 Where shares are to be transferred requiring a change of legal title on the company share register, an instrument must be completed and executed and sent to the registrar to effect and record the title change on the register. This is usually an STF but could be an equivalent instrument showing similar details to that of an STF.

8.2 The OTS report noted that in company and commercial law there is a continuing trend towards dematerialisation of share transfer processes both in the UK and internationally. Impetus for considering modernising Stamp Duty may arise from work on the dematerialisation of share certificates. In the EU, the Central Securities Depository Regulation (CSDR) requires dematerialisation of all share certificates by 2025.

8.3 In the UK, during 2016 and 2017, the government actively engaged with industry participants on the process for dematerialising existing paper share certificates. The government proposed as part of the engagement that shareholders currently holding paper certificates should remain direct shareholders after dematerialisation with no loss of shareholder rights. We understand that the assumption remains that these shareholders should retain their direct shareholder rights.

8.4 Advances in cloud storage and digital signing may prompt calls for electronic STFs. As a 'wet' signature (where a person physically marks the instrument) has traditionally been required, the usual Stamp Duty process is regarded as an inhibitor of advances in dematerialisation.

8.5 The OTS report recommended digitising the Stamp Duty process and retiring the stamping machines. It suggested that uploading a scan of the transfer instrument together with any other relevant information (for example a company tax reference number or a national insurance number) may be the easiest and quickest form of online submission to introduce initially, along with suitable legislation to support this.

8.6 The OTS report also recommended that the online system, immediately on receipt of a submission, should produce a 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 company registrar to enable the company's records to be updated. A suggested option to ensure security was 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 Stamp Duty Land Tax (SDLT)).

8.7 As discussed in section 6, HMRC has temporarily changed the way Stamp Duty is processed. As part of those temporary processes, HMRC currently accept the use of electronic communication and signatures.

Distributed ledger technology and smart contracts

8.8 The government is aware that capital markets are increasingly using new technology to raise and exchange capital. Specifically, both UK and global markets are using smart contracts and distributed ledgers to execute transactions in a cheaper, quicker and more assured way.

8.9 A distributed ledger is a database that can securely record financial, physical or electronic assets for sharing across a network through entirely transparent updates of information.

8.10 Smart contracts are contracts whose terms are recorded in a computer language instead of legal language. Smart contracts can be automatically executed by a computing system and recorded in assured fashion on a distributed ledger system.

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?

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

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

Question 21: Would an electronic STF be beneficial?

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

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?

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

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

9. Stamp Duty Legislation

9.1 Many of the Stamp Duty rules in use today are contained in legislation dating back as far as the 19th century and contain language which, while familiar to stamp taxes experts, may not be suitable for a 21st century tax. The rules are also spread across a very large number of acts, making it challenging to work with.

9.2 Stakeholders have raised concerns that some of the definitions used in the Stamp Duty legislation may lack consistency with definitions used in other taxes. For example, Stamp Duty legislation distinguishes between debt and equity capital for the purposes of the loan capital exemption (generally, loan capital is exempt from Stamp Duty whereas equity capital is not). There are, however, differences between the definition used for Stamp Duty and that used for other taxes.

9.3 Discrepancies also exist between Stamp Duty and SDRT definitions, for example the definition of “consideration”. Also, common terms in current-day business transactions are not catered for. Unlike most other taxes, there are no provisions explaining how to deal with transactions where the consideration paid is contingent upon future earnings or events (with this being developed by case law instead). The government consulted on making changes in this area in November 2018. However, following consultation, the government acknowledged that such changes in isolation without wider reform and modernisation of Stamp Duty would create significant negative impacts on certain sectors.

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

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

10. Summary of 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?

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?

Question 3: What are your views as to the priority which should be given to elements in any modernisation programme? This will encompass any views on which areas currently cause most problems and which areas would rely on other elements being addressed first.

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.

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?

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

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)?

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

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?

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?

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

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

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.)?

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 <u>the</u> most effective means of achieving that? If the answer to either question is "no", then what would be more effective?

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?

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?

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

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?

Question 21: Would an electronic STF be beneficial?

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

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?

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

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

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

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?

