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Stamp Taxes on Shares Policy Team
HM Revenue and Customs
Room 3/63
100 Parliament Street
London
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By email: sts.consultation@hmrc.gov.uk

21 June 2023

Dear Stamp Taxes on Shares Policy Team

Re: Stamp Taxes on Shares modernisation

The BVCA is the industry body and public policy advocate for the private equity and venture capital ("private capital") industry in the UK. With a membership of over 750 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized businesses.

This letter sets out the BVCA's response to the Stamp Taxes on Shares modernisation consultation. We have not responded to all of the questions raised in the consultation, but have instead focussed on those questions of particular relevance to our members. The UK's approach to stamp duty is of general importance to the BVCA and its members who invest in UK companies across a variety of sectors. We welcome, in particular, the consultation's proposal to remove the transfer of partnership interests from the charge to stamp tax, which has been a long-standing policy submission made by the BVCA. In light of the widespread use of partnership structures in the private capital industry, this is of particular consequence to our members, and is discussed further below.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the below in more detail (please contact Rachel Gauke at rgauke@bvca.co.uk).

Yours sincerely

Maria Carradice

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Chair, BVCA Taxation Committee

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The Association is a private company limited by guarantee without share capital

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BVCA responses to specific consultation questions

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

Yes – as acknowledged in the consultation, the current system with two separate taxes leads to inefficiencies and inconsistencies in application. Our members would benefit from the introduction of a unified regime that improves upon difficulties with the present system of taxation on transfers of securities.

Question 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?

As the consultation itself notes, simplicity should be the guiding principle behind the proposed changes to the current stamp taxes on shares regime. We agree that having a single charging point for the new combined stamp tax on shares would deliver on that goal, and consider that this can work, but applying the single charging point proposed in the consultation to the full range of share transactions would be likely to achieve the opposite effect.

In particular, as the consultation recognises, basing the charging point primarily on the point in time that an agreement to transfer shares is made could create significant issues for unlisted transactions, which often involve complex completion arrangements and elements of conditionality. We do not consider that these issues will be adequately addressed through the proposed single charging point outlined in the consultation, which seeks to specifically delay the proposed primary charging point (the point in time when an agreement is made) where conditional agreements are involved.

A charging point that turns on the fulfilment of conditions in a conditional contract to transfer shares would require detailed guidance as to which conditions are determinative for this purpose. For example, would the conditions in an agreement be treated as fulfilled for this purpose upon satisfaction of all third-party conditions, even where conditions within the control of the parties to the agreement remain outstanding? In order to achieve legal certainty and deliver on the guiding principle of simplicity, it is important that parties to a share purchase agreement are able to easily determine when the charging point is triggered which, given the nature of the conditions involved in many of such contracts, will require a complex and detailed analysis and mean that many of the current inefficiencies in the stamp taxes on shares regime remain in place.

There is also a risk that, if fulfilment of all third-party conditions was the trigger for the charging point, the charging point might be triggered, and the relevant transaction may still not complete. For example, one party to an agreement to transfer shares may subsequently default on its obligation in relation to the remaining conditions. Where the charging point has already been triggered, and the relevant duty potentially already paid, the legislation would need to include a process (potentially administratively burdensome, and no longer in keeping with the aim of having the new tax be self-assessed) for unwinding the charging point and refunding any duty already paid.

Instead, we propose that the single charging point be at the time when the share transfer is completed. This would provide taxpayers with a simple and easy way to determine the single charging point, and mean that there was no need to enter into a detailed analysis concerning when the charging point on conditional contracts was triggered. It should also mean, in practical terms, that the charging point for listed transactions remains as it currently is – when a share transfer is settled through CREST.

In order to address any risk of parties artificially delaying completion for purposes of delaying payment of stamp tax under this approach, we suggest that a concept akin to “substantial performance” in the Stamp Duty

Land Tax regime be introduced such that purchasers are required to pay stamp tax if, in practice, they enjoy the benefit of the shares. This safeguard, alongside an overall time limit on the charging period and the existing restriction on recording share transfers in share registers until stamp duty is paid, should effectively deal with any "resting on contract" risk.

Question 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?

As outlined in answer to Question 6 above, we consider that the single charging point outlined in the consultation would lead to problems in respect of transfers of unlisted shares, particularly where the agreement to transfer those shares involved complex completion mechanics and/or conditionality. If such a charging point was introduced, then combining that with a single accountable date of 14 days from that charging point would likely exacerbate these problems. For example, for transactions with completion dates more than 14 days after the conditions of the contract were treated as fulfilled for charging point purposes, purchasers would be required to be put in funds prior to completion of the transfer of shares, and pay stamp duty on such transfer (potentially including, as set out in the answer to Question 6 above, situations where completion may never occur).

If the approach to the charging point we have outlined in answer to Question 6 above was adopted, with the single charging point being the date on which the completion of the relevant share transfer occurred, a single accountable date of 14 days after the relevant charging point is workable.

Question 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?

Partnership structures, and in particular limited partnerships, have been widely used by the BVCA's members and other fund managers across the private capital industry over the past 30 years to effectively structure transactions and investments in line with the commercial demands of investors and their capital. These structures are a key reason for the UK's prominent global role in private capital: they provide flexibility to investors, allow for tax transparency and limit the liability of investors funding businesses that are critical to the growth of the UK economy. Under the current stamp duty regime, as a result of legislative changes that largely predate the widespread adoption of limited partnership vehicles, the transfer of partnership interests is within the charge to stamp duty.

Limited partnership funds are not generally established with the intention of interests in the fund being freely transferable, but there may be good reasons why a limited partner may wish to exit a partnership, including following a change in the partnership's business strategy or in order to increase liquidity. Secondary transfers of partnership interests are also becoming increasingly common. The application of stamp duty to such transfers creates complexity and difficulty in completion mechanics, and adversely differentiates UK limited partnerships from competitor structures and jurisdictions.

Therefore, we welcome the government's proposal to exclude transfers of partnership interests, where the partnership holds stock or marketable securities, from the scope of a new single stamp tax regime.

Whilst anti-avoidance provisions are necessary to ensure that partnership structures are not used as a means for avoiding tax on the transfer of securities, it is important that the scope of such rules is properly defined. In particular, and in order to achieve transparency and certainty in the law, anti-abuse legislation should not be overly broad and should not, for example, include vanilla transfers of fund interests. In order for our members to be able to operate with confidence under a new single tax regime, any anti-avoidance provision should be drafted sufficiently clearly such that legitimate uses of partnership structures across the private capital

industry fall squarely outside of the stamp tax regime, without the need for our members to rely on HMRC guidance.

We would welcome the opportunity to discuss this with you further as and when you are considering the design of the implementing legislation.