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Stamp Taxes on Shares modernisation

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 support proposals for a new single tax on securities, which will be a welcome simplification. We encourage the government to be bold in order to ensure that the opportunity is taken to achieve a clear and modern legislative framework for the taxing of transfers of securities.

1.3 That said, there are some aspects where the differences between the transactions undertaken through CREST and those that are not, are significant. It would be sensible to recognise these differences and have distinct rules for listed and unlisted transactions, rather than have a single rule to the detriment of one or the other. This is particularly true in relation to the charging point and the accountable date.

1.4 Simplification and modernisation should be embraced, however, in relation to removing pre 2003 interests in land from charge and the more historic aspects of geographical scope.

1.5 We do not agree with the proposal to remove the de minimis, the threshold of consideration below which transactions are treated as exempt. Removing this would create an additional burden for transactions of very low value. Instead, we suggest that the de minimis is increased to reflect inflation.

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 Introduction

3.1 The consultation on *Stamp Taxes on Shares modernisation* published on 27 April proposes that the existing Stamp Duty and Stamp Duty Reserve Tax (SDRT) legislation will be rewritten, modernised and consolidated. The new single tax that will replace them, is proposed to be self-assessed and administered in line with the rest of the UK tax system. It will be subject to clear rules on geographical scope, tax base and calculation of liability.

3.2 The consultation is the culmination of a consultation process that began following the publication by the Office for Tax Simplification (OTS) of a report in 2017 in which the OTS recommended the modernisation and digitalisation of Stamp Duty. Following on from this report, HMRC published a Call for Evidence on the principles and potential options for modernising the Stamp Taxes on Shares Framework and established a joint HMRC and industry Working Group in November 2021. The CIOT has been pleased to have been part of this Working Group, discussing and exploring the various options and issues arising from the proposed modernisation.

3.3 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, provides greater simplicity and clarity, so people can understand how much tax they should be paying and why and greater certainty, so businesses and individuals can plan ahead with confidence. We also advocate for a responsive and competent tax administration, with a minimum of bureaucracy.

3.4 The majority of the proposals in the consultation document are sensible and a new single tax will be a welcome simplification. There are some areas which require further thought, and also some aspects where we suggest that the government should be bolder in order to ensure that the opportunity is taken to achieve a clear and modern legislative framework for the taxing of transfers of securities.

4 Single tax and its administration

4.1 **Question 1: Do you agree that the government should pursue a single tax on securities instead of maintaining two separate taxes?**

4.2 A single tax on securities along the lines of that outlined in the consultation document would be a welcome and significant consolidation of the existing regimes, resulting in a modernisation and simplification of a regime that is clearly out of date. However, as discussed below, there are differences between transactions that are undertaken through CREST and transactions that remain paper based that are difficult to reconcile. Although it would retain some complexity, it may be sensible to maintain some differences between these two types of transactions from an administration perspective to reflect these differences.

4.3 At the most recent Working Group meeting, we discussed the possible name of the new tax. We understand that the name will be, to some extent, a political decision around how to present the new single tax. Whilst recognising that, we suggest that consideration should be given to ensuring that the name is properly descriptive and helpful in terms of ensuring that taxpayers can understand the scope of the new tax and what it applies to. For example, it would be helpful to take 'stamp' out of the name, as the concept of 'stamping' will no longer be relevant. Also, any description around the tax being a 'shares transaction tax' (emphasis added) would be misleading if the new tax also encompasses a charge in relation to pre 2003 interests in land (see response to question 22 below).

4.4 **Question 2: Do you agree that any new single tax should be self-assessed with transactions that are not processed through CREST being reported and paid via a new HMRC online portal?**

4.5 We agree that the new single tax should be self-assessed and that transactions not undertaken through CREST should be administered through a new HMRC online portal. We welcome that HMRC have said that the intention is that under the new portal, taxpayers and agents should be able to do everything that they can do now, including, for example, making bulk submissions. It is important that the system should not be more burdensome than the current system. It is important that adequate time is allowed to develop the online portal and test the new system's requirements before the changes take effect. While this may mean that the timetable is slower than envisaged, it is necessary to ensure the policy is properly implemented, and costs to all parties are reduced in the long term.

4.6 New systems and processes bring (at least) two further requirements. First, the need for adequate guidance. Without timely and detailed guidance users are left in the dark and will need to contact HMRC or bodies like CIOT to understand what they need to do. Secondly, agent access is critical. New systems frequently come with a requirement for the taxpayer to authorise their agent in order to use that service, typically with a 'digital handshake', leaving agents and taxpayers frustrated at having to do something they think they have already done. With all this in mind, we have developed a series of principles that we believe should apply to the introduction of new systems and processes. These are attached at Appendix 1 (*Minimum standards for the introduction of new HMRC digital systems*) and Appendix 2 (*Minimum requirements for HMRC digital forms*).

4.7 Our *Minimum standards for the introduction of new HMRC digital systems* points to the importance of developing digital systems that are accessible and simple for all taxpayers from the outset. This requirement will be particularly relevant to overseas purchasers involved in securities transactions. Adding workarounds post implementation is undesirable, as experienced with the CGT reporting service for gains on disposal of UK property by overseas sellers.

