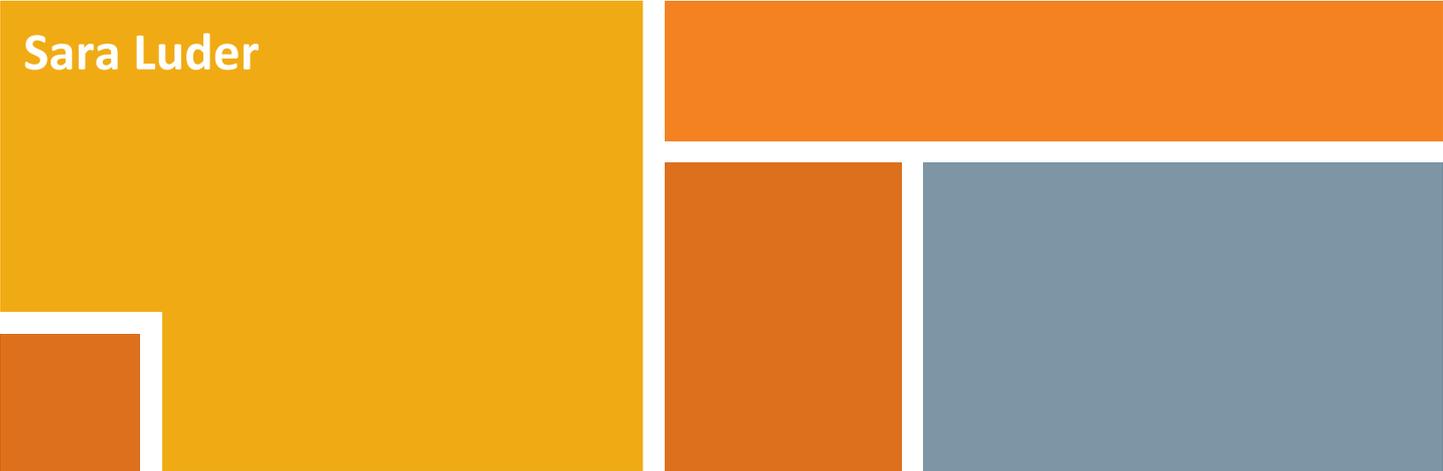


The Case for the Abolition of Stamp Duty

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Tax Law Review
Committee

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The Case for the Abolition of Stamp Duty

Introduction

This paper:

- describes how the economic reach of stamp duty is in practice very limited;
- explains why it nevertheless causes a range of problems;
- shows how the scope of SDRT could be expanded to cover the transactions in relation to which stamp duty currently raises revenue for the Exchequer;
- argues that stamp duty can and should on that basis be abolished; and
- identifies the key benefits that this would have for practitioners, taxpayers and the Exchequer.

This paper does not suggest that the existing tax yield from UK stamp taxes on transfers of securities be in any way reduced. It merely proposes a means of streamlining the way in which that tax is collected.

What is the scope of stamp duty today?

The practical scope of the charge to stamp duty can be summarised as follows:

- (A) transactions which are within the scope of SDRT but which involve instruments of transfer that are executed in the UK, that relate to property situate in the UK or that relate to matters or things done or to be done in the UK ("**UK-Related Instruments**"); and
- (B) certain transactions which are outside the scope of SDRT, being:
 - (i) transfers of (or relating to) stock or marketable securities which do not qualify as "chargeable securities" for SDRT purposes (broadly speaking, non-UK securities, interests in or rights to acquire non-UK securities and units under unit trust schemes) and which are effected by UK-Related Instruments;
 - (ii) arguably, the grant or issuance of derivatives over stock or marketable securities which are effected by UK-Related Instruments;

- (iii) transfers of partnership interests effected by UK-Related Instruments, where the partnership has an interest in stock or marketable securities other than unlisted stock or marketable securities admitted to trading on a recognised growth market; and
- (iv) share buybacks by UK-incorporated companies, where the shares are not transferred into treasury.

How much money does it raise?

