Securities Transfer Tax – Modernisation of the Stamp Taxes on Shares Framework: Draft Legislation

Consultation Response by Simmons & Simmons LLP

1. Introduction

1.1 Simmons & Simmons LLP welcomes the opportunity to respond to HMRC's technical consultation on the draft legislation for the new Securities Transfer Tax ("**STT**"), published on 13 July 2026 as part of the Finance Bill 2026-27 package (the "**Draft Legislation**").

1.2 Simmons & Simmons LLP is a leading international law firm with offices in major business and financial centres throughout Europe, the Middle East, Asia and the United States.

1.3 This response builds on our response of 22 June 2023 to HMRC's original consultation on modernisation of the Stamp Taxes on Shares framework ("**STS**") (the "**2023 Response**"). Given the volume of technical points raised by the Draft Legislation, we have focused this response on the three areas of most immediate concern to our practice and our clients: the treatment of transfers of partnership interests; the treatment of units in unit trust schemes and non-UK fund equivalents; and the payment, relief and registration procedure applicable to successive transfers of the same securities. We identify some additional points in our closing comments.

1.4 We would be happy to participate in further formal or informal discussions in relation to the subject matter of this response.

2. Summary

2.1 In our view, the most important points arising from the Draft Legislation in the three areas addressed in this response are as follows:

(A) We strongly welcome clause 70, which confirms that a transfer of a partnership interest is out of scope of the main charge save where a targeted anti-avoidance rule applies. However, we consider that the Draft Legislation leaves an unresolved ambiguity as to whether a partnership interest itself falls within the definition of "chargeable securities" at clause 4(1)(d), because a partner's economic interest in partnership property could be described as an "interest in" any chargeable securities held as partnership assets. We recommend an express carve-out on the lines set out at Section 3 below.

(B) Clause 70 also does not, in our view, adequately address *in specie* contributions of chargeable securities to, or *in specie* redemptions from, a partnership, which we raised in our 2023 Response and which we regularly see in practice. We recommend a specific exemption for such contributions and redemptions.

(C) We welcome the fact that clauses 48 to 54 are broadly intended to replicate the existing exemptions for funds. However, non-UK equivalents of unit trust schemes and OEICs are not brought onto an equal statutory footing with their UK counterparts, contrary to the clear direction set out in the 2023 consultation. We recommend that the Draft Legislation be amended to extend the exemptions in clauses 48 to 54 to comparable non-UK arrangements that have equivalent features.

(D) We also comment on further changes to the treatment afforded to unit trust schemes, open-ended investment companies ("**OEICs**") and contractual schemes under Chapter 3 Part 2 of the Draft Legislation, which we consider are necessary to preserve the current accepted treatment of transactions involving such collective investment schemes.

(E) We welcome the move to a single accountable date and the immediate issuance of a Unique Transaction Reference Number ("**UTRN**") on submission through the new online portal referred to in the Explanatory Notes, which should materially improve the speed with which company registrars can update the register of members. However, clause 62 retains an approach based on the existing model, under which a company must not register a transfer until it receives HMRC's acknowledgement of receipt (or a statement that no return was required), and clauses 56 to 61 impose accountable dates, deferral rules and redetermination obligations that do not, in our view, adequately address the practical position on successive transfers of the same securities within a short period, for example on a share sale immediately followed by a group reorganisation. We recommend specific procedural provision for such cases, as set out in Section 5 below.

3. <u>Transfers of Partnership Interests</u>

3.1 We strongly welcome clause 70 of the Draft Legislation, which limits the circumstances in which a transfer of a partnership interest is brought within the charge to STT to cases where it is reasonable to conclude that the underlying chargeable securities came to be held as partnership property as a result of arrangements whose main purpose, or one of whose main purposes, was the avoidance of STT, i.e. an enveloping transaction in anticipation of sale. This reflects the position for which we advocated at paragraph 2.23 of our 2023 Response, and in our view this should remove a significant complexity from secondary transactions in funds established as partnerships.

