

Stamp Taxes on Shares: Removal of 1.5% charge on issues and certain related transfers

Response by the Chartered Institute of Taxation

1 Executive Summary

- 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 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 We welcome the confirmation that the government will legislate to remove the 1.5% charge, under Stamp Duty and Stamp Duty Reserve Tax (SDRT), on the issue of UK shares (or other chargeable securities) onto foreign markets and on certain related transfers of shares that would otherwise arise as a result of the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act). Without legislation, the charge will arise from 1 January 2024.
- 1.3 We understand that it is intended that the draft legislation to effect this will be included in an upcoming Finance Bill. To ensure the change removing the charge has effect prior to the Finance Bill receiving Royal Assent (which would be after 1 January 2024), we suggest that the government passes a Budget Resolution. Under the Provisional Collection of Taxes Act 1968 (for stamp duty and section 50, Finance Act 1973 for SDRT), the measure to remove the 1.5% charge would then have statutory effect from the earlier date, that is when the resolution is passed.

2 About us

- 2.1 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.

- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Timing of the change

- 3.1 In September 2023, the government announced that it will legislate to ensure that the existing position, of there being no charge to Stamp Duty or Stamp Duty Reserve Tax, on the issue of UK shares (or other chargeable securities) onto foreign markets and on certain related transfers of shares, will continue to be the position. The intention is to negate the changes to the application of UK law that will occur as a result of the REUL Act. Currently, the 1.5% charge that is within the UK's legislation does not arise due to the application of EU law overriding the position on the UK's statute books. The REUL Act makes provision for significant changes to the status, operation and content of retained EU law. The REUL Act will result in the 1.5% Stamp Duty/SDRT charge on deposits of securities into overseas clearance services or depositary receipt issuers having effect from the end of 2023.
- 3.2 We welcome the change proposed by the government that, once enacted, will remove the charge from the UK's legislation and ensure that there is no charge to tax on the relevant transactions. We understand that the draft legislation that has been published for consultation to effect the change will be included in the next Finance Bill.
- 3.3 We are concerned about the proposed timing of the implementation of this change. Our stated objectives for a tax system that includes a legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences, and greater certainty, so businesses and individuals can plan ahead with confidence. As things are currently proposed, these objectives will not be met because the changes resulting from the REUL Act will take effect from 1 January 2024. After this date, the UK legislation as it currently stands will impose a 1.5% charge. Therefore, unless the Finance Bill containing the draft legislation implementing the measure receives Royal Assent before 1 January 2024, tax will become due on relevant transactions and transfers occurring on and after this date. We recognise that the draft legislation says that it will have effect from 1 January 2024 once it is enacted, but we do not think that this is sufficient to prevent the charge to tax from arising on 1 January 2024 until such time as the Finance Bill receives Royal Assent. It is not clear on what basis HMRC could decide not to collect the duty and/or tax due, if EU law is no longer a basis for not doing so.
- 3.4 At the very least, continuing to have only draft legislation in a Finance Bill beyond 1 January 2024 it is likely to cause uncertainty within the market. It is not clear that the clearance services and/or depositary receipt issuers would accept securities without payment of the tax even if HMRC indicated that they did not wish to collect it, as they will be liable for the tax that will be strictly due under the current rules. Even if it transpires that the tax is ultimately not due, once the Finance Bill has received Royal Assent, there will be a

cash flow cost if the tax has to be paid initially. In addition, the legislation does not suggest any mechanism for refunds of any tax paid before the legislation is enacted, so the position is far from clear.

- 3.5 In order to mitigate against the uncertainties, and unnecessary and unintended costs for businesses, we suggest that the government considers introducing temporary legislation by utilising the provisions of the Provisional Collection of Taxes Act 1968 (for stamp duty) and section 50, Finance Act 1973 (for SDRT). If the Autumn Statement includes 'Budget resolutions' and is followed by the publication of the Finance Bill, then the requirement under both provisions for a Bill to be tabled within 30 days of the relevant resolutions would be met and the necessary measure to remove the 1.5% charge would have statutory effect from the date the resolutions are passed.

4 Acknowledgement of submission

- 4.1 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.

The Chartered Institute of Taxation
12 October 2023