4.8 **Question 3: Do you agree that having a non-statutory pre-clearance system is an appropriate approach? If not, why not?**

4.9 We do not agree with all of the points made in the consultation document around pre-clearances. The loss of adjudication is expected as the tax will be self-assessed, but it must be recognised that this will be a significant change for large transactions that will instead be open to a four-year enquiry window. The general principle of self-assessment does not negate the logic of having statutory pre clearances for certain types of transactions, such as reorganisations.

4.10 In particular, we do not accept the statement that introducing a statutory pre-clearance system would be inconsistent with the way that HMRC treats other self-assessed taxes. As discussed at the Working Group meetings, there are statutory pre-clearances for capital gains tax reliefs and transactions in securities that are currently often applied for, and then referred to in the adjudication process for the similar Stamp Duty reliefs in Finance Act 1986 sections 75 and 77 for reconstructions and share for share exchanges.

4.11 We encourage the government to reconsider the proposals around statutory pre-clearances for the types of transactions that currently fall within the reconstruction and acquisition reliefs. Providing statutory pre-clearances for reliefs from the new single tax is clearly aligned with the reliefs and clearance procedures for the equivalent capital gains tax and income/corporation tax reliefs, that are handled by the BAI team, so this would not give rise to an additional resource burden for HMRC. Indeed, a consolidated statutory pre-clearance would reduce the HMRC resource need from the current position. This is because the existing separate adjudication process for the Stamp Duty reliefs represents a duplication of effort. At the very least, the Stamp Duty officer has to check the details of any clearance that has been granted by the BAI team, even if simply to make sure that it applies to the companies for whom adjudication is now sought; and in some cases, reference back to the BAI team is required. Having a statutory pre-clearance for the reliefs from the new single tax that can be made at the same time, and as part of the direct tax clearance, would remove this potential duplication of effort.

4.12 We do agree that in any event legislative clarity and good guidance will be important, and that taxpayers will still be able to seek informal views from HMRC pursuant to non-statutory clearances under general principles.

4.13 **Question 4: Do you agree that the need for a UTRN to be presented to registrars is an appropriate assurance and detection measure to have in place?**

4.14 Whilst we agree that a UTRN would be an important assurance and detection mechanism, the timing of the production of this, enabling it to be used for registration etc should be more carefully considered. A common situation is that lenders require the legal title to be updated as soon as possible, and often on the date of the transaction. If a UTRN is required, but this is not generated by the online portal until a later date of payment of the new tax, it will present an issue.

4.15 The consultation document acknowledges that the same issue arises under the current Stamp Duty regime, with costly workarounds being required to bridge the time gap. Although it is envisaged that the new portal will have the ability to input the transaction, claim relief or pay the tax and for a UTRN to be issued immediately, this does not alleviate the problem for transactions where the tax cannot be paid on the date of the transaction. Under the current proposals where it is envisaged that a UTRN will only be generated once any tax has been paid.

4.16 We understand why it is attractive from a compliance perspective to have the UTRN only after payment, and for registration to follow that, and be dependent on the UTRN. However, organising the administration of the new single tax like this would mean that workarounds would still be required to bridge any timing gap. We understand that it is not clear that the current mechanisms, using declarations of trust, would work if the registrars required a UTRN to update the register. We suggest the mechanisms around the generation of a UTRN require some further thought to ensure that commercial transactions are not adversely affected by the new regime. It will be a missed opportunity to simplify the system and be able to easily carry out a normal, commercial transaction if workarounds are still required.

4.17 It is important for the new system to facilitate the equivalent of 'same day stamping/registration of share transfer'. It should be possible to register the transaction on the online portal to generate a UTRN, and then at a later date go back in and register the payment against that UTRN. This would be similar to the current mechanisms under the stamp duty land tax (SDLT) regime.

5 Liable and accountable persons

5.1 **Question 5: Do you agree with the proposed approach in respect of the liable and accountable persons? If not, why not and what would you suggest instead?**

5.2 We agree with the proposed approach in respect of the liable and accountable person.

6 Charging point and accountable date

6.1 **Question 6: Do you agree that a single charging point as outlined can work and is the correct approach in any new single tax? If you do not think it is the best approach, what would you propose and why?**

6.2 The proposal is a single charging point at the relevant date, which will be either the point of the agreement or where there are conditions on the agreement, when those conditions are fulfilled. We recognise the desirability of having a single charging point for the single tax, in terms of simplicity, and the proposed charging point is broadly following the SDRT rules. However, as recognised there are a number of situations where the proposals would cause significant difficulties for unlisted transactions, particularly where there is a significant gap between exchange and completion, or where completion does not, in fact, occur. In addition it will be a significant change for many, particularly for smaller and owner managed businesses, where the general understanding is that Stamp Duty at 0.5% is due on completion (with little awareness of the potential SDRT charge). The new charging point will be much earlier than people imagine. It is very normal to complete a few weeks after an agreement goes unconditional, for example, to coincide with a month end. Also, in circumstances where debt financing is required to pay the Stamp Duty, and this finance is linked to completion, a buyer may not have it in time. It would be cumbersome to have to provide for a separate flow of funds to meet the cost of the new single tax. A longer time period between the relevant date and the accountable date may alleviate some of these issues, as discussed below. However, we suggest that consideration should also be given to introducing a 'substantial performance' element to the charging point, along the lines of that contained within the SDLT regime.

