



STAMP TAXES ON SHARES MODERNISATION

Issued 22 June 2023

ICAEW welcomes the opportunity to comment on the Stamp Taxes on Shares modernisation consultation published by HMRC on 27 April 2023, a copy of which is available from this [link](#).

For questions on this response, please contact the ICAEW Tax Faculty at taxfac@icaew.com quoting REP 61/23.

This response of 22 June 2023 has been prepared by the ICAEW Tax Faculty.

Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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OVERVIEW

1. The consultation was met positively by members who considered that a single tax on securities, implemented in the right way, could lead to a simplification compared with the existing regime.
2. We have not sought to answer each consultation question individually. This is because our response is high-level, focusing on matters pertinent to simplification of the tax system and the associated growth agenda. Similarly, given parts of the consultation relate to very niche technical areas of stamp taxes, we have not gained sufficient feedback to give a comprehensive and balanced response to every question. However, the key themes arising from discussions with members are discussed below.

CHARGING POINT

3. Members have expressed concern around having a charging point at the point of agreement. This could lead to tax becoming due before a transaction has completed which is likely to result in a further funding requirement ahead of the completion funds, the point at which the industry is currently accustomed to sourcing funds. This approach is likely to be more complex for affected taxpayers, create costs and an extra administrative burden.
4. The term 'point of agreement' would also need to be defined and could be quite wide-ranging. It is likely that the governance in larger groups / taxpayers will be different to that of smaller entities. Given the exercise is one of simplification we would suggest that this type of term could create unnecessary complications.
5. It is also important to note that a significant proportion of affected entities are smaller, owner-managed businesses who will not be familiar with stamp taxes. Many members felt that the charging point should be on completion of a transaction to reduce complexity. If there were any concerns around this model, an approach similar to SDLT could be adopted – ie. a charging point at the earlier of substantial performance or completion of the contract.

PAYMENT DEADLINE

6. We do not see any value in changing the existing payment deadline (for transactions outside CREST) of 30 days from the date of completion. The proposed acceleration of this payment will have minimal impact on the Exchequer while causing significant inconvenience to taxpayers. It could also increase the risk of error as taxpayers will be rushed to quantify liabilities and prepare their returns based on estimated figures if completion accounts are unavailable. There is therefore a risk that this policy will reduce compliance or increase the requirement for amended returns to be submitted.

MECHANISM FOR AMENDING RETURNS

7. Any self-assessed tax requires a mechanism for amendment, refund or payment. This will need very careful thought, especially if HMRC continues with the date of agreement as the charging point and a 14-day payment deadline. This is because tax could become due on transactions which never complete and we would assume HMRC would not seek a tax charge on aborted arrangements. Regardless of the charging point, taxpayers will require a statutory provision to facilitate amendment and deal with any associated changes in liability.

STATUTORY PRE-TRANSACTION CLEARANCE

8. Members had mixed views on whether a statutory clearance was absolutely necessary. However, there was general agreement that this posed an opportunity to save time and resources for HMRC considering all clearances pertinent to a transaction could be reviewed at the same time. For example, many transactions will require clearance under income tax, capital gains tax and corporation tax with regards to the 'commercial purpose' test and the 'main purpose' test (eg, (s137(1) and s139(5), Taxation of Chargeable Gains Act 1992 (TCGA 1992) and s701, Income Tax Act 2007).
9. Members suggested that having a similar statutory clearance for stamp taxes (eg, for reconstruction and acquisition relief under s75 and s77, Finance Act 1986 (FA 1986)) would appear reasonable and would allow a single HMRC team to consider all clearances in connection with one transaction. Should a separate non-statutory clearance be required for stamp taxes, it is likely that this would be performed by a separate HMRC team therefore demanding a duplication of already constrained resources.

DE MINIMIS

10. There was a strong consensus by members that any new legislation should retain a de minimis for Stamp Duty, some even suggesting that the existing figure of £1,000 is too small. The figure of £10,000 was proposed. Even at that level, the amount of stamp tax due would be £50.
11. We are advised that many taxpayers will seek advice on stamp taxes, particularly where forms and records are required for updating a company register following a transaction. The compliance cost of meeting obligations should be considered in light of the associated tax revenues collected. To not have a de-minimis would place an undue burden on taxpayers for minimal returns for the Exchequer. The administrative cost of collection by the Exchequer could in fact outweigh the quantum of any taxes collected at lower levels.

DEFERRED CONSIDERATION

12. We are advised that it is quite common for deferred consideration in the form of an earn-out to be paid out over a longer period than two years. For example, members suggested that a period of six years was not unusual. Therefore, a maximum deferral timescale of two years for stamp tax due on deferred consideration does not reflect the commercial reality of arrangements. Stamp duty will be payable on an estimate of any contingent amounts on the assumption that the contingency will lead to the consideration being payable. We note that the consultation refers to the possibility of making a subsequent claim for overpaid tax, but the time limit for doing so would need to be sufficiently long. Ideally, the window for making a claim would start from the point that the consideration is finalised.

RECONSTRUCTION AND ACQUISITION RELIEFS

13. Our members would welcome reconstruction and acquisition reliefs being retained in the new single tax. However, they consider that there is also an opportunity for simplification by aligning some definitions with other taxes (eg, s75, FA 1986 being updated to reflect a scheme of reconstruction, as defined in Sch 5AA, TCGA 1992) and to review the operation of s77A, FA 1986.

PRE-1 DECEMBER 2003 REAL-ESTATE TRANSACTIONS

14. In the interests of simplification of the tax system we would question whether the legislation relating to pre-1 December 2003 transfers of land should be retained. Members have advised us that they have not come across any transactions where this is likely to be in point.

NAME OF THE TAX

15. It is not uncommon for stamp duty to be confused with stamp duty land tax. Some members have suggested taking the opportunity to change the name of any 'new' tax to something which makes it clear that this is a tax on shares or securities and completely unrelated to stamp duty land tax. This could be something as simple as 'securities transaction tax'.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).