According to the UK stamp tax statistics published annually by HMRC, stamp duty has, on average over the last decade, contributed around 12% of the total revenue from stamp taxes on shares.

The published statistics do not identify the make-up of that contribution. It seems very unlikely, however, that any significant portion of it derives from the transactions described in subparagraphs (i) to (iii) of paragraph (B) above.

- Transfers of (or relating to) stock or marketable securities which do not qualify as “chargeable securities” for SDRT purposes can in the vast majority of cases be executed without the need for a UK-Related Instrument, either by executing and keeping the instrument of transfer offshore (which is what is generally done in relation to documented transfers of non-UK securities) or by avoiding an instrument of transfer altogether (as is common in relation to the transfer of cash-settled derivatives over stock or marketable securities).
- It is debatable whether the grant or issuance of derivatives over stock or marketable securities by means of UK-Related Instruments is chargeable at all – meaning that most taxpayers would not submit the instruments for stamping – and, even if it is, it can be avoided by executing and keeping the instrument of transfer offshore or avoiding an instrument of transfer altogether.
- Most taxpayers are either unaware that stamp duty potentially applies to transfers of partnership interests or, even if they are, see no reason to have the instruments of transfer stamped in practice.

It is more likely that the vast majority of the revenue raised by stamp duty is attributable to transactions which are also within the scope of SDRT but which involve UK-Related Instruments – the most common cases being transfers of shares in unlisted UK-incorporated companies and, now, takeovers of UK listed companies effected by transfer schemes of arrangement – and, probably to a much lesser extent, share buybacks by UK-incorporated companies.

What problems does it cause?

Unnecessary costs to taxpayers

The stamp duty legislation is sprawling and old (some of the most fundamental statutory provisions were enacted 125 years ago). For practitioners (let alone laypersons), that makes it

difficult not only to navigate but also sometimes to interpret and apply to transactions in the modern world. That difficulty translates into costs for those practitioners' clients. The case studies in the Annex provide clear examples of the problems faced.

Taxpayers also incur costs as a result of the antiquated administrative and compliance aspects of stamp duty, as illustrated by the examples in the Annex. Most taxpayers – even sophisticated businesses – enter into transactions giving rise to stamp duty on a reasonably infrequent basis and therefore often need to rely on third-party advisers to prepare stock transfer forms, covering letters and other materials needing to be submitted to the Stamp Office.

The lack of an SDRT group relief

There is no relief from SDRT for intra-group transfers. Instead, it is necessary to create a stampable document and claim stamp duty group relief, which then vacates the SDRT charge. In the modern world of electronic share dealing, it is difficult to justify this return to paper transfers. In addition, if the point is overlooked there is the potential for a 0.5% SDRT cost on a transaction which, for policy reasons, should be exempt.

Since company secretaries are prohibited from updating share registers until they have received an appropriately stamped instrument of transfer, taxpayers often have to wait weeks or even months before they can finalise transactions. Whilst same-day stamping is in certain exceptional circumstances available, the necessity to make and attend an appointment in Birmingham is chronically inefficient.

Whilst it is often possible to adopt structures to work around this time delay, such as the “declaration of trust” solution, it seems difficult to justify why this time delay arises at all. It is often necessary for perfectly innocent reasons for legal title to shares to be moved around a group several times on the same day or over the course of a few days. Where the transfer must be stamped, however, that is impossible because each relevant instrument must be submitted to the Stamp Office before the next onward transfer can be effected and the company registrar will register the first transfer only once he or she has evidence that stamp duty has been paid or is not payable.

Double charges

Although in the vast majority of cases an SDRT charge will effectively be “franked” by the stamping of a related instrument of transfer, there is nevertheless a risk of a double charge if the related instrument of transfer is not submitted for stamping within six years of the transfer agreement's being made. The taxpayer will invariably be at fault for such a double charge, but there is no obvious policy reason for charging the same transaction twice.