6.3 The consultation document does not address what will happen in relation to a transaction that does not complete. If, before that happens, the new single tax has been paid because the charging point is the date of the agreement, there will, presumably, have to be a mechanism for repayment of the tax. This will further complicate the new single tax.

6.4 There will also be complications around ascertaining when the conditions are satisfied. What a condition is, is not well understood by non-tax persons. We welcome that HMRC have said that they will continue their work considering what sort of conditions would be taken into account in determining the relevant date. In addition we are not clear about the suggestion that there should be an overall two year time limit with respect to conditions. There is not a similar time limit currently for SDRT. We understand that the government is minded to have a time limit, and, therefore, suggest that a time limit of five years would be preferable to allow for the longer time being taken for some transactions to become unconditional, and complete, due to, for example, competition or national security scrutiny.

6.5 We understand that the intention is to align the charging point to the SDRT rules to avoid disruption for the transactions that do operate within CREST, and we agree that this is important. It is also important that the new rules do not open up a loophole for avoidance around resting on contract. However, it is recognised in the consultation document that there may need to be some differences between transactions settled through CREST and those outside of CREST. The rules around the charging point may be where different rules should apply.

6.6 For smaller businesses in particular, the practical reality is that completion is a clearly defined and generally uncontroversial point in time that taxpayers and advisers alike can recognise without technical training or practical experience. Furthermore, taxpayers are used to the fact that, immediately after completion, they have to pay the professional fees, consideration (where appropriate) and any transaction taxes. A new rule that the transaction tax must be paid at some time before completion, would introduce a new area of uncertainty into the system. While superficially a single charging point may seem simpler, in practice this

would not be the case in many unlisted situations. In this regard, we would also note the guiding principles for the modernisation of Stamp Duty (set out at page 7 of the consultation document); these are simplicity, ease of use and clarity and certainty. Overall, we suggest that these principles would be better served by having a charging point for transactions outside of CREST as completion of the transaction.

6.7 **Question 7: Do you agree that a single accountable date of 14 days from the charging point would work and is the correct approach? If not, what would you do differently and why?**

6.8 It is our view that an accountable date 14 days from the charging point is probably too short a time period for many transactions currently taking place outside of CREST. A longer time period would ensure that a greater percentage of these transactions would have completed by the accountable date, there by alleviating the issues around having to fund the new tax otherwise than as part of the completion monies and arrangements.

6.9 We also note that it is not unusual for transactions in unlisted securities to 'run to the wire' and complete immediately before holiday deadlines, for example just before Christmas (to meet a 31 December year end) or Easter (for a 31 March year end) – with changes to the commercial arrangements being negotiated up to the last minute. This could mean that a theoretical 14-day period may leave only four or five working days in which to complete the compliance requirements. It seems to us to be disproportionate and unnecessary to reduce an effective 30-day deadline for Stamp Duty (which is well known in the market) to 14 days.

6.10 A longer period may make the new regime workable for most. We suggest that a time period of up to 60 days should be considered. Alternatively, notwithstanding the charging point, the accountable date could be linked to completion of the transaction (with a longstop to prevent 'resting on contract' planning).

6.11 A longer time period would also reduce the number of re-submissions and deferral applications (for example in relation to ascertainable, but unascertained consideration – see questions 32 and 33 below).

7 Territorial Scope

7.1 **Question 8: Do you agree that the current SDRT geographical scope rules should apply to any new single tax on security transactions? If not, what would you suggest and why?**

Question 9: Do you agree it is not necessary to define where an electronic share register is kept under any new single tax on securities? If not, why not?

7.2 The geographical scope of the new tax should be taken back to a clear policy decision around what should be within scope. We welcome the proposals to adopt the geographical scope of SDRT, being UK incorporated companies, with certain limited extensions. However, we suggest that these existing extensions (for example, to non-UK securities registered on a UK register or paired with UK shares) should be removed. This would greatly simplify the regime by avoiding the complexities around identifying the place of an electronic register and, further, we understand that concepts such as paired shares are anachronistic and do not exist anymore.

8 Tax base

8.1 **Question 10: Do you agree that the proposed scope is appropriate, captures what you would expect it to capture and excludes what you would expect it to exclude?**

Question 11: Is there anything that is currently captured by stamp duty and SDRT that would not be captured through this approach to scope?

Question 12: Do you agree that the government should explore a different approach to the loan capital exemption? Do you foresee any issues with such an approach?

8.2 We agree that the current rules around what is included within the scope of Stamp Duty and SDRT is complex, relying on a number of exemptions and carve outs from the exemptions. We agree that this could be simplified by the government adopting a different approach, focussing on what it wishes to be within the scope of the new single tax, and then constructing the legislation to define that. Overall, we agree with principle that anything that does not have equity like features should not be in scope. It seems preferable to have an approach that defines what is in scope, rather than having a broader definition and then carving things out.

