

Shares Working Together Steering Group

18th July 2016

1 Horse Guards Road, Westminster, London

Attendees:

Clare Bouwer (CB), CIOT & Linklaters LLP
Fiona Cole (FC), Stamp Taxes Practitioners Group & KPMG
Michael McCormick, British Bankers Association
Michael Quinlan (MQ), Law Society (E&W) & Temple Tax Chambers
Robert Van-Geffen (RG), AFME

Geoff Yapp (GY) HMRC: chair
Pete Downing (PD) HMRC
Simon English (SE) HMRC
Stephen Roberts (SR) HMRC
Anne Berriman (AB) HMRC
Rob Read (RR) HMRC
Adam Shooter (AS) HMRC
Kofi Ofe-Boakye (KO) HMRC

Minutes of Meeting:

1. Welcome and introductions.

GY of HMRC welcomed everyone to the meeting. GY confirmed that this will be his last shares working together steering group meeting, as he will shortly be retiring. He thanked everyone in attendance, and conveyed that he had found this meeting forum to be extremely useful.

2. Review of minutes of last meeting.

There were no action points arising from the previous meeting, and there were no further comments from attendees on the previous minutes.

3. Stamp Duty Performance

AS provided an update on Stamp Duty performance. AS communicated that overall operational performance in relation to document stamping etc. was within 2 to 3 days of customer service targets. HMRC is recruiting extra staff for stamp taxes.

AS confirmed that since 2011, there has been a year on year increase on documents being sent to Birmingham for stamping, including relief claims. The average stamp paid per document was £5,000.

AS said that items of post were being received with the wrong post code for the Birmingham Stamp Office (BSO). GY added that BSO was fairly unique in that it has its own post opening and sorting. AS confirmed that the Stamp office post code which should be used is B2 4AR; customers using the general post code for City Centre House in Birmingham will find that their post will end up being sent

to HMRC's main post sorting depot, which could mean it will take longer due to the post then having to be redirected to BSO.

AS highlighted another main issue with documents sent in for stamping, in that many documents contain clerical errors, particularly around relief applications e.g. documents not signed, not dated etc.

SE asked the group whether HMRC guidance was sufficient, and whether there were parts that need updating.

CB asked whether the stamps guidance should include a checklist, using the passport application process as an example to ensure all relevant documents are included and completed correctly.

AS confirmed that the previous problems and delays in publishing guidance on GOV.UK had now subsided, and that HMRC Stamp Taxes now have direct means to publish and update the Stamp Taxes on Shares manual.

In respect of clerical errors, AS mentioned that on the sample of documents he reviewed, many were from smaller firms, including smaller to medium sized solicitors' practices. It was agreed overall that communication was key.

MQ mentioned that the Law Society have a well-established communication network in place which could be used to relay information such as issues in relation to Stamp Duty.

AP1. AS (HMRC) to draft note, for MQ to circulate within Law Society.

4. SDRT Performance

AS moved on to provide an update on SDRT performance. AS confirmed that there had been an exceptional volume of shares settlements for the 24th and 27th June, with the volumes causing problems with the HMRC CREST database system. AS confirmed that HMRC is working with their IT support provider, and Euroclear in progressing a fix to the problem.

AS confirmed that SDRT repayment claims for those days affected will take a little longer than the normal 5 working days turnaround, and currently claims for those days will may take in the region of 15 to 20 days.

All other areas of SDRT business is as usual.

5. Finance Bill 2016

Deep In the Money Options (DITMO)

SR communicated that feedback on the Deep in the Money Options (DITMO) measure indicated that the general consensus from those in the industry was that the measure would stop the mischief without significantly impacting the market. The DITMOs legislation is part of the Finance Bill 2016 process.

Company Takeovers (Share for Share)

SR then spoke about the company takeover (share for share) measure which was brought in at committee stage of FB2016.

SR communicated that work on legislation had to happen quickly due to tax at stake. A question on IPO's was raised by the group. SR said that normal IPOs would not be caught by the new legislation.

Only if an IPO structure is used to change control of a company would it be caught. This was very unlikely in practice.

SR confirmed that the existence of an underwriting or sub-underwriting agreement would not be viewed as a “disqualifying arrangement” under the new legislation. HMRC will provide guidance in due course on IPO’s and underwriters.

FC asked whether, in a typical company reconstruction, the appointment of a liquidator was caught by the new measure. SE responded that he would not expect an appointment of a liquidator to be a change of control. However, HMRC was obtaining legal advice.