The definitional ambiguity at clause 4(1)(d)

3.2 However, in our view this outcome is not, in fact, put beyond doubt by clause 70 alone. Clause 4(1)(d) sweeps within the definition of "chargeable securities" any "interests in" shares, equity-like debt interests or units falling within clause 4(1)(a) to (c), and this wording is not obviously confined to direct interests. Partnership assets are held collectively by the partners for partnership law purposes (see section 20 of the Partnership Act 1890), so each partner has an underlying economic stake in whatever the partnership owns, including any shares or units comprised in its assets. A partnership interest could, on that basis, be characterised as itself an "interest in" those underlying securities, bringing it within clause 4(1)(d) other than in the avoidance scenario addressed by clause 70. We do not think this was the intended result, but the current drafting does not prevent this reading.

3.3 Under the current stamp duty regime, this ambiguity is avoided because paragraph 31 of Schedule 15 to the Finance Act 2003 expressly preserves the specific stamp duty treatment of partnership interest transfers, rather than leaving the position to be inferred from general charging words. The Draft Legislation does not, in our view, replicate an equivalent safeguard.

3.4 We recommend that HMRC put this issue beyond doubt with an express statutory provision confirming that, for the purposes of STT, an interest in a partnership is not, of itself, an interest in any chargeable securities held as partnership property. Absent such a provision, taxpayers and their advisers will need to reach a view, without the benefit of clear statutory wording, on whether every transfer of a partnership interest (however small, and regardless of the composition of the partnership's assets) falls within clause 4(1)(d) subject only to clause 70's carve-out, which in our view is inconsistent with the policy intention.

***Pro rata in specie* contributions and redemptions**

3.5 At paragraph 2.17 of our 2023 Response, we raised the specific issue of *in specie* contributions of chargeable securities to, and *in specie* redemptions from, a partnership. Where a partner makes an *in specie* contribution to a partnership in exchange for the grant of, or an increase in, a partnership interest, there is arguably a change in the beneficial ownership of the partnership's assets, as each partner subsequently holds an undivided share in each partnership asset reflecting their partnership interest. We do not consider that this technical change in beneficial ownership should give rise to an STT charge, as the contributing partner's economic position is unchanged.

3.6 The Draft Legislation includes specific exemptions on comparable facts for other collective investment vehicles, most notably the *pro rata in specie* redemption exemption at clause 52 and the contractual scheme exemptions at clause 51, but includes no equivalent exemption for *in specie* contributions or *in specie* redemptions in the partnership context. We do not consider that clause 70 addresses this gap, as clause 70 is concerned only with the anti-avoidance treatment of a subsequent transfer of the partnership interest itself, not with the initial *in specie* contribution or the mechanics of a later *in specie* redemption. We also do not consider that the position is addressed by the clause 44 no change of beneficial ownership exemption.

3.7 We recommend that HMRC introduce a specific exemption from the main charge for *in specie* contributions to, and *in specie* redemptions from, a partnership. In our experience, this issue is of particular significance to institutional investors making or realising secondary investments in funds established as English limited partnerships, and the absence of an express exemption is likely to result in continued recourse to non-statutory clearance requests notwithstanding the general shift to a self-assessed regime. For clarity, we recommend that the exemption should apply, as currently both to *pro rata* and non-*pro rata* contributions and redemptions.

4. Units in Unit Trust Schemes and Non-UK Fund Equivalents

4.1 We welcome the fact that the Draft Legislation makes clear that units in a unit trust scheme (other than an excluded unit trust scheme) remain within the definition of chargeable securities at clause 4(1)(c), and that the Draft Legislation broadly seeks to replicate the existing structure of exemptions and exclusions for funds, including the excluded unit trust scheme and excluded open-ended investment company definitions at clauses 48 and 49, the scheme manager, contractual scheme, *in specie* redemption and fund reconstruction exemptions at clauses 50 to 53, and the umbrella scheme treatment at clause 54.

No equal statutory footing for non-UK equivalents

4.2 At paragraph 2.16 of our 2023 Response, we agreed with HMRC's proposal that non-UK fund equivalents should have an equal statutory footing to UK funds, and we remain of the view that there is no policy justification for distinguishing between UK and non-UK arrangements with the same legal and economic features. The Draft Legislation, however, does not appear to address this. The definitions of "excluded unit trust scheme" and "excluded open-ended investment company" at clauses 48 and 49, and the fund-related exemptions at clauses 50 to 53, are drafted by reference to UK regulatory concepts, including the Financial Conduct Authority approval requirements at clause 53(3), the

Charities Act 2011 and Charities Act (Northern Ireland) 1964 at clause 48(2), and the Open-Ended Investment Companies Regulations 2001 and Undertakings for Collective Investment in Transferable Securities Regulations 2011 at clause 53(3)(d) and (e).