Unnecessary costs to the Exchequer

Every document that requires stamping needs to be inspected and processed by an individual, as does any application for relief from stamp duty. A separate division of the Stamp Office needs to be maintained, as does the physically machinery of stamping. Stamp Office and other HMRC staff must be trained in relation to stamp duty and guidance must be prepared and monitored. And issues of interpretation in relation to stamp duty must be discussed with internal

and external counsel, as must necessary legislative changes from time to time. All of this requires the allocation of considerable resource which could be more usefully used elsewhere within HMRC.

Blemishing the UK's reputation as a modern financial centre

Stamp duty is often regarded as an unfortunately anachronistic feature of the UK's otherwise attractive and efficient tax system, particularly by those abroad. Recent experiences in relation to public company takeovers (summarised in the Annex) exemplify this: practitioners have been met with bemusement when describing not only the interpretative issues around which documents are stampable and what amounts are required to be paid, but also the need for dozens of blank continuation sheets to be appended to stock transfer forms and the logistics of having those physically impressed with a stamp.

How can these problems be solved?

It can be seen that all of these problems can be solved by extending the scope of SDRT and abolishing stamp duty altogether.

As noted above, the charge to stamp duty is in practice confined to (a) transactions which are within the scope of SDRT but which involve UK-Related Instruments and (b) certain transactions which are outside the scope of SDRT.

Transactions already within the scope of SDRT

At present, stamp duty is accounted for on these transactions only because it is necessary to stamp a UK-Related Instrument – for example, where a stock transfer form is used to convey shares in a UK-incorporated company. Were stamp duty abolished, these transactions would instead be charged to SDRT without any further legislative changes being required.

The main issue arising in this context would relate to collection. SDRT is known to operate very well within the dematerialised CREST system, but some further work would be needed on its operation where securities are in materialised form. It is, however, easy to envisage this being relatively simple: if a self-assessment basis, supplemented with an appropriate penalty regime, were not considered sufficient (perhaps because of perceived enforcement difficulties in relation to non-UK taxpayers), the existing stamp duty collection mechanism could be adapted to serve the needs of SDRT by prohibiting company secretaries from registering transfers until they have received appropriate evidence that any relevant SDRT has been or will be paid.

It would also be necessary to adapt the reliefs applying for stamp duty, purposes – in particular, stamp duty group relief (section 42 Finance Act 1930), reconstruction relief (section 75 Finance Act 1986) and acquisition relief (section 77 Finance Act 1986). As the SDLT regime shows, these reliefs could, however, be relatively easily adapted so as to become directly applicable to SDRT. This would also offer a useful opportunity to update the application of these reliefs by making that application automatic where the relevant conditions are met, so as to remove the need for adjudication by HMRC. If necessary, it could remain necessary for notice of the relevant transaction to be given to HMRC.

Further changes would need to be made to deal with those exemptions applying only indirectly for SDRT purposes by virtue of the definition of “chargeable securities” not including securities the transfer of which would be exempt from all stamp duties (section 99(5) Finance Act 1986). There is, however, no reason to think that the legislation could not be re-worked to ensure that these exemptions applies directly, so as to expressly exempt (for example) transactions in loan capital and transactions on recognised growth markets.

Transactions currently outside the scope of SDRT

As noted above, with the exception of company buybacks it seems unlikely that significant revenue is raised by stamp duty in respect of these transactions and the decision could be made to take them outside the charge to stamp taxation altogether. It could be, for example, that the costs of enforcement would outweigh the revenues raised. And it could be that it is accepted that the existing charge to stamp taxes is anachronistic and should be withdrawn. This would be particularly appropriate in relation to the transfer of securities that are not chargeable securities but which are perfected by UK-Related Instruments, the current charge on which seems out of keeping with the rest of the UK’s otherwise modern tax regime.

