THE
INVESTMENT
ASSOCIATION

Response to consultation

STAMP TAXES ON SHARES CONSULTATION

About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 250 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £10 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 46% of this is for overseas clients. The UK asset management industry is the largest in Europe and the second largest globally.

Our Response

The IA strongly supports the Government's drive for simplicity, ease of use and clarity and certainty across the tax landscape and welcomes the opportunity to respond to the Stamp Taxes on Shares Modernisation consultation.

There is keen interest across our membership to ensure that this review results in remedying operational issues related to Stamp Duty and Stamp Duty Reserve Tax (SDRT), collectively Stamp Taxes on Shares, after years of fragmentation.

At the outset however we would like to highlight the wider UK Listings Review, which aims to transform the UK into a leading global market of choice for issuers, intermediaries and investors, as part of which, in May 2023, the FCA released a consultation paper on Primary Markets Effectiveness[1]. It is important to consider, as part of that broader review, any reforms to Stamp Duty and SDRT, and their role in financial markets, ensuring that these taxes remain appropriate in an increasingly competitive and globalised market for securities.

Unlike many other major markets, the UK maintains a form of financial transaction tax on the transfer of main-exchange UK listed shares via the Stamp Duty and SDRT rules. The UK rate of 0.5% for the transfer of standard equity shares is higher than that of France (0.3%), Hong Kong (0.26%) and India (0.2%). In contrast, the US does not impose any form of financial transaction tax on its main exchanges.

[1] https://www.fca.org.uk/publications/consultation-papers/cp23-10-primary-markets-effectiveness-review

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Like any tax, Stamp Taxes on Shares have an effect on investor behaviours, as an additional cost. It directly and indirectly drives-up transaction costs and lowers UK listed asset prices. This consequently negatively impacts trading volumes and discourages high-frequency trading of assets subject to these taxes.

Moreover, the reach of Stamp Duty and SDRT is not consistent across all classes of equity and can incentivise investment into derivatives linked to UK listed shares.

The current project on modernisation of Stamp Taxes on Shares project predates much of this wider Listings Review work and it would be a clear missed opportunity for the UK to modernise its tax regime without considering its future relevance. Therefore, it is important to further explore and assess the necessity of Stamp Taxes on Shares and understanding their role in the UK's competitiveness in the race for international listings.

We acknowledge that the wider strategic review of UK Stamp Taxes falls outside of the purview of HMRC 's mandate and the scope of the current consultation. As such, we have endeavoured to answer the questions on modernisation as best we can, through member feedback, while separately urging the Government to approach this review holistically and first assessing the role of Stamp Taxes on Shares before implementing fundamental, difficult and potentially unnecessary operational changes.

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

Subject to our comments regarding the UK Listings review, to the extent that UK decides to maintain Stamp Taxes on Shares, we agree that the UK Government should introduce a single tax on securities.

We support this new single tax on securities with a design based on the current Stamp Duty Reserve Tax ("SDRT") regime rather than Stamp Duty. This is because the majority of financial market transactions no longer transfer shares by way of physical documents and to change the well-established status quo with CREST would cause financial market disruption.

The IA continues to be supportive of the initiatives to simplify the UK tax on securities transactions. We believe the increased clarity and simplification will increase our members' awareness and understanding of the tax providing investors with heightened certainty.

Q 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?

We 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.

We request that the ability to communicate with HMRC outside the portal is maintained, e.g., on management company group reconstructions with regards to case-by-case transactions where there is ambiguity as to the application of the new legislation.

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

We agree that having a non-statutory pre-clearance system is an appropriate approach.

SDRT is a nuanced, specialist area of tax and our members often face uncertainties when considering certain transactions. Absent reaching out to advisors which can be expensive and time consuming, we welcome the ability to contact HMRC Stamp Taxes for non-statutory pre-clearance rulings and guidance.

Q 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?

UTRNs are often used within the UK tax system as a method to evidence a filing being made and to reconcile associated tax payments. We therefore agree that the need for a UTRN to be presented to registrars for register update is an appropriate measure to evidence that a transfer has taken place.

Assuming any tax will need to be paid at the same time in order for a UTRN to be issued, this will be a good detection measure, but care will be needed for corporate group transactions, where having this timing for payment on non-CREST settled transactions may be unworkable and impractical.

