

**Modernisation of the Stamp Taxes on Shares framework – Securities Transfer Tax – draft Finance Bill legislation**  
**Comments by the Chartered Institute of Taxation**

**1. Introduction**

- 1.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.
- 1.2. The publication of draft legislation introducing a new securities transfer tax (STT) follows a seven-and-a-half year period of review of the taxation of transfers of shares and securities, that has involved several consultations. While this has, at times, been a slow process, we welcome the level of consultation and engagement with HMRC throughout, and we welcome the introduction of the STT. This and the abolition of stamp duty and stamp duty reserve tax is long overdue reform that transactional tax advisers have been calling for. The STT is a welcome replacement, bringing stamp taxes into the modern age.
- 1.3. However, while we also welcome the opportunity to review and comment on the draft legislation proposed for inclusion in the next Finance Bill to introduce the tax, this draft legislation has been published for a relatively short consultation period, over the Summer, providing a limited time to fully digest and consider this lengthy and complex legislation. As we are aware that other stakeholders, and particularly the Stamp Taxes Practitioners Group, are engaged with HMRC and the consultation process, and will be feeding in more specific, detailed comments on the legislation, we have limited our comments to more high-level points around underlying principles.
- 1.4. Our aim is to ensure, so far as possible, that the STT will be practicable, achieve HMRC's policy aims and meet the CIOT's objectives for the tax system. Our stated objectives are for a tax system that includes:
  - A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
  - greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - greater certainty, so businesses and individuals can plan ahead with confidence.
  - a fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).

- responsive and competent tax administration, with a minimum of bureaucracy.

1.5. We note that the tight timetable for comments on the draft legislation is so that HMRC can meet the overall timetable for including legislation in the next Finance Bill, and we hope that the time will be sufficient to ensure that the comments received on the draft legislation can be considered and changes made to ensure that the legislation works as intended.

1.6. Our principal concern is around liability and accountability discussed in paragraph 2 below. In our view, it is unacceptable for agents to become an accountable person effectively by default, merely because of filing the STT return for a client, and, therefore, jointly and severally liable for the STT.

## **2. Liability and accountability**

2.1. Under the new STT, the buyer will be primarily liable to pay the tax.

2.2. However, section 10 provides that another person ('B') can be an accountable person (if authorised to act as an agent for another person 'A'). Where this happens B will (under section 9(4)(a)) become liable on a joint and several basis for the tax due (albeit with some protection around taking reasonable steps to recover the tax under section 9(4)(b)). B becoming an accountable person is linked to a requirement on A to make a return under section 56. For non-electronic transactions ('any other relevant transactions' under section 56(2)(c)) this will be the buyer (although there is some circularity because the legislation says it is the person liable for the tax who must make the return, which will include B, if B has become jointly and severally liable).

2.3. We understand that it is currently envisaged that the further condition around B confirming to HMRC 'in the manner and form specified by HMRC that B is authorised' (section 10(3)(c)) would be satisfied by an agent filing an STT return on behalf of a client. The current intention is that when submitting the STT return, an agent will have to confirm that it is authorised as required by the legislation, and thus will become an accountable person, jointly and severally liable for the STT. It is currently envisaged that it will not be possible for an agent to submit a return without giving a confirmation that it is so authorised. We understand that the reason for this approach is that it is currently envisaged that the STT return will not have sufficient detail about the taxpayer (such as a national insurance or unique taxpayer reference number) for HMRC to be able to identify and pursue the taxpayer for the tax.

2.4. This proposed approach is causing significant concern for our members and the likely result is that agents will not be able to file returns for their clients, because it will not be acceptable to them to take on the risk of being liable for the STT, not least because it is unlikely that they will be able to obtain insurance against this risk. It seems unreasonable to us to make another person jointly and severally liable for a tax simply because HMRC is setting up a system in a way which does not give them sufficient information about the person with the primary liability. Taking on a liability for the STT would put advisers in a different position in respect of this tax as distinct from others in respect of which returns are routinely filed by them, including capital gains tax, income tax and corporation tax, and stamp duty land tax.

