Managed Funds Association
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York | Brussels | London

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Via Electronic Submission: sts.consultation@hmrc.gov.uk

Stamp Taxes on Shares Policy Team
HM Revenue and Customs
Room 3/63
100 Parliament Street
London
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United Kingdom

Re: Stamp Taxes on Shares Modernisation

Managed Funds Association[1] ("**MFA**") appreciates the opportunity to provide feedback to His Majesty's Revenue and Customs ("**HMRC**" or "**HM Revenue & Customs**") on the above-captioned consultation for proposals to modernise the UK's stamp taxes on shares framework, published on 27 April 2023 (the "**Consultation**").[2]

We support the modernisation of Stamp Duty and Stamp Duty Reserve Tax ("**SDRT**"), and in particular, we support the proposal to implement a single tax on securities rather than maintaining Stamp Duty and SDRT as two separate taxes. The implementation of a single tax on securities which has a clear and readily identifiable scope and offers workable commercial exemptions, where appropriate, will maximize government resources and enhance efficiency. We also agree that the new single tax would be more easily administered for taxpayers and a positive move towards modernising the UK's complex tax regime in this area, welcomed by our members as part of their ongoing commitment to investing in and managing assets through the UK.

We have not responded in detail to every question presented in the Consultation; rather, we have focused our input on those matters we believe are of most concern to our members and where we can add the most helpful commercial insight. Our comments are set out in narrative form below (for ease of comprehension) but are cross-referenced to the questions posed by the Consultation where appropriate.

New Single Tax

We strongly agree that a single tax on securities would be preferable to the current system under which two separate taxes may apply (sometimes in slightly different ways) with respect to relevant transactions in securities. We feel that the approach of introducing a single tax would result in greater certainty for taxpayers and eliminate much of the confusion which can often arise (especially for non-UK parties) as to the interaction between Stamp Duty and SDRT. A single tax would also achieve simplification of the underlying legislation, which is currently spread across a number of primary sources and is not easily read on a unified basis when applied in practice.[3] This simplification would help our members understand and administer their obligations

[1] Managed Funds Association ("**MFA**"), based in Washington, D.C., New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 170 member firms, including traditional hedge funds, credit funds, and crossover funds, that collectively manage nearly $2.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

[2] "Stamp Taxes on Shares modernisation," HMRC, https://www.gov.uk/government/consultations/stamp-taxes-on-shares-modernisation/consultation-stamp-taxes-on-shares-modernisation (published 27 April 2023)

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

with respect to UK stamp taxes more efficiently and would encourage investments to be made in UK securities and/or made and managed in the UK.

We also note that the stamp tax regime continues to apply (at least, in part) to UK "Qualifying Asset Holding Company" ("**QAHC**") vehicles and that any simplification of the UK tax regime which applies to QAHC vehicles would be welcomed by our members who have otherwise shown considerable interest in using QAHC vehicles.

We also generally agree that any new single tax on securities should be self-assessed and reported and paid via a new online portal to the extent that transactions are not processed through CREST. This depends, however, on the new rules being sufficiently clear as to which securities fall within the charge to tax (both in terms of substantive characteristics and geographic scope), the party liable to pay the tax, the method of calculating the tax payable, and the practical application of available exemptions.

Any online portal will need to be straightforward, robust from a technological and logistical perspective (with alternative submission and payment routes available in the event of technical malfunction), and accessible by taxpayers, as well as by external advisors and counsel. We note that our members commonly delegate the preparation and submission of Stamp Duty and SDRT returns or applications for exemptions to their legal advisors (who may not otherwise be appointed as their formal tax agents), and it is expected that this will continue going forward.[4]

We note that the Consultation does not suggest any changes are being considered with respect to the stamp tax position for depositary receipts (including American depositary receipts ("**ADRs**")). We would nonetheless underline the importance to our members of the current position that a depositary receipt is not to be regarded as "stock" or a "marketable security" for the purposes of stamp duty, nor as a "chargeable security" for SDRT purposes (by virtue of Section 99(6) of the Finance Act 1986). It is important that this position remains clear and unchanged following the Consultation (and any resulting legislative changes), since this position is regularly relied upon by many of our members who operate in U.S. capital markets.[5]

Geographical Scope of New Single Tax

In our view, the current geographical scope for Stamp Duty and SDRT should be revised such that any new single tax only applies to securities issued by UK-incorporated companies.[6]

