Clause 1: Stamp duty: transfers of unlisted securities and connected persons

Summary

1. This clause extends the Stamp Duty market value rule to the transfer of unlisted securities to connected companies. The clause will apply only where there is an issue of shares by way of consideration. The clause will be introduced in the Finance Bill 2019-20 and will have effect for instruments executed on or after Royal Assent. Related changes are made by clauses 2 and 3.

Details of the clause

2. Clause 1 inserts a new section 47A into the Finance Act 2019.

3. New subsection 47A(1) sets out the three conditions which if met, will mean that new subsection 47A(3) will apply.

4. New subsection 47A(1)(a) sets out the first condition. This is that there is an instrument which transfers "unlisted securities" to a company or its nominee for consideration.

5. New subsection 47A(1)(b) contains the second condition. This is that the person transferring the securities is connected with the company or is the nominee of a person connected with that company.

6. New subsection 47A(1)(c) defines the third condition. This is that some or all of the consideration for the transfer consists of the issue of shares.

7. New subsection 47A(2) defines the term "unlisted securities" for this new section 47A. It means stock or marketable securities that are not listed securities within the meaning of section 47 of the Finance Act 2019.

8. New subsection 47A(3) provides that, where section 47A applies, the amount or value of the consideration for the transfer is the greater of the amount or value of the consideration for the transfer or the value of the unlisted securities. This applies for the purposes of the enactments relating to stamp duty.

9. New subsection 47A(4) defines enactments relating to stamp duty. This is the Stamp Act 1891 and any enactment amending that Act or that is to be construed as one with that Act.

10. New subsection 47A(5) defines value for the purpose of new section 47A. It means the market value of the securities at the date the instrument is executed. "Market value" has the same meaning as in Taxation of Chargeable Gains Act 1992 and is to be determined in accordance with sections 272 and 273 of that Act (valuation).

11. New subsection 47A(6) provides that the definition of connected person given by section 1122 of the Corporation Tax Act 2010 applies for the purpose of new section 47A. Section 1122 sets out a number of circumstances in which two persons will be connected.

12. New subsection 47A(7) provides for new section 47A to compliment and supplement any other provisions governing Stamp Duty as may be necessary for the Stamp Duty provisions to work as a whole.

13. New subsection 47A(8) provides for new section 47A to have effect in relation to instruments executed on and after the date on which the Finance Act 2020 is passed.

Background note

14. Where UK securities are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or Stamp Duty Reserve Tax (SDRT) on agreements to transfer where the transfer will take place electronically. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.

15. Section 47 of the Finance Act 2019 introduced a new Stamp Duty market value rule for listed securities transferred to connected companies. In these circumstances Stamp Duty is charged based on the higher of the amount or value of the consideration (if any) for the transfer or the market value of the securities.

16. At Budget 2018 the government also consulted on the impacts of introducing a wider rule to prevent contrived arrangements involving the transfer of unlisted securities to connected companies.

17. This clause addresses these contrived arrangements by extending the Stamp Duty market value rule for listed securities to the transfer of unlisted securities to a connected company but only where there is an issue of shares by way of consideration.

18. If you have any questions about this change, or comments on the legislation, please contact Stephen Roberts on 03000 585 455 (email: stephen.roberts@hmrc.gov.uk).

Clause 2: SDRT: unlisted securities and connected persons

Summary

1. This clause extends the Stamp Duty Reserve Tax (SDRT) market value rule to agreements to transfer unlisted securities to connected companies. The clause will apply only where there is an issue of shares by way of consideration. The clause will be introduced in the Finance Bill 2019-20 and will have effect for agreements to transfer made on or after Royal Assent. A related change is made by clause 1.

Details of the clause

2. Clause 2 inserts a new section 48A into the Finance Act 2019.

3. New subsection 48A(1) sets out the two conditions which, if met, will mean that new subsection 48A(3) will apply.

4. New subsection 48A(1)(a) sets out the first condition. This is that a person is connected with a company, and the person or the person's nominee (i) agrees to transfer unlisted securities to the company or the company's nominee for consideration in money or money's worth or (ii) transfers such securities to the company or the company's nominee for consideration in money or money's worth.

5. New subsection 48A(1)(b) contains the second condition, which is that some or all of the consideration consists of the issue of shares.

6. New subsection 48A(2) defines the term "unlisted securities" for new section 48A. It means chargeable securities that are not listed securities within the meaning of section 48 of the Finance Act 2019.

7. New subsection 48A(3) defines the amount or value of the consideration for the purpose of tax chargeable under section 87 of the Finance Act 1986 where new section 48A applies. It means the greater of the amount or value of the consideration for the transfer or the market value of the unlisted securities at the time the agreement is made.