8.3 We note, however, that many of the concepts that will remain relevant to the definition of scope are difficult. For example, 'marketable securities': there are many different markets that may be relevant. But non-marketable securities is an important concept, because it takes out of scope debt that would otherwise be caught, such as trade debtors. It must be accepted, therefore, that out of necessity the drafting of the legislation may not be that simple and the overriding objective should be to achieve clarity as to what is within charge.

8.4 ***Security interests***

8.5 **Question 13: Do you agree that the granting of security interests is currently out of scope?**

Question 14: Do you think that the government should specify that the granting of security interests is out of scope in legislation and that it wouldn't open up any route for avoidance?

Question 15: If we chose not to specify that the granting of security interests is out of scope, can you share how much time you would expect to spend establishing and showing the correct tax position for lenders and how often you would be likely to do this?

8.6 Although we agree that the granting of security interests is currently out of scope, we cannot see any particular harm from this being expressly clarified in the legislation for a new single tax. As noted above, it will be important that the bounds of the charging provisions and what is in scope are clearly defined in any event.

8.7 ***In specie contributions and redemptions***

8.8 **Question 16: Do you agree that non-UK fund equivalents should have an equal statutory footing to UK funds? What are the benefits and disadvantages of doing so in your view?**

Question 17: Do you have any alternative suggestions for how the government might deal with in specie contributions and redemptions, bearing in mind the need to guard against significant losses to the Exchequer?

8.9 We do not have any specific comments on in specie contributions and redemptions.

8.10 ***Mergers***

8.11 **Question 18: Do you agree this is the correct approach to mergers? If not, why not and what would you propose? If you are proposing an alternative what are the benefits and disadvantages of that option?**

8.12 We suggest that some further clarification around the underlying principles in relation to mergers and an explanation of what the 'existing approach' is, is required. We do not agree that existing case law and market practice in Stamp Duty necessarily or always provide clear signposts as to the wide range of practical situations that can arise. We understand that the intention is to keep the rules as they are now, and it would be helpful to understand the current conceptual basis around what is and is not caught. For example, is this

based on whether the transaction happens as a matter of law, or because there is no conveyance on sale? It is desirable that the new legislation provides certainty here.

8.13 ***Call options and warrants***

8.14 **Question 19: Do you agree that this is the correct way to deal with call options and warrants?**

Question 20: Do you think that this treatment of options and warrants may open up any routes to avoidance?

Question 21: If you do not think the government's proposal is the correct way to deal with options and warrants, what would you do differently and why?

8.15 We do not have any specific comments on call options and warrants.

8.16 ***Pre 2003 interests in land***

8.17 **Question 22: Is there any reason why you think the government should not retain the existing treatment of land transactions that are currently in the scope of Stamp Duty rather than SDLT?**

8.18 We understand that the government does not see that the length of time that has elapsed is a reason not to charge tax that is due. However, if the purpose of the modernisation is to sweep away the anachronisms of Stamp Duty, it is not clear why removing pre 2003 interests in land from scope would not follow from that. We also note that it is possible to unwind the structures that remain in place from pre 2003 on a restructure or third party sale without triggering Stamp Duty. Consequently, we wonder how much tax is at stake and whether what there may be justifies the amount of legislation that would be required to replicate how Stamp Duty might apply to what is likely to be a very small amount of transactions.

8.19 In addition, SDLT was introduced for land transactions with an effective date on or after 1 December 2003. HMRC have a time limit of 20 years from the effective date beyond which HMRC are not entitled to raise a discovery assessment in relation to SDLT even where the taxpayer has deliberately failed to declare the tax due. Therefore, by the time that any new rules in relation to Stamp Duty are in place, there will be transactions falling within SDLT where HMRC will not be able to pursue taxpayers who have avoided the tax. It seems disproportionate to add complexity to what will already be a complex new tax in order to tackle arrangements that were legal when entered into (albeit potentially contrary to the intentions of the legislation) where HMRC is out of time to pursue deliberate evasion of tax in relation to more recent transactions.

8.20 Further, and importantly, in terms of the administration of the tax system and its overall fairness, it seems wrong to us to include a charge on interests in land within a tax that is otherwise presented (see the discussion around the new tax's name above) as a tax on securities. Therefore, to the extent the government wishes to keep these historic transactions that are currently resting on contract potentially in scope, the rules should be subsumed within the SDLT regime.

9 Consideration

9.1 ***Transfers of partnership interests***

9.2 **Question 23: Do you agree that taking partnership interests out of scope and dealing with any potential avoidance issues through anti avoidance legislation is the correct approach? If not, what approach do you think we should take, why, and how would that approach deal with any potential abuse?**

9.3 We welcome the proposal to take the transfer of partnership interests out of scope. We would also welcome some further detail around the anti-avoidance legislation that is envisaged. As we understand it, as

partnership interests are not chargeable interests for SDRT, and Stamp Duty is generally not paid in practice on documents involving partnership transactions, there is no (or very little) tax at stake. Therefore, why is it envisaged that moving to a new tax would result in avoidance that needs to be countered? Provided that the new tax continues to cover agreements to transfer and sales of chargeable interests in securities for money or money's worth, it is difficult to see logically the need for any anti-avoidance legislation. We suggest that complex anti-avoidance rules that are not required for any clearly identified purpose would be at odds with the simplification agenda.