To the extent that it were decided that certain of these transactions should not be taken outside of the charge to stamp taxes, the scope of SDRT could be expanded to cover them. For example:

- Interests in partnerships holding interests in chargeable securities could themselves be made chargeable securities, just as transfers of interests in certain partnerships with interests in land were brought within the scope of SDLT under Finance Act 2003. This would represent an expansion of the charge to stamp taxes.
- Were HMRC minded to collect SDRT on the grant or issue of derivatives over chargeable securities, the issue or grant of such securities could be deemed to be agreements to transfer the underlying securities.
- SDRT could also be expanded to cover UK share buybacks by deeming such transactions to be made pursuant to an agreement to transfer the relevant shares to the company in question. This would be no more artificial than the way that such transactions are brought within the charge to stamp duty.

A more expansive explanation of how the scope of SDRT might be extended to allow for the abolition of stamp duty is beyond the scope of this paper – its focus is more on showing *why* stamp duty is ripe for abolition. But it can hopefully be seen that the task would not be insurmountable.

What would be the benefits?

The benefits of expanding SDRT to resolve the problems described above should be obvious, but they may be summarised as follows:

- *Legislative simplification* - The SDRT legislation is comparatively new and is largely confined to a single statute (Finance Act 1986) and accompanying statutory instrument

(the Stamp Duty Reserve Tax Regulations 1986). Were these to be adapted as suggested above, a raft of outdated and complex stamp duty legislation could be removed from the statute book.

- *Cost savings for taxpayers* – Substituting a single, streamlined system for the existing parallel frameworks would reduce costs for taxpayers in relation to the interpretation, application and administration of stamp taxes.
- *Cost savings for HMRC* – Relatively few resources would need to be diverted to the administration of SDRT, meaning that most of the resources currently devoted to stamp duty could be allocated elsewhere within HMRC.
- *Increasing the UK's attractiveness as a business centre* – Although stamp duty is unlikely to put people off from doing business in the UK, anything to make the UK tax system seem more modern and efficient is to be welcomed.

Conclusion

The arguments in support of abolishing stamp duty are many, whilst the arguments in favour of keeping it are few, certainly when SDRT already presents a sensible framework into which to absorb it. Stamp duty is a form of tax from a bygone era: on the one hand, its utility and revenue-raising capacity is now almost totally overshadowed by SDRT; on the other, its antiquated legislative and physical infrastructure cause a host of issues for taxpayers and HMRC. Its abolition in favour of SDRT presents a viable long-term solution. Some changes would be needed to SDRT, but these changes are neither too many nor too large and the benefits would easily outweigh the costs.

Annex – Recent examples of problems in practise

One area where a significant number of tricky issues in terms of both calculating and paying stamp duty are seen is in relation to public takeovers effected by means of transfer schemes of arrangement. Previously, takeovers would typically not have attracted stamp duty because cancellation schemes were used, but following changes to UK corporate law in 2015 which prevent the use of cancellation schemes for public takeovers, stamp duty is now in play – and the practical issues it can cause are clear.

Case Study 1 – A's takeover of B

In 2016, a UK listed company, "A", acquired all of the issued shares in another a UK listed company, "B", for a mixture of shares and cash. The takeover was effected by means of a transfer scheme of arrangement. In dealing with stamp duty, A and B encountered the following issues:

1. Establishing what the stampable instrument is.

- Initial HMRC guidance following the change to UK corporate law in 2015 suggested that that the court order itself was the stampable instrument. This would have given rise to a number of insurmountable practical problems, so it was necessary to convince HMRC that the court order was not stampable. It took just under six months of discussion and consultation with HMRC until revised guidance was published.
- HMRC amended its guidance around six months later to say that the court order would not be the stampable instrument so long as the scheme was drafted in a way that expressly provided for a separate transfer instrument to be executed in order to transfer the shares *following on from* the court order approving the scheme. In that case, it would be the separate instrument of transfer which was stampable. Although this revision was welcome, it did mean that the scheme document had to be amended to include specific wording to make clear that the stock transfer form ("STF") was the stampable transfer instrument.
- The revision also added an unnecessary layer of administration to the stamping process. That is because the guidance required B (and still requires target companies) to seek confirmation from HMRC that the court order was not the stampable instrument of transfer. To obtain this confirmation, B had to send a letter enclosing (i) a copy of the scheme of arrangement (signposted to the relevant section that discusses the transfer of shares), (ii) a draft court order, (iii) an estimate of the duty at stake and (iv) an undertaking from A to HMRC that it would instead present the STF for stamping. HMRC insisted that B's letter and A's undertaking were on company-headed paper. A's undertaking also had to be signed by someone with authority to bind A and their role had to be included under their signature. HMRC then had to write to B confirming that the court order was not stampable.
- Given the confusion around which transfer instrument was stampable, Companies House will only accept an unstamped court order presented to it (which is necessary in order for the scheme to become legally effective) if a copy of HMRC's confirmation letter is also presented to it. Therefore, a delay in obtaining HMRC's confirmation could lead to a delay in the scheme becoming legally effective.