Q 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?

We agree with the proposed approach.

Q 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?

We agree with a single charging point to support a simplified regime.

The current SDRT regime applies to both listed and private (CREST and non-CREST settled) transactions, meaning there would not be a material change in practice, and it would therefore seem reasonable to maintain this as the charging point for any new single tax on shares.

Q 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?

We agree with a single accounting date for listed shares held in CREST of 14 days from the date of the charging point. We also agree that this should also be the accounting date for listed shares held in CREST but are not CREST settled on transfer e.g. when a transfer takes place in the custodian books only and there is no physical movement in CREST (such as fund sub fund switches). In these instances, manual payments should be made possible by HMRC Stamp Taxes e.g. through the non-CREST settled portal.

We consider that agreements to transfer non-CREST held securities, such as, group corporate restructures and private company purchases may require a longer period from the charging point to the accountable date, e.g., transactions involving earn out and uncertain consideration etc.

We suggest HMRC take guidance from corporate lawyers and Stamp Tax practitioners for pragmatic and workable solutions including extending the accountable date for non-CREST held securities to, say 3 years.

Q 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?

We firmly believe that the geographical scope of the new single tax on securities should be UK only.

This is currently not the case for SDRT nor Stamp Duty, both of which bring into charge non-UK shares in certain circumstances included those that are kept on a share register that is maintained in the UK, those that are "paired" with UK shares or transfers of non-UK shares where there is a "matter or thing to be done in the UK".

HMRC need to maintain clarity of scope of the new tax, drafting clear and concise legislation accordingly. This could be done for instance by specifying securities, interests in securities, and rights over securities, issued by UK incorporated companies that carries the certain specified characteristics, to be subject to UK Stamp taxes.

We are aware that this may require large sections of the current legislation becoming obsolete, but we consider this necessary to achieve the intension of this consultation, i.e., to simplify stamp taxes on shares.

CREST depository interests and other depository interests may wish to be considered further as means to further simplify the new single tax and possibly remove the 1.5% regime which we appreciate is not included in this consultation.

Q 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?

Introducing the simpler definition, and not requiring the involvement or reliance of where a share register is maintained, should negate the need for any such reference.

We also suggest that there are relatively few, if any, non-UK companies that are brought into current charge by virtue of their share register being kept on a register maintained in the UK. If there are, these are unlikely to be detectable.

Q 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?

We agree that the proposed scope is appropriate and is in line with the reality of the Stamp Taxes on Shares in force today.

Q 11: Is there anything that is currently captured by Stamp Duty and SDRT that would not be captured through this approach to scope?

Non-UK shares e.g. that are kept on a share register that is maintained in the UK and non UK shares that are "paired" with UK shares would not be caught.

Q 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?

With carefully drafted legislation, detailing securities that are in scope i.e. UK shares and exotic debt, there should be no need for a loan capital exemption.

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

We broadly agree that the granting of security interests is currently out of scope.

Q 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 any route for avoidance?

Guidance should clarify that the granting of security interests is out of scope of the legislation rather than adding legislation to that effect which may be misleading and confusing.

This is a wider point that UK Government will need to focus on – communication and guidance.

HMRC Stamp Taxes team have recently updated the Stamp Taxes on Shares Manual but the level of technical detail and explanatory notes is insufficient with much of the financial markets commentary simply discussing industry activities rather than the relevant stamp tax treatment or guidance.

Q 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?

As a trade association, we have no comments on this question.

Q 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?

We agree that non-UK fund equivalents should have an equal statutory footing to UK funds in the same way that any other modern day non-discriminatory tax regime operates.

However, given that any new single tax would be based on the current Stamp Duty and SDRT concept of taxing [transfers of equity ownership], there should not be a defined list of these vehicles in statute, however simple this may seem, other than those which are not subject to change in terms of legal construct. This is because there are too many variables and overseas fund vehicles that have hybrid features or dynamic constitutional drafting.

We therefore consider that guidance could suggest accepted equivalents for vehicles that are known to be analogous to UK vehicles, e.g. Luxembourg SICAVs to UK OEICs, but for vehicles that demonstrate hybrid or dynamic characteristics such as certain US trusts, should be managed on a case by case basis.

