

Shares Working Together Steering Group
10 February 2015 @ 10:30am
Floor G, room number- Auditorium L
100 Parliament Street
(1 Horse Guards Road entrance)
Westminster, London.

Attendees

Peter Stewart (PS)	British Bankers Association
Adam Parry (AP)	CIOT & Linklaters
Robert Fair (RF)	Euroclear
Michael Phillips	HSBC
Bryony Berridge (BB)	IMA
Michael Quinlan (MQ)	Law Society (E&W) & Temple Tax Chambers
Craig Leslie (CL)	Stamp Taxes Practitioners Group & EY
Fiona Cole (FC)	Stamp Taxes Practitioners Group & KPMG
Geoff Yapp (GY)	HMRC
Simon English (SE)	HMRC
Jane Ewart (JE)	HMRC
Chris Taylor (CT)	HMRC
Anne Berriman (AB)	HMRC
Adam Terry (AT)	HMT

Apologies

Sarah Wulff- Cochrane (SWC)	British Bankers Association
Jon Cannon	HMRC
Stephen Jewell	HMRC
Sheila Doyle	ICSA
John Heaton (JH)	ICSA
Nigel Popplewell	Law Society (E&W)
Andy Thompson (AT)	WMA

1. Welcome

- GY introduced himself as the new Director of CTIS Stamp Taxes (replacing Jon Sherman).
- This is the first meeting of the group since his appointment in August 2014.

2. Review of minutes from the last meeting

- GY referred to the minutes of the last meeting (already circulated) and asked if there were any comments. There were no points arising.
 - GY led a review of the Action Points from the last meeting.
 - AP1 - HMRC had undertaken to issue communications regarding the introduction of new penalties for late notifications and late payments of SDRT to the group in advance of the change in the law. CT said that unfortunately this had not been possible. He said that the guidance had not been issued until 16th January 2015. The guidance had taken more time to put together than anticipated. This was due to the need to take in account the cross-tax sensitivities involved and the need to be sure that nothing was included that might prejudice applying these penalties in other tax regimes. This was accepted. It was noted that no feedback had been received.
- AP Closed

- AP2 – HMRC had been asked to consider a request for the BBA to attend meetings of the CREST Enhanced Assessment Service Phase II discussion group as an observer. This had been agreed and the BBA has been represented at all meetings since the last SWTG meeting. AP Closed
- AP3 – HMRC was asked to provide examples to show how the behaviour elements of the revised stamp duty penalties consideration process might be applied. CT advised that examples had been circulated to the group. The group confirmed that they are satisfied with the information supplied. AP Closed

3. CDI/ADR update

- SE explained that EUI has approached HMRC seeking clarification on how the legislation should be applied to a CDI in an ADR over a UK security.
- He explained the practicalities of creating this kind of CDI or DI 'wrapper'.
- SE added that HMRC's view is that in determining whether the CDI is chargeable to SDRT, we should look through the CDI and the ADR to the underlying security and that a charge to SDRT would arise on a transfer of an ADR in UK security.
- This view has been communicated to EUI but nothing has been heard since.
- RF said he would check the position with colleagues [AP1].
- SE acknowledged that MQ had provided a Law Society paper on the matter.
- MQ explained that the Law Society view is that there is backing in UK tax administration to suggest we should look at the ADR itself. The ADR will have been the subject of a tax charge at the point of conversion. On this basis, to charge tax on the transfer of the CDI over an ADR is to tax something twice.
- AP put forward an opinion that under FA86\S99 (6) an interest in a depositary receipt for stocks or shares is exempt from the tax charge.
- AP and MQ jointly expressed the view that FA86\S99 (6) should remove the charge.
- SE thanked the group for their representations and said HMRC will take them into account. He confirmed that Stamp Taxes is taking legal advice.
- PS asked the volume of securities involved. SE and RF indicated this is not thought to be a big issue as there are approx. 10 known securities.