9.4 ***Obligations to pay pension benefits***

9.5 **Question 24: Do you agree with this view on the payment of pension benefits and agree with the proposed approach?**

Question 25: Do you think there is any potential for avoidance with the government's proposed approach to the payment of pension benefits?

Question 26: If you don't agree with the government's view on the payment of pension benefits and the proposed approach please explain why?

9.6 We do not have any specific comments on pay pension benefits.

9.7 ***Life insurance policies***

9.8 **Question 27: Do you agree that life insurance policies would fall into scope and do you agree with the proposed approach? If not, why not?**

Question 28: Do you support the proposal to use money or money's worth for consideration under any single STS tax?

Question 29: Are there any further instances that are not captured where transactions would be brought into scope where adding a charge would be disruptive that you think we should consider? When telling us of further instances, please illustrate the impact of adding a charge and the extent of the disruption.

Question 30: Are there any further instances where transactions would be brought into scope by using the SDRT definition of consideration that wouldn't naturally fit into the system as outlined that government needs to consider? Question 31: Is there anything proposed in this section on consideration that could open up a route for avoidance?

9.9 We do not have any specific comments on life insurance policies, but understand that the life insurance industry consider that maintaining the current position is important to the overall competitiveness of the UK.

10 Contingent, uncertain and unascertainable consideration

10.1 **Question 32: Do you agree with the government's proposals for dealing with uncertain and unascertainable consideration?**

Question 33: If not, how do you think we should deal with uncertain and unascertainable consideration for any single tax on securities?

10.2 Broadly, we agree with the proposed approach, but question why it is considered necessary to have a two-year time limit in relation to the deferment approach for contingent, uncertain or unascertained consideration. Earn outs can run for longer than two years, and there is not an equivalent time limit for SDLT. If a time limit is retained, this should be extended.

10.3 We understand that HMRC may have concerns about allowing indefinite deferral applications which can lead to uncertainty as to whether silence from the taxpayer means that the taxpayer has forgotten to make a further filing. However, any application for deferral would set out when further elements of consideration will be payable and so HMRC should know when to expect to hear further from the taxpayer. HMRC could also consider following the approach of the Welsh Revenue Authority in respect of land transaction tax and limiting deferral for an initial period of, say, five years, with the taxpayer being entitled to request an extension of that period if the uncertainty continues.

10.4 We also think it is important that the legislation sets out when HMRC can or cannot grant deferral, with HMRC obliged to accept a deferral application where legislative conditions are met. Alternatively, a purchaser should be able to self-assess that the conditions for deferral are met, in the same way that a purchaser would be able to self-assess that the conditions for a relief or an exemption are met.

11 Exemptions/reliefs

11.1 ***The de minimis***

11.2 **Question 34: Do you agree with the reasoning behind the proposal to remove the de minimis? If not, what justification can you give for retaining it?**

11.3 We do not agree with the reasoning behind the proposal to remove the de minimis relief. Doing so would create additional complexity into the system due to the need to pay very small amounts of tax on low value transactions. Instead, we suggest that there is a case to be made for increasing the de minimis limit to reflect inflation in the 15 years since the introduction of the threshold to, say, £10,000.

11.4 We do not accept that doing a return on the portal will be no more burdensome than claiming the relief (which simply requires a declaration on the transfer document that is being executed in any event). However the return via the online portal is constructed, it will inevitably be more burdensome than the current position.

11.5 The consultation document does not address whether or not transfers for nil consideration would need to be reported. We would welcome a clarification around this. Assuming that they would not be, given the unnecessary administration burden of doing so, how would this mechanism work without a de minimis exemption?

11.6 ***Intermediary relief***

11.7 **Question 35: Is there anything that you do not think has been sufficiently considered in relation to the geographical application of intermediary relief?**

Question 36: Do you think that the government should explore whether there is an easier way for intermediaries to apply or not apply intermediary relief to particular transactions?

11.8 We do not have any specific comments on intermediary relief.

11.9 ***Stock lending and repurchase relief***

11.10 **Question 37: Is there any reason why you think the government should change the geographical application of Stock lending and repurchase relief that it may not be aware of?**

11.11 We do not have any specific comments on intermediary relief.

11.12 ***Debentures***

11.13 **Question 38: Do you agree that this is the correct approach to debentures? If not, why not and what would you do differently?**

11.14 We do not have any specific comments on the proposed approach to debentures.

11.15 ***Share buy backs***

11.16 **Question 39: Do you agree that this is the correct approach to share buybacks? If not, why not and what would you do differently?**

Question 40: If outlining an alternative approach to share buybacks, what are the benefits and disadvantages of that approach?

11.17 We do not have any specific comments on the proposed approach to share buybacks.

11.18 ***Group relief***

11.19 **Question 41: Do you agree that we should include group relief in any new single tax?**

11.20 We agree that group relief should be included in a new single tax and would welcome further clarity around the anti-avoidance provisions. We would also note that the preparation of complicated group relief claims can be time consuming and would be another reason for extending the proposed 14 day time period for accounting for the tax after the charging point.