Q 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?

We recommend extending 'seeding' relief to OEICs. Currently, this relief is only available to unit trusts which is a clear disparity between two fundamentally similar investment products and we understand it was always the UK's intention to extend this relief to OEICs.

Similarly, we recommend extending 'pro rata in specie contribution' relief to OEICs. Currently, this is only available where the fund is in the form of a unit trust.

Extending these reliefs to OEICs would ensure that OEICs have an equal statutory footing to Authorised Unit Trusts (AUTs), in line with the underlying UK tax policy that there should be no difference in the tax treatment between investing in an OEIC and an AUT.

From a policy perspective, we struggle to see any reason why these relief should be limited to unit trusts, especially when the relief for 'pro rata in specie redemptions' covers both OEICs and unit trusts.

We strongly support removing the 'cliff edge' risk (referred to in the consultation document) with regards to any 'pro rata' transition since the current 'hard edge' rule can give rise to the unjust result (out of line with the general scheme of the stamp taxes legislation) where there can be a charge to tax without a change of beneficial ownership of the chargeable securities forming part of the transaction. We consider that this could be dealt with so that any new single tax becomes payable on the portion of the chargeable assets transferred that are not a pro rata match. For example, a redeeming investor owns 10% of the fund, but receives 11% of the fund's chargeable securities. In such a scenario, the new STS should only be payable (by the investor) on the value attributable to the overallocation (of 1%) of the chargeable assets transferred.

More generally, as regards the definition of 'pro rata', it would be helpful to have further clear guidance on this, as indicated in the consultation document, e.g., any variance of, say, less than 20bps could be regarded as meeting the pro rata requirement and the 'line-by-line' pro rata requirement should be limited to the **chargeable** assets forming part of the in-specie redemption/contribution. Further guidance surrounding the practical application of these rules would promote certainty and save HMRC time and resources by limiting the need for clearance and query requests.

Our members value the ability to consult with HMRC on these matters and we consider it important to retain this constructive and collaborative relationship including in particular non-statutory pre-clearance applications to the Stamp Office.

Q 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?

We do not agree that this is the correct approach to mergers.

Our members are often uncertain as to whether a merger can benefit from no Stamp Duty or SDRT due to the lack of specific reference to fund reconstructions in the legislation.

The current HMRC guidance dealing with mergers in light of the Save & Prosper case is covered under SDRT Newsletter 7 and only applies to UK authorised funds in the form of OEICs and AUTs. This leads to taxpayers requiring non-statutory clearance where mergers involve either a transferor fund, transferee fund or both the transferor or transferee funds that are overseas funds but the transfer of UK securities pursuant to the merger is still effected by operation of either UK law (which remains relevant where the transferor is a UK authorised fund and the transferee fund is non-UK) or relevant foreign law where an overseas fund is the merging fund. The relevant foreign law of the merging fund jurisdiction may operate in a similar way to COLL whereby the scheme property automatically transfers from the merging fund to the transferee fund pursuant to the merger once the merger is approved by unitholders (e.g. 75%) – i.e. by way of operation of law rather than agreement. Therefore, it would be helpful to make it clear that the principles in Save & Prosper can apply to non-UK fund mergers (or indeed UK to non-UK fund mergers), but leave open the possibility for taxpayers to seek non-statutory clearance.

Our members welcome legislated conditions for a merger relief that when met would render a merger exempt for example, the conditions set out in the FCA COLL, with the ability to consult with HMRC Stamp Office with a non-statutory pre-clearance in instances where the local law for non-UK fund mergers differs or other uncertainty arises.

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

We agree that this is the correct way to deal with call options and warrants.

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

Our members are familiar with the GAAR and if there was a risk of an avoidance method being used, they would address this in the usual way.

Q 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?

Please refer to our comments above.

Q 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?

To the extent that there are still pre 2003 land transactions taking place (which we highly doubt) we consider it more appropriate to add any legislation addressing these transactions in the SDLT legislation, and not through the new simple single tax on shares.

Q 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?

We would suggest taking partnership interests outside of the scope of the single tax entirely. This can be subject to an anti-avoidance rule, but any such rule would need to be specific enough such that there was no uncertainty in most situations (i.e. it would need to reference only where the main or one of the main purposes of entering into a partnership was to save Stamp Duty on a sale of UK shares).