4.3 We recognise that clause 53(4) makes some accommodation for non-UK schemes by requiring only that the scheme be "comparable in its legal structure and its operation" to a UK collective investment scheme to which the relevant regulatory requirements apply, and by treating comparable non-UK regulatory requirements as satisfying clause 53(3). We welcome this as a partial answer, but it is limited to the fund reconstruction exemption in clause 53, and does not extend to the excluded scheme definitions in clauses 48 and 49 or the scheme manager and *in specie* redemption exemptions in clauses 50 and 52, each of which continues to assume a UK regulatory framework. We are also concerned that clause 53(4) assumes that a relevant foreign jurisdiction will take an equivalent approach to having “relevant regulatory requirements” analogous to those referenced in clause 53(3) – we have experience of a number of common fund domiciles where there is no equivalent legislation and therefore restructurings of funds must be dealt with on a case-by-case basis, rather than being able to identify a specific statutory merger regime.

4.4 We recommend that HMRC amend the Draft Legislation to extend the full scope of clauses 48 to 52 to non-UK arrangements that are comparable in their legal structure and operation to the relevant UK arrangement, using drafting equivalent to that already adopted in clause 53(4), so that non-UK unit trusts, non-UK OEIC equivalents and non-UK contractual schemes are placed on an equal footing to their UK counterparts across the whole of Chapter 3, not only in the context of fund reconstructions. We also recommend that HMRC review the operation of clause 53(4)(b) when considering fund domiciles that lack analogous “relevant regulatory requirements”.

***In specie* contributions and the *pro rata* definition**

4.5 We also note that the 2023 consultation proposed giving further consideration, when drafting the legislation, to the definition of "*pro rata*" in the context of *in specie* contributions and redemptions, given the "cliff edge" that currently arises where a contribution or redemption does not exactly or proportionately match the fund's existing holdings. The Draft Legislation does not appear to include any further definition or clarification of "*pro rata*" for these purposes, including in the *in specie* redemption exemption at clause 52(1)(d), which continues to rely on the imprecise formulation "proportionate to, or as nearly as practicable proportionate to". We recommend that HMRC's response to this consultation confirm whether further guidance (rather than legislative definition) is intended to address this point, consistently with the approach taken in the 2025 consultation on the 1.5% charge.

Potential gaps in the Draft Legislation’s application to collective investment schemes and similar arrangements

4.6 From our review of the Draft Legislation, we see no equivalent of the position adopted in guidance or HMRC practice on the following transactions:

(A) where an initial investor seeds (or initial investors seed) a newly created unit trust scheme (or subfund of an umbrella unit trust scheme) by way of *in specie* contribution, HMRC’s practice is that neither stamp duty nor stamp duty reserve tax applies – see STSM107020 – this is not clearly addressed in the Draft Legislation;

(B) where a subsequent investor makes an *in specie* contribution to an existing unit trust scheme (or subfund of an umbrella unit trust scheme) by way of *in specie* contribution, HMRC’s practice is that neither stamp duty nor stamp duty reserve tax applies where the contribution exactly *pro rata* matches the existing lines of investments held by the unit trust – see STSM107030 – this is not clearly addressed in the Draft Legislation (we note that in practice, HMRC is open to accepting that so long as the UK lines exactly match, there is more flexibility around the non-UK lines, and also around how exact the matching should be);

(C) where an authorised unit trust converts to an OEIC – see STSM107050 – this is not clearly addressed in the Draft Legislation, as the relevant secondary legislation does not appear to have been amended to reflect the introduction of STT; and

(D) where a collective investment scheme (either in the form of a unit trust scheme or an OEIC) is wound up or terminated. HMRC accepts that the distribution of investments is regarded as a transfer not on sale such that a formal written instrument of transfer is not chargeable to stamp duty (and preparation of such an instrument addresses any potential stamp duty – see STSM107100 – this is not clearly addressed in the Draft Legislation (and the reference in the guidance to the need to create a written instrument of transfer suggests that HMRC is not clear on whether there might be money or money's worth consideration under the existing stamp duty reserve tax rules),

4.7 It is not clear to us that other exemptions, such as the clause 44 no change of beneficial ownership exemption, would apply to these types of transaction.

