Stamp taxes on share consideration rules: draft Finance Bill

Large Corporate **OMB**

01 October 2019

The CIOT commented on the draft Finance Bill clauses, which will give effect to an extension of the market value rule so that this applies to all transfers of securities, listed and unlisted, to connected companies where the consideration includes the issue of shares.

This change to the stamp duty and stamp duty reserve tax (SDRT), collectively known as stamp taxes on shares (STS), consideration rules, was consulted upon following Budget 2018, along with two other changes that the government has decided not to implement. In our comments, we welcomed the fact that the government has decided not to proceed with the other two proposals:

- aligning the definitions of consideration for stamp duty and SDRT; and
- aligning the rules on contingent, uncertain and unascertained consideration.

However, we remain concerned that there may be unintended consequences arising from the proposed change; not least because it will result in significant additional costs that are wholly disproportionate to the tax at stake in many cases, and which may in some situations prevent commercially advantageous transactions, with no avoidance motive, from going ahead.

The draft legislation also contained changes to FA 1986 s 77A, intended to prevent two charges to stamp duty arising on capital reduction partition demergers, which we welcomed. However, our response did highlight some continuing difficulties arising from s 77A and suggested that this section also warrants a review of the underlying policy aims. It is also difficult to reconcile the imposition of STS charges in these transactions with the fact that the policy decision was made, presumably as far back as 1965, that these transactions should not be subject either to capital gains tax or to corporation tax on gains. We said that it seems to us that this is a fundamental point of policy, and is one of the reasons why we would like the government to consider a root and branch review of STS as a whole.

This consultation has served to demonstrate that the STS regime is and remains very complicated. We said that we realised that it may not be possible to prioritise action in this area, but encouraged the government not to lose sight of its aim of reforming, digitising and simplifying stamp duty (and the whole STS regime) generally. We emphasised that, rather than piecemeal change, we would prefer to see a longer term plan towards more wholesale reform of STS and a road map to manage the transition which fully considers how the tax might be brought up to date and brought into line with other reliefs and exemptions throughout the tax code.

In our view, there would be significant benefits arising from stamp duty reform and simplification.

Our full response can be read on the CIOT website.