HM Revenue & Customs

Stamp Duty: Change of Control Using Share for Share Exchanges

Who is likely to be affected?

Public or private companies involved in takeovers where the arrangements include a share for share exchange.

General description of the measure

Stamp duty is charged on instruments which transfer shares by way of sale. Relief is available where shareholders swap shares in one company (the target company) for newly issued shares by another company (the acquiring company) which has been inserted above the target company as part of a company reconstruction. This is called a share for share exchange.

The measure will change the stamp duty rules so that no share for share relief will be available where arrangements are in place at the time of the share for share exchange for a change of control of the acquiring company.

Policy objective

Government policy is that stamp duty is paid on takeovers of UK companies (including the acquisition of private companies). This measure makes the tax system fairer and provides certainty by preventing an unfair tax advantage where share for share relief is claimed on takeovers. HMRC have identified transactions which lead to this unfair outcome and are taking action.

Background to the measure

The purpose of the share for share relief is to ensure that there is no stamp duty charge where there is no real change of ownership. That is, the same people hold the same proportion of shares in the companies before and after the reconstruction. The relief allows genuine reconstructions of companies to take place in a tax neutral way.

The relief should not apply to company takeovers where there is a change of control. Takeovers are not reconstructions. Takeovers are usually undertaken by a transfer scheme of arrangement or contractual offer. In both cases, stamp duty is payable. Companies Act regulations (SI 2015/472) prohibit companies from using capital reduction schemes of arrangement to circumvent payment of stamp duty on takeovers. Purchasers should pay stamp duty on a takeover however that takeover is implemented.

This measure will not impact on normal Initial Public Offerings (IPOs) where share for share relief is often used to insert a new acquiring company. IPOs provide companies with capital for future growth and IPOs do not generally result in takeovers. If an IPO structure is used to change control of a company, it will be caught by the measure.

The measure was announced during the passage of Finance Bill 2016 at Committee of the Whole House. The measure was introduced as soon as it became clear that new legislation would be necessary, because of the need to protect significant tax revenue.

Detailed proposal

Operative date

The measure will have effect in relation to any instrument executed on or after 29 June 2016.

Current law

Section 77 Finance Act 1986 provides relief on instruments transferring shares in one company (the target company) to another company (the acquiring company) where the acquiring company issues shares as consideration for the transfer to all the shareholders of the target company. The transfer must form part of an arrangement by which the acquiring company acquires the whole of the issued share capital of the target company in exchange for the issue of new shares in the acquiring company. The shareholders in the acquiring company after the share for share exchange must mirror those in the target company immediately prior to it.

Proposed revisions

Legislation will be introduced in Finance Bill 2016 to amend section 77 Finance Act 1986. This will mean that no relief will be available where arrangements are in existence at the time the instrument is executed by virtue of which any person alone or persons together could acquire control of the acquiring company.

The definition of control will be in accordance with section 1124 Corporation Tax Act 2010.

Summary of impacts

Exchequer impact (£m)

2016 to 2017	2017 to 2018	2018 to 2019	2019 to 2020	2020 to 2021
nil	nil	nil	nil	nil

This measure is not expected to have an Exchequer Impact but supports the Exchequer in its commitment to protect revenue.

Economic impact

The measure is not expected to have any significant economic impact.

Impact on individuals, households and families

The measure is not expected to have any impacts on individuals or households.

The measure is not expected to impact on family formation, stability or breakdown.

Equalities impacts

This measure is not expected to have any impacts on groups sharing protected characteristics.

Impact on business including civil society organisations

This measure is expected to have no impact on businesses who are paying Stamp Duty on company takeovers; it will only impact on the businesses that are misusing the share for share relief resulting in stamp duty not being paid on company takeovers.

Operational impact (£m) (HMRC or other)

The anticipated costs/savings for HMRC in implementing this change are anticipated to be negligible.

Other impacts

Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Stephen Roberts (Stamp Taxes Policy) on 03000 585 455 or Simon English (Stamp Taxes policy) on 03000 585 446

(email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk)

Declaration

David Gauke MP, Financial Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.