11.21 ***Reconstruction and acquisition reliefs***

11.22 **Question 42: Do you agree that the government should include reconstruction and acquisition reliefs in any new single tax?**

Question 43: Is there anything you would like to highlight with regards to making the legislation for reconstruction and acquisition reliefs clearer?

11.23 We agree that the government should include reconstruction and acquisition reliefs in a new single tax.

11.24 There is no discussion in the consultation document about the way in which group relief or reconstruction and acquisition reliefs would apply under the new regime. The implication is that there will be no change in scope so that, for example, the current issues around partition demergers which do not always satisfy the conditions for group relief (if there are intra-group reorganisations of companies before the demerger step) or reconstruction relief (which does not apply to the demerger step of partition demergers). Whilst recognising that the proposals in the consultation document are largely administrative, concerned with modernising and merging the existing taxes, this exercise does also present an opportunity to consider the overall scope of these reliefs. Aligning these reliefs with the equivalent direct tax reliefs so far as possible, both in terms of the application and effect and the drafting of the legislation for them, would be a simplification of the tax system overall. It would also fall within the other guiding principles of the work in this area of ease of use and clarity and certainty.

11.25 ***Growth market exemption***

11.26 **Question 44: Do you agree that the growth market exemption should be retained under any new single tax? If not, why not?**

Question 45: In light of the consideration of reliefs and exemptions and their continued functionality, are there any market developments that should be considered?

11.27 We do not have any specific comments on the growth market exemption.

12 Penalties and compliance

12.1 **Question 46: Do you agree that the compliance regime as outlined above is appropriate and proportionate for any new single tax on shares?**

Question 47: If not, what do you think should be different, how would you change the proposed compliance regime and why?

12.2 The CIOT supports the harmonisation of legislation and processes across different taxes wherever possible[1]. We therefore agree that '*the standard enquiry and enforcement powers for self-assessed taxes should be applicable to any new single tax*' (see comment in the consultation document under the heading 'Penalties and Compliance'). In general, there should be a presumption in favour of a harmonised system, but with recognition that there may sometimes need to be exceptions. Processes and time limits for assessment, payment, interest and appeals should be aligned, with any deviations kept to a minimum and only for clearly explained and defined reasons. Familiar processes should help increase compliance with and trust in the tax system.

12.3 Tax compliance, including assessment and penalties, is an area that is being looked at during HMRC's ongoing Review of the Tax Administration Framework. It would be sensible for the penalties and compliance approach for a new single tax for shares transactions to align with the outcomes of that review, insofar as they have been developed within the same timeframe as the new single tax.

12.4 Broadly, what is proposed in the consultation document for the new single tax follows the system and concepts that are found within other self-assessed taxes – such as income tax and corporation tax. However there are some differences and we suggest these are considered further in finalising the proposals for the new single tax.

12.5 The proposed penalty assessment time limits are not the same as in equivalent rules. It is not obvious why they should be different. For example, the assessing time limits being proposed are longer than those applying to late filing penalties for other taxes (including SDRT) (see FA09 Sch 55 para 19) and for penalties for errors (see FA07 Sch 24 para 13(3)). We suggest that HMRC consider drawing on the wording and time limits used elsewhere to try to introduce consistency into the penalty assessment rules for the new single tax on securities. In particular, the proposed time limit of '*3 years after the final determination of the amount of tax upon which the penalty is based*' seems an unnecessarily long time for HMRC to assess penalties, resulting in a long period of uncertainty for taxpayers. We suggest that 12 months should give HMRC sufficient time and would be more efficient for HMRC's processes.

12.6 The proposals around penalties for late notification seem reasonable and are similar to other rules. However, we also note that the rules are moving away from this approach to a points based system in relation to VAT and income tax self-assessment, because of Making Tax Digital (MTD). However, we can see that a divergence from the new points-based rules may be appropriate for the new single tax, as a points-based system will not work well for a tax where there are relatively few returns required from a particular taxpayer and no regular filing obligations.

12.7 The proposals around discovery powers are as expected, and we would encourage the legislation to use the same wording as elsewhere in the tax code for consistency (for example TMA 1970 s29). Similarly, we suggest that the new single tax is included in the list of taxes to which FA08 Sch 36 applies in relation to information and inspection powers, replacing SDRT (FA08 Sch 36 para 63) so that these powers are applied consistently with other taxes.

[1] See the CIOT's response to HMRC's Call for Evidence on the Tax Administration Framework Review 15 July 2021 (see paragraphs 5.6 and 7.3): https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/d1104860-4402-4156-83b9-5b2af972e057/210715%20Tax%20Administration%20Framework%20-%20CIOT%20response%20FINAL.pdf.

13 Redundant legislation

13.1 **Question 48: Do you agree that these provisions are now redundant and no longer needed? If not, can you explain why not including them in legislation for any new single tax would be an issue?**

Question 49: Are there any other existing provisions that are now redundant and no longer needed?

Question 50: Are there any other existing provisions that do not work in practice?

13.2 We do not have any reasons for including the provisions referenced in the consultation document in the legislation for a new single tax, nor are we aware of any other provisions that are either redundant or do not work in practice. However, we suggest that this should be kept under review, as further provisions that are redundant may emerge as the shape of the new single tax emerges.