In most cases, it will be clear that the partnership does not exist for such purpose and in such situations, there should be no requirement to submit a Stamp Duty return of any form in respect of the transfer of the partnership interests.

If the anti-avoidance provisions are drafted so broadly that the new single tax applies generally to transfers of partnership interests when there are underlying UK shares, this would risk turning what is now a voluntary tax into a mandatory tax. This would be particularly damaging to the UK funds industry as interests in limited partnership funds that hold UK equities are transferred for commercial reasons, and in practice no stamp duty is currently paid unless the transfer relating to the partnership interests is required as evidence in a UK civil court. Such limited partnership funds will not have been formed to transfer UK shares free of stamp duty, so partners acquiring partnership interests should not be subject to the new tax in relation to such purchase of partnership interests by reference to underlying UK shares held by the fund when they would not currently (in practice) pay stamp duty on such transaction; especially as the changes covered by the consultation are not (we understand) intended to be revenue raising in nature.

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

We agree with the view that obligations to make payment of pension benefits should be carved out.

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

We cannot think of any potential for avoidance with Government's proposed approach to the payment of pension benefits.

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

We agree with Government's view on the payment of pension benefits.

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

In the interests of maintaining tax neutrality and not being at risk of being seen as using this consultation as a means to raise tax intake, we agree with this approach.

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

We support the proposal to use money or money's worth for consideration under any single STS.

However, any fund transaction that would have previously not had Stamp Duty or SDRT charged by virtue of the execution of a letter of direction, e.g. in kind subscriptions into an Irish CCF should have specific exemptions to retain tax neutrality.

Failure to do so would be discriminatory not only on a jurisdictional basis for non-UK funds, but also on an investor basis given the investor profile of a life company, which HMRC appear to have sympathy for, is specific.

Q 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.

No further comment.

Q 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?

No further comment.

Q 31: Is there anything proposed in this section on consideration that could open a route for avoidance?

No further comment.

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

We agree with the government's proposals for dealing with uncertain and unascertainable consideration.

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

No further comment.

Q 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?

We do not agree with the reasoning behind the proposal to remove the de-minimis given the amount of resource required for such immaterial transactions.

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

To not be viewed as a country with discriminatory tax legislation, we consider any broker dealer satisfying the activity behaviours required for intermediary relief, regardless of geographical jurisdiction, should be able to apply for direct recognition to HMRC on purchases of in scope securities.

Q 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?

Please see above. Any broker dealer satisfying the activity conditions for intermediary relief should be able to appeal to HMRC for direct recognition, regardless of geographical jurisdiction.

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?

We consider that stock lending relief should be made available to any party, regardless of location or business activity providing the essential conditions of the relief remain.

We also consider there should be clear guidance provided with regards to collective investment schemes that enter into stock lending arrangements.

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

Yes, we agree with the approach provided by HMRC Stamp Taxes with regards to debentures.

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

We do not have data to demonstrate the impact on the Exchequer but on the basis that the revenue raised is material and the purpose of this consultation is to retain tax neutrality, we consider this is the correct approach to share buybacks. However, this may deem the UK an unattractive place to establish a listing company, and that is a policy decision to make as part of the overall strategic review urged earlier in this response.

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

No further comment.

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

Yes, we agree there should be an associated companies' relief from the new single tax in line with the conditions currently listed in s42 FA 1930 (as amended).

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

Yes, we agree there should be a reconstruction and acquisition relief in the new single tax.

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

No further comment.

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

We agree with the policy decision to retain a growth market exemption.

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

No further comment.

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

We agree that the compliance regime is appropriate and proportionate for a new single tax on shares.

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

No further comment.

Q 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?

Due to the specialist nature of the taxes, we request that HMRC consult specialist practitioners to assess whether these provisions are now redundant. In any event, we agree that HMRC should take the opportunity for reform to remove redundant provisions and correct any legislation that is not fit for purpose.

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

The exemption from Stamp Duty and SDRT on transfers of units in UK Authorised Contractual Schemes is redundant given these interests are out of scope to both the taxes. Having an exemption for non-taxable transfers adds confusion to the reader.

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

No further comment.