2.5. We understand that this is the way that it currently works for SDRT and transactions that are settled through CREST but suggest that an approach involving joint and several liability is more appropriate for electronic transfers. The nature of non-electronic transfers, and the relationship between buyers and agents in non-electronic transactions is very different to that involving systems operators within CREST. Also, in non-electronic transfers, the risk would be exacerbated if the transaction involved deferred consideration because section 10(3) says that B remains an accountable person irrespective of whether B continues to be authorised. The risk is also increased because of the fundamental change to the tax being self-assessed and, therefore, subject to enquiry. As noted below, the removal of adjudication for reliefs reduces certainty for those liable for the tax.

- 2.6. These concerns have been raised by advisers and stakeholders during the consultations on modernisation of stamp taxes, and it is disappointing that the government is still taking an approach that exposes advisers to joint and several liability where they file STT returns on behalf of their clients. We note that a similar approach was considered and dropped when stamp duty land tax was introduced because of similar concerns by agents. As noted above, unless the position changes, we anticipate that the outcome will be that advisers will not be prepared to submit STT returns on behalf of clients, as they routinely do for stamp duty land tax returns. This would be an unsatisfactory outcome for taxpayers and, we suspect, HMRC, as it is likely to lead to an increased number of mistakes in filings made by taxpayers themselves, and a delay in filings if each buyer must register to use the portal.
- 2.7. We suggest that a better approach would be to ensure that sufficient detail, such as national insurance, unique taxpayer references numbers (or VAT numbers where available) are included in the return to avoid the perceived issue. Whilst this may make completing the return more time consuming for some transactions, in our view, this would be far preferable to the risk involved in the current proposals. We recognise that further information outside of the return may still be required about some transactions, and details separately provided about certain taxpayers, for example where these are overseas and do not have the UK tax identifiers mentioned. The detail around this should be worked through prior to commencement of the new tax.
- 2.8. We also suggest, that, if there remains a potential for another person to be an accountable person under section 10 for a transaction that is not an electronic transaction, HMRC should clarify that this would only happen if the confirmation required by section 10(3)(c) is given in a separate form, outside of the STT return, so that advisers can be completely clear when they are taking on this potential liability. It would still be unsatisfactory to have a specific affirmative action in the STT return itself (for example, that if person B fills in the particular box in the STT return it clearly states that B will become an accountable person and, therefore, jointly and severally liable), because occasionally mistakes happen when filing electronically and the position is irrevocable. Any risk around potential liability for the tax will put advisers off making returns.

### **3. Scope of the tax**

- 3.1. The main charging provision in section 2(1) refers to a charge where a person 'agrees to transfer'. This wording gives rise to an uncertainty as to whether transactions such as share buy backs, acquisitions into treasury and court sanctioned schemes of arrangement will be within the charge. This is because, due to the legal nature of these transactions there is no 'agreement to transfer'. These transactions currently fall outside of the scope of SDRT for this reason, and the draft STT legislation has no equivalent to Finance Act 1986 section 66 (Company's purchase of own shares) that currently ensures that some are subject to stamp duty.
- 3.2. We understand that this is not the government's intention and suggest that the legislation should be amended to bring these transactions clearly within scope.

### **4. Reliefs for demergers etc.**

- 4.1. We understand that the exemptions are intended to mirror the old stamp duty reliefs in relation to group relief, demergers and insertions of holding companies. However, some of the language in the draft legislation gives rise to a lack of clarity as to what the exemptions are intended to apply to.
- 4.2. For example, section 15 refers to a 'business', rather than 'undertaking' that is used in the stamp duty rules. In addition, much of the current treatment is derived from guidance and practice to provide a well-understood position as to what is in scope. We would welcome some clarification around what the new wording in the draft legislation for STT is intended to cover.