8. New subsection 48A(4) provides for new subsection 48A(5) to have effect for the purposes of SDRT chargeable under section 93 of the Finance Act 1986 (depositary receipts) or section 96 of that Act (clearance services).

9. New subsection 48A(5) provides that if the amount or value of the consideration for any transfer of unlisted securities is less than the value of those securities at the time they are transferred, the transfer is to be treated as being for an amount of consideration in money equal to that value.

10. New subsection 48A(6) defines value for the purposes of new section 48A. It means

the market value of the securities. “Market value” has the same meaning as in the Taxation of Chargeable Gains Act 1992 and is to be determined in accordance with sections 272 and 273 of that Act (valuation).

11. New subsection 48A(7) provides that the definition of connected person given by section 1122 of the Corporation Tax Act 2010 applies for the purposes of new section 48A. Section 1122 sets out a number of circumstances in which two persons will be connected.

12. New subsection 48A(8) provides for new section 48A to be construed as one with Part 4 of the Finance Act 1986.

13. New subsection 48A(9) provides for commencement of the effect of new section 48A. New section 48A will have effect—

    (a) in relation to the charge to tax under section 87 of the Finance Act 1986 where—

        (i) the agreement to transfer securities is conditional and the condition is satisfied on or after the day on which the Finance Act 2020 is passed, or

        (ii) in any other case, the agreement is made on or after the day on which the Finance Act 2020 is passed;

    (b) in relation to the charge to tax under section 93 or 96 of that Act, where the transfer is on or after the day on which the Finance Act 2020 is passed (whenever the arrangement was made).

Background note

14. Where UK securities are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or SDRT on agreements to transfer where the transfer will take place electronically. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.

15. Section 48 of the Finance Act 2019 introduced a new SDRT market value rule for agreements to transfer listed securities to connected companies. In these circumstances SDRT is charged based on the higher of the amount or value of the consideration (if any) for the transfer or the market value of the securities.

16. At Budget 2018 the government also consulted on the impacts of introducing a wider rule to prevent contrived arrangements involving the transfer of unlisted securities to connected companies

17. This clause addresses these contrived arrangements by extending the SDRT market value rule for listed securities to agreements to transfer unlisted securities to a connected company but only where there is an issue of shares by way of consideration.

18. If you have any questions about this change, or comments on the legislation, please contact Stephen Roberts on 03000 585 455 (email: stephen.roberts@hmrc.gov.uk).

Clause 3: Stamp duty: acquisition of target company's share capital

Summary

1. This clause amends section 77A of the Finance Act 1986 so that an arrangement for a change of control of an acquiring company will not prevent a taxpayer obtaining relief under section 77 of the Finance Act 1986, provided certain conditions are met. The clause will be introduced in the Finance Bill 2019-20 and will have effect for instruments executed on or after Royal Assent. A related change is made by clause 1.

Detail of the clause

2. Subsection (1) amends section 77A of the Finance Act 1986 as follows.

3. Subsection (2) provides that a person who has held at least 25% of the issued share capital of the target company at all times during the relevant period is not within paragraph (a) or (b) of subsection 77A(2) of the Finance Act 1986. This means that relief under section 77 of the Finance Act 1986 will not be lost if they are to obtain control of the acquiring company.

4. Subsection (3) inserts new subsection 77A(2A) into section 77A of the Finance Act 1986. This provides that the "relevant period" is the period of 3 years ending immediately before the time at which the shares in the acquiring company are issued (or first issued) as consideration for the acquisition.

5. Subsection (4) consequentially amends subsection (3) of section 77A of the Finance Act 1986 by omitting the word `But` in subsection (3).

6. Subsection (5) inserts new subsections (5A) and (5B) into section 77A of the Finance Act 1986.

7. New subsection 77A(5A) enables the Treasury to use regulations to amend subsection (2) or new (2A) to alter the percentage or length of the period for the time being specified there.

8. New subsection 77A(5B) provides for the power to make regulations under new subsection (5A) to be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

9. Subsection (6) provides for amendments made by this section to have effect instruments executed on or after the day on which the Finance Act 2020 is passed.

Background note

10. Where UK securities are transferred by paper instruments or documents, the transaction is subject to Stamp Duty. The rate is 0.5%. A higher Stamp Duty rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.

11. Section 77 of the 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.

12. Section 77A of the Finance Act 1986 ensures that no relief under section 77 will be available where arrangements are in existence at the time the instrument is executed for a change of control of the acquiring company.

13. A partition demerger is a type of reorganisation which can involve a change of control of the acquiring company. Where no section 77 relief is available a Stamp Duty double charge currently arises on these partition demergers. This clause prevents this from happening provided the conditions are met.

14. If you have any questions about this change, or comments on the legislation, please contact Stephen Roberts on 03000 585 455 (email: stephen.roberts@hmrc.gov.uk).