11. The Consultation Process

This call for evidence is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the principles and design of a new Stamp Duty and Stamp Duty Reserve Tax (SDRT) Framework. This will inform a longer-term modernisation of Stamp Duty and SDRT.

How to respond

A summary of the questions in this consultation is included at chapter 10.

Responses should be sent by e-mail to:

sts.consultation@hmrc.gov.uk

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

We will process the following personal data:

Name
Email address
Postal address
Phone number
Job title

Purpose

The purpose for which we are processing your personal data is: Modernisation of the Stamp Taxes on Shares Framework

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

- You have the right to request that any inaccuracies in your personal data are rectified without delay.

- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue and Customs, 100 Parliament Street, London, SW1A 2BQ.

Please do not send responses to the consultation to this address.

Annex A –

Definitions of “chargeable securities” and “stock” and “marketable securities”

“Chargeable securities”

SDRT is charged on agreements to transfer “chargeable securities”. Whereas a Stamp Duty charge can arise on various property types, the charge to SDRT is restricted to “chargeable securities” which means:

- All issued stocks, shares, loan capital in UK and non-UK companies having a register of its securities in the UK;
- Interests in, or in dividends, or other rights arising out of stocks, shares and loan capital;
- Rights to allotments of or to subscribe for, or options to acquire, stocks, shares or loan capital
- Units in a unit trust and shares in an Open Ended Investment Company (OEIC).
- Stocks, shares or loan capital within which are issued or raised by a non-UK incorporated company but registered in a register kept in the UK.
- Shares issued or raised by a non-UK incorporated company which are paired with shares issued by a UK incorporated company.

“Stock” and “marketable securities”

“Stock” includes any share in any stocks or funds or funded debt issued by a UK or non-UK corporate body, corporation or society. “Marketable securities” includes property which are not shares or stocks but are securities which are capable of being marketed and traded in any stock market in the UK.

Examples of instruments other than a STF where Stamp Duty applies

- Interests in partnerships where the partnership assets include stock or marketable securities;
- Companies House returns for a company re-purchasing its own shares;
- Certain Court Orders that act as an instrument of transfer; and
- Sales of stocks or marketable securities where a common nominee acts for the seller and purchaser so that completion of an instrument transferring legal title is not required.

Annex B – Notification Dates and Penalties

SDRT

Details of the SDRT notification dates, penalties and appeals are set out in the HMRC guidance:

https://www.gov.uk/guidance/stamp-duty-reserve-tax-penalties-and-appeals

Stamp Duty

Details of the Stamp Duty notification dates, penalties and appeals are set out in the HMRC guidance:

https://www.gov.uk/guidance/stamp-duty-penalties-appeals-and-interest#appealing-against-a-stamp-duty-penalty

Annex C: Relevant (current) Government Legislation

Stamp Duty

The Stamp Duties Management Act 1891, the Stamp Act 1891 and the Finance Act 1895, still contain much of the operative law on Stamp Duty, although there have since been significant amendments and a partial consolidation was made in the Finance Act 1999. FA 2003 section 125 provided for the abolition of Stamp Duty except on instruments relating to stock or marketable securities.

In particular:

- Section 122 of the Stamp Act 1891
- Part 1 of schedule 13 of Finance Act 1999
- Stamp Act 1891 sections 6 and 55, 57 and 58
- Sections 67 and 69 of Finance Act 1986
- Sections 70 and 72 of the Finance Act 1986
- The Stamp Duty (Method of Denoting Duty) Regulations 2019

SDRT

The main charging provisions and scope of SDRT are contained within Part IV Finance Act 1986 (sections 86-99) of primary legislation, which is, in turn supplemented in secondary legislation by Statutory Instrument 1986/1711 (The Stamp Duty Reserve Tax Regulations 1986).

Annex D: Temporary changes to Stamp Duty and SDRT processes due to Coronavirus (COVID-19)

Details of the temporary changes to Stamp Duty and SDRT processes due to Coronavirus (COVID-19) are set out in the HMRC guidance:

https://www.gov.uk/guidance/stamp-duty-on-shares

https://www.gov.uk/guidance/pay-stamp-duty

https://www.gov.uk/guidance/stamp-duty-reliefs-and-exemptions-on-paper-shares

https://www.gov.uk/guidance/pay-stamp-duty-reserve-tax