- 4.3. In addition, we note that the government is currently consulting on the rules for taxation of distributions and repayments of capital from companies for direct tax and are proposing to allow relief on a demerger for investment companies. We suggest that it is important for the definitions across the taxes to be aligned so that there is no disparity of treatment. An outcome where the rules for STT have a narrower meaning than the rules for direct tax, resulting in an STT charge that may prevent demergers from going ahead, should be avoided.

## **5. Deferred and contingent consideration and deferrals**

- 5.1. It is not clear how section 8 (Consideration unknown at time of charge) and section 59 (Deferral of due date for payment where consideration is uncertain) will interact in practice. Section 59 says that a claim must be made in a return under section 56, but it is not clear whether this is intended to be simply ticking a box, or whether a supporting letter or other evidence would be required. We suggest that it would be burdensome for a separate letter to be provided and would support the claim being made by ticking a box in the return.
- 5.2. However, in any event, there is also a 'hard' 30-day deadline for requesting deferrals under section 59, both for the initial deferral and subsequent deferrals. This seems unduly punitive. It does not seem proportionate that a late return in an ordinary case attracts the general late-filing consequences, whereas a late return containing an otherwise valid deferral claim may result in the permanent loss of the right to defer payment. We suggest that the consequences of a late initial claim in the section 56 return should be the general late filing penalty rather than withdrawing the ability to defer.
- 5.3. Further, the 30-day limit could easily be missed for subsequent deferral claims (where the deadline runs from the longstop date given in respect of the previous deferral). We understand that missing deadlines is an issue in relation to Land and Buildings Transaction Tax in Scotland, where there is a mandatory 3-year review period for nearly all leases. We suggest that a longer window would be preferable, and that HMRC should have discretion to accept a late claim where there is a reasonable excuse. If a sanction is considered necessary, a proportionate penalty would preserve an incentive to meet the deadline without imposing a tax charge that is unrelated to the taxpayer's ultimate substantive liability.

## **6. De minimis**

- 6.1. We note that the main charge is levied at 0.5% of the consideration for most transactions, rounded to the nearest penny, with no de minimis. The £1,000 de minimis for stamping a document is abolished.
- 6.2. This seems onerous and will bring many small, non-electronic transactions within the scope of STT, requiring filings and payments of 1p charges to STT. It is quite common for companies to be transferred for a nominal consideration of £1 in private transactions or, for example, in traditional cleaning up exercises transferring shares in dormant or shell companies. It will also create additional burdens for option holders exercising their options and employee benefit trusts transferring shares to employees, many of which would previously have been exempt.
- 6.3. Again, while filings and payments of pennies in SDRT may not cause an additional administrative burden within an electronic system, it seems unduly burdensome for non-electronic transactions, resulting in a cost for filing and payment obligations that is greatly more than the STT that is due.
- 6.4. We suggest that a de minimis of £1,000 (in aggregate for linked transactions) is included in the legislation to align with the current position.

**7. Timing and transition**

- 7.1. The government aims to implement STT in 2027, with some transitional arrangements. An update on the commencement date is expected this autumn. Further detail of the online portal through which returns and payment will be made is still awaited, as well as details about how overseas customers will be able to file returns. We understand that reliefs and exemptions will be claimed in the return via the online portal (a box-ticking exercise similar to stamp duty land tax) and that no additional proof will be required.
- 7.2. Although overall the reform is welcome, it is notable that at a time when it is recognised how important certainty is to taxpayers, the replacement of stamp duty and stamp duty reserve tax with STT will result in less certainty for taxpayers, particularly due to the reliefs and exemptions that will be claimed rather than adjudicated.
- 7.3. Therefore, the introduction of STT should not be rushed. There are points of detail that require clarification and due consideration of appropriate levels of information that is to be required in the returns. We hope that the good engagement with HMRC will continue and that there will be further consultation around these issues prior to any commencement date.

**8. Acknowledgement of submission**

- 8.1. We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

**9. About us**

- 9.1. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 9.2. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 9.3. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 9.4. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation  
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