The discussion moved on to the carve-out for mergers under the new section 77A(4). SR confirmed that for the purposes of section 77A(4)(c) (ii), subscription shares will be treated as consideration for the acquisition of Company A. This will be confirmed in guidance. FC asked when will guidance be issued, and SR replied that guidance will be released as quickly as possible.

CB raised an issue about de-mergers, providing an example where Stamp Duty could be paid twice and asked whether the scenario described would fall within the new measure. CB said she would send SR an email to confirm the particular structuring. SR said that the legislation would apply if there was a change of control and that s77 relief was intended to be a narrow relief. SR also said that stamp taxes are transactional and in the example provided it would appear that there were separate and independent transactions being undertaken with different parties involved, each of which may fall within scope of Stamp Duty. SE asked whether there was a way to restructure so that Stamp was not paid twice.

SR confirmed that in response to the measure on company takeovers, he had received an email from FC containing a number of scenarios and asked the group whether they would like to run through some examples for discussion.

One such example discussed was in respect of IPOs, in particular whether the fact that in a normal IPO the shareholders as a whole would obtain control would be regarded as a “disqualifying arrangement”, one point raised in relation was that a test for change of control was not merely a numerical one, the word ‘arrangements’ in the legislation implies some level of persons acting together to obtain control. SR confirmed that a “disqualifying arrangement” required there to be an arrangement for a “particular person” or “particular persons together” to obtain control. This would not be the case in a normal IPO. HMRC would, again, confirm this in guidance.

CB fed back to the group a comment raised by a CIOT member regarding a possible drafting mistake in s77A. It had been suggested that the reference in s77A(3)(a) should be to s77(1) or to s77(3)(d) , but not to s77(3). SR agreed to look into this further.

Before bringing this item to a close, SE suggested on sharing the guidance with the group as a way forward to canvas views.

AP2. SR (HMRC) to confirm position in respect of liquidations and the suggested drafting error.

6. Letters of Direction

AS explained that Stamp office on enquiries made had received a number of Letters of Direction (LOD), which on inspection did not contain all the relevant information to be seen as an LOD, or that the document had been produced sometime after the transfer of securities to which the document referred to, in some cases 18 months after the transaction.

It was mentioned that there are LOD examples within the CREST handbooks, although MQ commented that the examples were on the whole not very good.

AS went on to outline the normal process in CREST, which allows participants to claim exemption from SDRT, by the use of CREST Transaction Stamp Status '5' (Execution of Letter of Direction) by virtue of s.92 FA86.

MQ asked about 'Memorandum of Understanding' used as an instrument.

AS said that HMRC expectation is that a LOD is executed before the underlying shares are allowed to be settled and SDRT exemption claimed in the CREST system. Where a LOD is executed after share settlement, the accountable person will need to fully explain with documentary evidence, upon any enquiry from HMRC, as to the intended effect and purpose of the LOD.

SE suggested that HMRC guidance on clarifying the importance of executing a LOD before the underlying shares are allowed to be settled in the CREST system and SDRT exemption claimed may be helpful.

7. Accuracy of use of CREST Flags

AS outlined that Birmingham shares team have been undertaking work over the last year in reviewing CREST data. The review had highlighted that accuracy levels around CREST flags were not as good as they should be, and that the misuse of flags could be cause to apply penalties.

The group discussed some of the more common CREST flags used and some examples of their misuse.

There was a suggestion of whether there was a need to add further flags and to include further descriptions on the current flags in use.

8. AOB

Raising Stamp Duty Ad-Valorem threshold Project

KO explained that he is currently working on a tax simplification project looking at the possibility of raising the Stamp Duty £5 ad-valorem threshold without affecting customer behaviour. He asked the group for their thoughts on whether the current threshold should be maintained or for their reasoned analysis for setting the threshold at a higher suggested amount level.

Although no specific suggestions on value threshold were put forward, KO would welcome any further feedback.

Phase 2 (CREST Enhanced Assessment Service)

RG asked for an update on Phase 2 of CREST Enhanced Assessment Service. SE acknowledged that it had been some time since the phase 2 group last met, but responded that HMRC are still gathering data, particularly on use of aggregation. SE mentioned that where phase 1 primarily focused on settlement netting, aggregation was the main discussion point where phase 2 is concerned.

With no further items for discussion, the meeting was brought to a close.