14 Acknowledgement of submission

14.1 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
29 June 2023

Appendix 1 - Minimum standards for the introduction of new HMRC digital systems

We set out below what we believe are the minimum standards which should be applied by HMRC when developing new digital systems to be used by taxpayers and agents. In this regard we mean digital systems and processes by which taxpayers and agents interact with HMRC to fulfil their tax obligations (examples include the VAT registration service, the Trust Registration Service, RTI reporting, the property reporting service, Making Tax Digital etc).

1. Policy development should consider the extent of digitalisation required to deliver it.

   Changes to the tax system invariably require the introduction of new, or changes to existing, digital systems. When developing tax policy, the consultation process should include consideration of how the policy will be delivered, a realistic evaluation of how long new systems will take to put in place, and the costs of development and ongoing compliance.

2. Consultation and testing of the digital system before its use becomes mandatory.

   New digital systems should be the subject of consultation and full end-to-end pilot testing process prior to their use becoming mandatory. Participation in testing should be voluntary, and encompass a variety of circumstances, including represented and unrepresented taxpayers, and both large and smaller agents. Systems should only become mandatory once this has taken place and any glitches rectified, so as to ensure they work as envisaged, meet the requirements set out below, and fulfil the policy objective.

3. The new digital system has at least the same level of functionality as the system it replaces.

   HMRC's ambition is to be 'the most digitally advanced tax authority in the world'. New systems should deliver against that ambition and introduce additional, improved functionality without removing that which exists already. Where the new system requires the completion of digital forms, we have separately set out the minimum requirements for such forms.

4. Interaction with existing HMRC systems is maximised.

   New digital systems should complement HMRC's existing IT infrastructure, pulling through information from existing systems, and seamlessly interacting with those systems. This will improve the overall 'customer experience', as well as improving accuracy and reducing costs all round.

5. Guidance is available on how to use the new digital system before it goes live.

   This will enable its users to make the necessary preparatory steps to their procedures and in-house IT capabilities so they can use the new system effectively and it can deliver the intended benefits and functionality. This should include step-by-step guidance and up-to-date screenshots or YouTube videos to aid understanding. Those testing the system should be able to access the draft guidance to ensure it supports them through the process.

6. The digital system should keep pace with legislative and policy changes.

   The digital system should be regularly reviewed and updated so that it reflects changes to legislative and policy requirements, so that its users remain compliant.

7. The new digital system should respect existing agent authorisations, and that a taxpayer may use different agents for different taxes / obligations.

   HMRC's Charter promises to 'respect your wish to have someone else deal with us on your behalf', which might include multiple agents for various taxes / obligations. Where that wish has already been granted for a particular area of tax, it should not be necessary to repeat that authorisation as a result of the introduction of a new digital system.

8. Agent access should keep pace with that for taxpayers themselves.

   One of the HMRC Charter promises is: 'Recognising that someone can represent you', and HMRC's vision is that agents should have access from the outset of new systems. This will ensure that taxpayers who have instructed an agent to deal with their affairs (a significant majority in some areas) do not miss out on the benefits of digitalisation, or are prevented from complying with their obligations.

9. Agent functionality to mirror that for taxpayers themselves.

   In addition to the Charter promise of 'Recognising that someone can represent you', HMRC's vision is for agents to be able to see and do what their clients can. Adherence to these undertakings will ensure that taxpayers who have instructed an agent to deal with their affairs (again, a significant majority in some areas) can do so effectively, thus promoting compliance and reducing costs.

10. HMRC staff are adequately trained and available to provide on-the-spot assistance.

    Even if all the above criteria are met, taxpayers and agents will need support from HMRC, whether to use the particular service (in which case a dedicated helpline should be considered), resolve glitches in the system, or those who simply need help to 'go digital'. HMRC must provide easily accessible and prompt support and recognise that non-digital channels (such as telephone helplines through to real, knowledgeable staff) will still have a role to play even as more and more services are moved onto digital channels, thus enabling compliance and reducing costs.

11. HMRC, taxpayers and agents should see the same information.

    While in some circumstances third party software will present information differently, where HMRC's systems are being used it should be possible for HMRC to see the same information in the same format as that seen by the taxpayer or their agent. This will enable HMRC to better support its customers and minimise the confusion which currently exists in many areas.

12. New digital systems should work for all affected taxpayers.

    All taxpayers faced with a particular obligation should be able to use the new digital system to comply. Groups of taxpayers (eg such as those based overseas, or without a National Insurance number etc) should not be left behind, or prejudiced, because HMRC's systems cannot accommodate their characteristics. Where there is a staged roll-out of obligations, the timescales and who is in / out of scope should be clear.

13. Non-digital processes for those who cannot interact digitally or find it difficult to do so.

    All digital processes should have a credible, non-digital equivalent, to ensure those who cannot go online (because of their inability to do so, or because HMRC's systems do not accommodate them), or have difficulty doing so, are

not disadvantaged when interacting with HMRC. This will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', so those users do not receive a 'second class' service.

14. Accessible versions or characteristics of digital systems for those with particular needs.

Digital systems should be accessible for those who can go online, but who have particular needs eg those who use screen readers. Again, this will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', as well as complying with the Equality Act and meeting Web Content Accessibility Guidelines.