5. Payment, Relief and Registration Procedure on Successive Transfers

5.1 We welcome the move to a single accountable date of 14 days for electronic transactions and 30 days for other relevant transactions under clause 56(3), and the Explanatory Notes' confirmation that the new online portal will generate a UTRN immediately on submission once any tax due has been paid. Taken together with the retention of the registrar link in clause 62, this should, in principle, allow registrars to update the register of members considerably more quickly than the current stamp duty adjudication process, which HMRC's own analysis in the 2023 consultation acknowledged could take 15 to 20 working days or more.

Registration is still blocked pending confirmation

5.2 Clause 62 nonetheless retains the substance of the current position: a company must not register a transfer of shares unless it receives either a copy of HMRC's acknowledgement of receipt of the relevant return, or a statement that no return was required. As we noted at paragraph 2.4 of our 2023 Response, this blocking mechanism causes particular difficulty for successive transfers of the same shares within a short period, for example an acquisition immediately followed by an intra-group reorganisation, or the creation of security over recently acquired shares in favour of an acquisition financing lender. In each case, the second transfer cannot be registered, and any charge over the shares cannot be perfected by registration, until the first transfer has been reported and (if tax is due) paid and acknowledged, even though the online portal should reduce the delay considerably as compared with the current position. It is not currently clear to us whether in practical terms it would be possible to submit multiple returns relating to the same shares on the same date, waiting in each case for the HMRC acknowledgement before proceeding to submit the next return, and we would welcome HMRC's guidance on this.

Interaction with deferral and redetermination

5.3 The position is further complicated where the first transfer involves contingent, uncertain or unascertainable consideration. Clause 8 requires tax to be paid initially on the basis of a reasonable estimate, with the return amended under clause 57(3) once the exact value becomes clear, and clause 59 allows deferral of payment for up to four years (extended from the two years proposed in the 2023 consultation) where the relevant conditions are met. Although we welcome the extension to four years, a company secretary or registrar applying clause 62 to a second, successive transfer has no way of confirming, from the face of HMRC's acknowledgement of receipt alone, whether the first transfer's STT position is provisional, deferred, or final, which in our view undermines the certainty that clause 62 is intended to provide and could cause a second transfer to be delayed even after HMRC has issued its acknowledgement in respect of the first.

Recommended procedural easement

5.4 We recommend that HMRC consider making specific procedural provision for successive transfers of the same chargeable securities within a defined period, for example 30 days, under which a registrar may register a second transfer on the basis of the UTRN issued in respect of the first transfer, without needing to establish separately that the first transfer's STT position has been finally determined. This would preserve the policy purpose of clause 62 (ensuring that STT on the first transfer is not avoided by a rapid onward transfer) while removing the practical bottleneck that otherwise arises on same-day or near-simultaneous completions.

5.5 We also recommend that the online portal referred to in the Explanatory Notes clearly flag, on the face of any acknowledgement of receipt or UTRN, whether the associated STT liability has been finally determined or remains provisional (whether because it is based on a reasonable estimate under clause 8, or subject to a deferral claim under clause 59), so that registrars, company secretaries and their advisers are able to assess quickly and reliably whether a second, successive transfer can be registered without further enquiry.

5.6 We also disagree with the proposal in clause 62(8) to treat a contravention of the duty not to register in clause 62(2) as a contravention of the kind mentioned in section 1121(1) Companies Act 2006. Under the current rules, there is no such sanction and we do not see this as justified.

6. <u>Additional points</u>

6.1 We encourage HMRC to review the proposal in clauses 9 and 10 that an agent with authority to act on behalf of the liable person should be treated as an accountable person, with the consequence that the agent becomes jointly and severally liable for the STT concerned.

6.2 Were this change to be adopted, law firms filing STT returns would be exposed to potentially significant liabilities for matters (i.e. non-payment of the STT liability) that are not within their control. In such circumstances, the natural response would be for lawyers and other advisers to cease to act as agents. This will push the compliance obligation onto the underlying client, and will increase the likelihood of errors. It may also create challenges for the STT portal, given the need to support additional users.

Simmons & Simmons LLP

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