2. *Calculating and paying the stamp duty.*

- Because B had a very large retail investor base (a few hundred thousand shareholders), block STFs had to be used. The stamp duty certification rules around transactions for a value of £1,000 or less meant that the share transfers were effected by means of two separate block STFs – one covering the transactions below the stamp duty threshold (which did not need to be stamped) and one covering the transactions falling above it (which was subject to stamping). This use of two block STFs (and the consequential examination and classification of all of the relevant transfers) was driven entirely by stamp duty considerations.
- HMRC insisted that a schedule detailing each of the individual share transfers be provided, so as to identify the transactions being effected pursuant to the block STFs. Two separate schedules had to be prepared, each with an appropriate header linking it to its block STF (and the block STF had to refer to that schedule as well). HMRC also insisted that either A or A's company registrar provide it with a certificate verifying that all the transfers in the schedule were correctly detailed.
- Given the large number of individual transactions, each schedule was extremely long and special arrangements had to be made with B's company registrar and HMRC to ensure that they could be delivered to HMRC in a way that would allow them to satisfactorily verify (i) the "plus £1,000 block STF" before it was stamped and (ii) the "sub-£1,000 block STF" - even though that STF did not need to be stamped. A had long discussions with HMRC about HMRC's IT facilities and whether it would be able to accept an electronic schedule (and how) rather than a physical copy.
- As each of the transfers in the block STFs was regarded for stamp duty purposes as a separate transaction, the amount of duty chargeable on each had to be separately rounded up to the next nearest £5. (To make the calculation exercise easier, HMRC agreed to allow the total number of chargeable transfers to be multiplied by £2.50. But a rounding exercise covering several tens of thousands of transfers was nevertheless required. HMRC refused to accept a simple, SDRT-like calculation involving the multiplication of the total chargeable consideration by 0.5%.)
- Stamping still involves the physical impression on a document of one or more stamps denoting a particular value, with the maximum amount capable of being represented by a single stamp being £1m. In this case, the size of the transaction meant that a large number of these £1m stamps had to be impressed upon the instrument of transfer – so many, in fact, that there was insufficient room on the instrument itself. It was therefore necessary to add a number of continuation sheets to the instrument, which HMRC had to calculate in advance. Each one had to include a bespoke header linking it to the STF and be signed and certified by a senior official of B (or – for practical reasons – A, acting under a power of attorney).
- The penalty applying to the registration of stampable but unstamped instruments meant that the stamp duty chargeable had to be paid, and the chargeable block stock transfer form had

to be stamped, before B's registrar could register the share transfers so as to give effect to the transfer of legal ownership. As A needed to acquire legal ownership as soon as possible following the scheme's taking effect, special arrangements had to be made with the Stamp Office in Birmingham for the STF to be stamped on an expedited basis – as part of this A had to write a letter to HMRC setting out the imperative commercial need for expedited stamping. Once granted, A's representatives had to organise a stamping appointment in Birmingham for a fixed time. Ultimately, a representative of A and one of its advisers had to stay overnight in Birmingham to ensure that the relevant documents were safely delivered on time. A 36-page action plan had to be developed and followed in order to ensure that everything went smoothly, including the electronic delivery of the schedules to the STF. Documents had to be sent to HMRC in draft in advance as a "dress rehearsal".