Appendix 2 - Minimum requirements for HMRC digital forms

We set out below what we believe are the minimum standards which should be applied by HMRC when developing new digital forms to be used by taxpayers and agents. In this regard we mean forms that have to be completed and submitted online, rather than forms which are available online, but are printed off and submitted by post.

Development of the form

1. Consultation and testing with a range of potential users of the form.

   New digital forms, and changes to existing ones, should be the subject of consultation and testing prior to their launch, to ensure they work as envisaged, meet the requirements set out below, and fulfil the policy objective. This should be carried out with represented and unrepresented taxpayers, and agents of different sizes. A *post-implementation review should be undertaken to assess whether it has met its policy objectives and identify any deficiencies or improvements that can be made.*

2. Government Gateway status

   There should be a clear policy, based on sensible rationale, as to whether a form is in front of or behind the Government Gateway. That policy should be applied consistently.

3. Allow time for familiarisation.

   Sufficient time should be given to allow taxpayers and their agents to adapt to any new processes, particularly for forms which require regular completion, or for users who complete similar forms regularly.

Completion of the form

4. A list of information required to complete the form.

   This will enable the user to easily identify all the information needed to complete the form, assemble it in advance, and prepare to complete it themselves or take advice. This is particularly important if it's not possible to progress through the form without fully completing the previous page. This will ensure that the form can be completed in an efficient manner, in one go.

5. Clear instructions for completing the form.

   There should be clear instructions on how to complete all the boxes on the form, particularly if it is necessary to complete fields with special characters, or enter 'nil' or '0' rather than leave blank, and how to digitally 'sign' the form. Links to relevant guidance should be provided throughout the form.

6. The ability to save and return to a part-completed form.

   This is necessary in case information requirements or other work prevents completion of the form in one go, or the form 'times out' after a period of inactivity, or the form needs to be checked by another party during the process of completion.

7. The ability to amend an entry.

An easy process for amending an entry that is, prior to submitting, found to be inaccurate, will reduce the scope for error and improve the taxpayer experience.

8. The ability to upload attachments or provide additional explanations.

   Some processes require the provision of supporting documentation or explanations. It should be possible to do this as part of the process of completing the digital form, through the inclusion of attachments or 'white space' explanations. This will enable the complete package to be submitted to HMRC in one go, speeding up the process and reducing the risk of documentation going astray.

9. Sufficient character spaces to meet the requirements of the form.

   The form should provide sufficient space to provide all necessary information and explanations. Fields which require explanations – eg of behaviours or the interpretation of technical points – should be large enough to accommodate them in full.

10. The ability for an authorised agent to complete the form on behalf of the taxpayer.

    Not only is this a requirement of the HMRC Charter ('Recognising that someone can represent you'), but it will also facilitate more accurate and timely completion of forms for represented taxpayers. This should include the ability for the form to be accessed by more than one individual within a business or an agent's firm, to allow for access to be delegated. HMRC's systems should be able to efficiently and securely identify agent-taxpayer relationships, without them having to be resubmitted.

11. The ability to save a completed form.

    This will enable the form to be reviewed, to ensure it is correct and complete, prior to its submission, such as a client reviewing and authorising what their agent has input, or to allow for a manager etc to review the work of a more junior member of staff.

12. The ability to print a completed form.

    If it is not possible for a represented taxpayer to view the completed form online prior to submission, the ability to print it in full will ensure that the agent can obtain approval for its submission from the client. This is necessary because agents cannot normally submit information to HMRC without the client's prior approval. For unrepresented taxpayers, being able to print a form means the taxpayer can check the form off-screen, which is often easier and can help spot mistakes.

13. The ability for the digital form to correctly compute the tax due.

    Tax Returns and other forms which lead to a tax calculation must be able to cope with all tax computations. It should not be the 'norm' for there to be a list of exceptions where computers cannot do the calculations accurately, causing taxpayers/agents to have to print and post the form to HMRC.

<u>Submission of the form</u>

14. Clear messaging to explain what submission of the form means.

    Therefore, the person submitting the form is aware of the consequences of what they are certifying, what the next steps will be, and the consequences of incorrect / false declarations.

15. The ability to capture a copy of the submitted form.

    This ensures that the taxpayer (and, where appropriate, their agent) has a record of what was finally submitted – either by printing it or downloading and saving it. This might be important, for example, if the client requests a copy of the submitted form for their records, or in case of a subsequent dispute with HMRC.

16. A digital receipt or equivalent proof of submission.

    This evidences that the form has been submitted to, and received by, HMRC, and should record the date and time of submission, along with a submission reference number.

Necessary alternatives

17. Non-digital versions of forms for those who cannot interact digitally or find it difficult to do so.

    All digital forms should have a non-digital equivalent, to ensure those who cannot go online, or have difficulty doing so, are not disadvantaged when interacting with HMRC. These should be easy to obtain and include appropriate guidance to aid their completion. This will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly'.

18. Accessible versions of digital forms for those with particular needs.

    Digital forms should be accessible for those who can go online, but who have particular needs eg those who use screen readers. Again, this will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', as well as complying with the Equality Act and meeting Web Content Accessibility Guidelines.