4. Stamp Duty performance

- CT said that although HMTC's perception is that generally speaking the majority of customer service standards are being met with regard to stamp duty processing, since the last meeting he had received feedback from within the group raising some issues with regard to Stamp Duty performance and instances where standards had not been met.
- Point 1; Follow –up to telephone queries. CT explained that Stamp Taxes operates a helpline that is able to deal with the majority of simple queries. If it is not possible to answer a question there and then the helpline take contact details and refer to the Stamp Office in Birmingham, who will try and contact the caller three times and provide a satisfactory response. It was suggested that if the process fails, the caller should call the helpline again and ask for the matter to be escalated. The case will be referred upwards and action taken to resolve matters.
- Point 2; same day stamping arrangements – these receive a lot of publicity. The service is there to allow for documents to be stamped in circumstances that are unforeseen and business critical.
- There was some concern over the circumstances being "unforeseen" and it was suggested that this should be changed to unavoidable. An example was given, explaining that increasingly obtaining finance is contingent on the change in title to shares being registered and this is foreseen however; some lenders are reluctant to accept undertakings so the need to stamp documents urgently is unavoidable. It was agreed that the change should be adopted, CT will check that website and STSM guidance are in line.

- Stamp Office aims to stamp documents within 5 working days and is usually well within this and once this is explained, most customers are comfortable with sending documents for stamping in the post or by courier.
- It was emphasised that the number of same day stamping appointments has declined significantly. Stamp Office receives 4-5 applications and arranges 1-2 appointments a week.
- Stamp Duty late stamping penalties were revised from 1 October 2014. Following up concerns raised at the previous meeting examples illustrating the circumstances in which customer behaviours might be a part of considering in the stamp duty penalties had been circulated to the group
- CL pointed out that agents sometimes do not appreciate that same day stamping is not available in cases that also involve adjudication.
- AP referred to the paragraph in the STSM (021050) indicating that transactions in foreign currency should be converted to sterling using the "Pound Spot - Forward against Pound" table previously published in the Financial Times but which it is understood is no longer published. HMRC agreed that this guidance needs updating and suggested that another source, such as the Bank of England, should be used in the meantime [AP2].

5. SDRT performance

- CT reported that there are currently no operational issues with regard to processing SDRT notifications through CREST or manually.
- CT said that as reported in the review of the minutes of the last meeting, the Appointed Day Order signed 11 December 2014, introducing penalties for late payments and changing the way late notification penalties are calculated became law with effect from 1 January 2015. He apologised again for the delay in providing information to the group. The guidance on how HMRC calculates these penalties for all relevant tax regimes is in the Compliance Handbook and has been updated to include SDRT.
- He added that the changes had not generated any questions from customers.
- Updates to the STSM have been written but not published. It is anticipated that this will happen in the next two weeks. The delay is to some extent to the migration of web content from the old HMRC website to GOV.UK.
- SE said that an unexpected side effect of moving Stamps guidance to GOV.UK had been that information previously published on the HMRC website now showed the date it was published on the new website (rather than the date it was originally published by HMRC). This had resulted in confusion for some customers.
- CL said that he had realised this himself. However, he did want to offer some positive feedback saying that the new website format displayed on mobile devices is far superior.
- There was a further comment to the effect that the search facility for the STSM was not very effective. A helpful suggestion was made to use Google instead!
- PS made reference to an issue with EUI in late 2014 and delays in resolving repayment claims related to a disruption in the service. After a short discussion it was agreed that RF and PS should discuss this separately [AP3].

6. CREST Enhanced Assessment Service (CEAS)

- SE explained that the legal requirement to notify every transaction for SDRT assessment and the proliferation of settlement services (that resulted in 'net' transaction reporting in CREST) were behind HMRC's decision to form a working group to discuss how HMRC could regain visibility of gross transactions.
- Phase 1 had focused on settlement netting by central counter parties (CCPs). The CEAS was the solution that facilitated gross reporting to HMRC. This had gone live in June 2014 and appeared to be effective

- Phase 2 is seeking to extend this to other providers of settlement services, including non-CCP netting and aggregation.
- The members of the working group have been asked to provide information regarding data flows to help HMRC understand the volumes of trading within the scope of the arrangements.
- There are operational considerations around reporting (bi-lateral or single sided), transparency and accountability (participants such as custodians may not have visibility with regard to tax status of the underlying client) which are still being debated. There is no immediate solution in sight.
- HMRC is trying to set a reasonable timetable however; it has already been necessary to extend the consultancy period and although it was hoped to introduce a solution this year, this may not be possible.
- RF indicated that draft CSD legislation assumes gross reporting. So there may be other legal considerations to be taken in to account.

