Stamp taxes on shares consideration rules

Large Corporate **Management of taxes** **OMB**

01 March 2019

The CIOT responded to the consultation relating to *Stamp taxes on shares consideration rules* which made various proposals to amend the rules relating to stamp taxes arising on consideration for share transactions

On 7 November 2018 HMRC published a consultation relating to *Stamp taxes on shares consideration rules*. This consultation considered various changes to the rules relating to stamp taxes arising on consideration for share transactions which can be summarised as follows:

- introducing a market value for transfers of shares in unlisted companies to connected companies and individuals;
- aligning the meaning of 'consideration' for stamp duty and SDRT by adopting the SDRT meaning of money or money's worth; and
- aligning the stamp duty and SDRT treatment of contingent, uncertain and unascertainable consideration.

With regard to the proposal to extend the market value rule to unlisted securities, the CIOT said that neither the policy rationale, nor the intended targets of, the proposed extension had been made clear. We suggested that further discussion with HMRC around the types of arrangements involving connected parties being used to minimise Stamp Duty and SDRT that HMRC wishes to target as being avoidance would be useful, before the rule is extended generally. The CIOT's principle concern is that that an extension to the market value rule is likely to result in significant additional costs that are wholly disproportionate to the tax at stake in many cases, which is particularly undesirable in circumstances where there is no avoidance motive for the transaction. We suggested that the current vague description of policy rationale prevents designing a targeted rule so as to reduce the unintended

consequences.

Our response focussed on corporate reconstructions which, so far as we are aware, are the most commonly occurring circumstances in relation to unlisted securities that this change would give rise to significant additional Stamp Duty or SDRT for. In particular, we said that it is not clear to us why the government would wish to impose a charge in these circumstances. There is generally relief from other taxes, such as capital gains tax and corporation tax, which ensure that the transactions are tax neutral. It can also be said that any tax charges that do arise on a corporate reconstruction are generally 'dry' tax charges, in that no cash is generated by the transaction. As such a charge to Stamp Duty or SDRT is a real cost to a business or shareholder. Further, in circumstances where the corporate reconstruction takes place in order to facilitate a sale of the business, there should be a Stamp Duty or SDRT charge on the subsequent sale.

In addition, we said that we could not see any policy reason to extend the market value rule to connected persons other than companies, nor, in particular, to transactions involving individuals. The impacts would be predominantly ones of cost, although we would expect there to be so many exemptions. We suggested some exemptions that we would expect to see, but commented on the difficulties of drawing up an exhaustive list. In addition, the effort of doing so is likely to mean that the application of the extended rule will be so limited as to be disproportionate to its introduction.

With regard to the other two proposals, we said that it would be useful to know how these proposed changes fit into the government's aim of reforming, digitising and simplifying Stamp Duty generally: why is the government proposing these two non-core recommendations from the OTS report on '*Stamp Duty on paper documents: a way forward to reform, digitise and simplify*' at this time? We said that we would prefer to see a longer-term plan towards more wholesale reform of stamp taxes and a road map to manage the transition. On their own, we are not convinced that the changes proposed will be of sufficient benefit to taxpayers or HMRC to justify the effort and cost of implementing them.

The CIOT's full response can be found on the CIOT website.