Case Study 2 – X's takeover of Y

In 2015, a US listed company, "X", acquired all of the issued shares in a UK listed company, "Y", for a mixture of shares and cash. The takeover was effected by means of a transfer scheme of arrangement. In dealing with stamp duty, X and Y encountered the following issues:

- The change in HMRC's guidance referred to above was sudden and unexpected in the case of X's takeover of Y – it was released two weeks before the court order was scheduled to be filed at Companies House. As Y's scheme did provide for a separate instrument of transfer, Y needed to get HMRC's confirmation that the court order was not stampable. Y had to write to HMRC and provide the necessary documents (copy of the scheme document, copy of the draft court order, undertaking from X etc.). HMRC's guidance, however, said that the Stamp Office would respond to such letters within 15 working days. Y therefore had to ask the Stamp Office to consider its request on an expedited basis.
- For a number of important reasons (including a planned drop-down of Y immediately after Closing), X needed to be on Y's share register as soon as possible. Because it normally takes 10 working days for the Stamp Office to return a duly stamped STF, X had to request same-day stamping – which meant it had to write to HMRC explaining the imperative commercial need for same day stamping (as was the case with A and B) . This gave rise to a number of difficulties – both practical and for calculating the stamp duty:
 1. X needed to arrange a same-day stamping appointment with the Stamp Office, which meant that one of X's advisors needed to travel to Birmingham with the STF and other documents on the same day that the court order was presented to Companies House. In order for the STF to be stamped the same day the STF had to be stamped before the stamping machines close at 2pm. This meant that the latest available appointment was at 1pm. The STF, however, could only be executed *after* the court order was presented to Companies House, which meant that timing was very tight that morning getting the STF from London to Birmingham in time.
 2. In case the Stamp Office refused its request for same-day stamping – and because the STF was the stampable instrument of transfer – Y had to amend its scheme of arrangement to include a voting power of attorney in order for it to be able to receive notices of meetings etc., in the interim period after the court order had been

presented to Companies House (and thus the scheme had become legally effective) but before X's share register had been updated following X's registrar's receipt of a duly stamped STF.

3. In order for Y to get on X's register on the same day, Y needed to have calculated and paid the stamp duty before the STF was stamped. At first, HMRC said that they needed to receive the stamp duty payment in cleared funds by 5pm the day before the stamping appointment. This would have meant the STF being executed the day before the stamping appoint, which in Y's case (as is often the case in public takeovers) could not happen because the STF must be executed on the same day that the court order is presented to Companies House. HMRC eventually conceded that they could view their account in real time, and so X could transfer the duty on the morning of the stamping appointment. There was still a lot of concern, however, about whether the large sum of duty involved would be received in time for 1pm given that it was reliant on the CHAPS system working.
 4. In connection with that, the stamp duty was payable by reference to the amount or value of the consideration for Y's shares. Because part that consideration was shares in X, X's shares needed to be valued. The relevant value of X's shares was their market value on the day of the date of the transfer instrument. Traditionally, for stamp duty purposes shares are valued using the chargeable gains method for valuing shares, found in s. 272 TCGA 1992. From 6 April 2015, the Market Value of Shares, Securities and Strips Regulations 2015 are used. For UK listed shares, the market value is the mean average of the two "quotation" prices in the Stock Exchange Daily Official List ("DOL"). The DOL is published from 8pm which means that same day stamping is technically impossible for takeovers the consideration for which comprises UK listed shares. X, however, encountered a different problem – its shares were listed in the US. By the time the stamping machines closed in the UK, the relevant US exchange would have only just opened and would not have closed. That meant there was no price available for X's shares on the day the STF was executed. After much discussion with HMRC, a compromise was agreed.
- Y also encountered similar problems to A and B in terms of the practicalities of stamping – Y too had to produce electronic schedules to accompany block stock transfer forms given the large shareholder base. It therefore encountered the same difficulties in agreeing appropriate headers and formats with HMRC ahead of its stamping appointment.