7. Autumn Statement

- SE referred to proposed changes in the Companies Act to be introduced by regulations that prohibit company takeovers being structured as a cancellation and reissue of shares.
- Department of Business Innovation and Skills and HM Treasury are leading on this.
- There was a perceived risk that trying to achieve the aims through changes to stamp duty or SDRT legislation might have been contrary to the EU Capital Duties Directive.
- Changes could become law in February or March 2015.
- There is a discussion taking place around the appropriate documents to be forwarded to HMRC where takeovers are effected by means of transfer scheme of arrangement instead. What should be stamped and how?
- HMRC indicated that it was inclined to the view that adjudication would not be necessary.
- HMRC is consulting with representative groups including company registrars regarding the stamp duty and SDRT considerations.
- Several comments were made around the impact of time constraints on notifying Companies House and potential operational issues for the Stamp Office. It was stated that Stamp Office is alive to the issues and will be endeavouring to put an appropriate process in place. Appreciated that business would look for comfort but added that HMRC would still need to see and consider the scheme particulars.
- AP could foresee timing issues associated with valuing the consideration for Stamp Duty purposes where this included shares or loan notes. Comments noted.
- FC suggested the SDRT route could be used to recover any unpaid duty.
- CL felt that the volumes would not be great and suggested that provisional stamping together with an undertaking to represent and pay any additional duty could be another way forward.
- SE invited the group to contribute their further thoughts on the matter outside of the meeting [AP4]
- HMRC will publish guidance in due course.

8. Office of Tax Simplification

- Report published October 2014 makes several recommendations in relation to partnerships and competitiveness regarding stamp duty and SDRT.
- OTS suggestion to drop stamp duty on partnerships; feedback from the group indicated this is a matter that is rarely considered.
- There is a suggestion to raise the non-chargeable consideration limit of £1,000. Raise it to something within the range £10-20,000.
- Look to abolish the penalties on company registrars who update the company register without a stamped document under SA1891\S17.

- There were comments around the contrast between SDRT on dematerialised shares and the process of stamping documents. One being perceived as quick, clean and efficient the other as slow and cumbersome.
- CL suggested HMRC could consider introducing self-assessment for stamp duty along the lines of the Irish Tax Authority (introduced from 7th July 2012).
- RF indicated that notwithstanding the impending general election, we should take into account that government will press for full dematerialisation of UK securities. There is also a drive for this to be in place across the EU by 2023.
- JE indicated that HMRC will need to consider how to bridge the differences between stamp duty and SDRT. IT is acknowledged that the stamp duty reliefs; intra group relief and acquisitions relief are not in the legal framework for SDRT. Also, the due dates for payment are different. The group were asked to provide their feedback and suggestions on how to improve how the legislation operates.

9. AOB

- FC raised the issue of loan capital (funded debt) being within the definition of stock¹ for the purposes of stamp duty relief claims relating to company acquisitions². SE said that the consideration is ongoing. SE said it is hoped that interim guidance can be issued within the next 2 weeks that will exclude certain types of debt that might not be considered 'capital', such as mortgage interest and business funding through a bank overdraft. The position is complex and legal advice is being sought. CL observed that the position is causing uncertainty especially in IPOs and the possibility of having to mirror funded debt will have an adverse effect on the industry and could make the relief practically redundant. AP suggested that wording of the legislation gave some scope for interpretation. SE added that in constructing the legislation in this way the drafter must have had something in mind. GY asked if it is worth putting together a sub-group to consider the matter in more depth [AP6].
- FC raised the issue of HMRC's consideration of distributions out of a non-UK CIS. SE said that HMRC will consider representations on a case by case basis, but would look at the terms of the scheme to see if distributions to 'members' are provided for other than in cash in the context of FA86\S90(1B).

¹SA1891\S122 - In this Act, unless the context otherwise requires... The expression "stock" includes any share in any stocks or funds transferable... or funded debt

² FA86\S77 (4) - In this section references to shares and to share capital include references to stock.

Action Point		For
AP1	RF to check EUI's position on HMRC	RF
AP2	Update website and STSM guidance regarding foreign currency /sterling conversion at rate published in the Financial Times	CT
AP3	RF and PS should discuss/resolve CREST repayment issues	RF/PS
AP4	HMRC requested contributions from group on the stamp duty process with regard to takeovers by transfer scheme of arrangement.	ALL
AP5	Office of Tax Simplification report recommendations; feedback & contributions invited.	ALL
AP6	Opportunity for informal consultation to take place on the matter of what should be considered 'funded debt' in relation to stamp duty relief claims. Contributions invited.	ALL