Stamp Duty (as it currently stands) may apply to "*an instrument executed in any part of the UK, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done in any part of the UK*".[7] In our view, this broad scope is significantly out of step with the modern financial markets. Whilst UK tax advisors are generally familiar with the practical application of this rule (and what steps may be taken to avoid bringing a relevant instrument within the geographic scope of Stamp Duty), we do not feel it is proportionate that taxpayers should have to engage with these complexities (typically, with the support of specialist advisors) when the almost universal result for common transactions (such as transfers of interests in non-UK companies) is that no UK Stamp Duty is paid. The current broad geographical scope of Stamp Duty adds unnecessary administrative friction to common securities transactions which have any connection whatsoever to the UK, and modern business practices (such as the use of electronically signed instruments of

[4] ***Question 2***: "Do you agree that any new single tax should be self-assessed with transactions that are not processed through CREST being reported and paid via a new HMRC online portal?"

[5] STSM051020, HMRC, https://www.gov.uk/hmrc-internal-manuals/stamp-taxes-shares-manual/stsm051020 (last updated 17 May 2022)

[6] ***Question 8***: "Do you agree that the current SDRT geographical scope rules should apply to any new single tax on security transactions? If not, what would you suggest and why?"

[7] Section 14(4) Stamp Act 1891.

transfer and email communication) can generate unnecessary concerns for investors and fund managers based in the UK. We are glad to note that the Consultation clearly proposes significant reform in this regard.

With respect to the geographical scope of SDRT (which forms the core of the approach proposed in the Consultation), we note that there is a current exemption for securities issued by a non-UK issuer (subject to carve-outs where those securities have some other relevant UK nexus),[8] but that this exemption is only available for securities issued by a non-UK body corporate. This leaves open some areas of uncertainty, such as securities issued by non-UK partnerships, sovereigns, or other bodies not treated as a body corporate, for which there is no apparent rational basis for imposition of the new single tax. Similarly, the carve-outs to this exemption do not provide certainty where (as is now common) relevant securities are held on an electronic register or otherwise in dematerialised form and could—conceivably—fall within the geographical scope of SDRT even though there is no true UK nexus to any copy of that register (*e.g.*, if the electronic or dematerialised register is stored on a server in or accessed from the UK).

These uncertainties could be eliminated by limiting any new single tax to securities issued by UK-incorporated companies. We understand from the Consultation that the government "*does not propose to define where an electronic share register is kept for any new single tax, but instead to use whether shares are in a UK incorporated company or not as the key factor for whether they are in scope*" which would appear to align with our suggestion.[9]

We note the questions in the Consultation as to whether the geographic scope of the intermediaries, stock lending and repurchase reliefs should be extended. Our members currently rely on each of these reliefs, and it is important that they are retained in their current form (which the Consultation suggests they will be). We do not consider that there is a need to extend the territorial application of these reliefs, however, and assuming their existing scope and operation are maintained (and no inadvertent changes result from legislative amendments to the stamp tax regime as a whole following the Consultation), agree with the proposal not to make changes in this respect.[10]

We therefore agree that the proposed approach to the tax base, focusing on non-government equity in UK-incorporated companies, is correct. In our view, it would be helpful to avoid the use of the term "stock," since it is unclear what this term is intended to capture that is not otherwise covered by shares, options, or interest in shares.[11]

Partnership Interests

It would also be helpful to specifically exclude interests in UK and non-UK limited partnerships and limited liability partnerships from the scope of the new single tax, if nothing else for the avoidance of doubt and to assist taxpayer comprehension and application of any new legislation.[12] It should be clear to taxpayers, without having to engage specialist tax advisors and without having to take convoluted practical steps (such as

[8] Section 99(4) Finance Act 1986.

[9] Notes to ***Question 8*** of the Consultation.

[10] ***Question 35***: "Is there anything that you do not think has been sufficiently considered in relation to the geographical application of intermediary relief?"

Question 37: "Is there any reason why you think the government should change the geographical application of stock lending and repurchase relief that it may not be aware of?"

[11] ***Question 10***: "Do you agree that the proposed scope is appropriate, captures what you would expect it to capture and excludes what you would expect it to exclude?"

[12] ***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?"

execution and maintenance of instruments of transfer offshore), that the new single tax does not apply to transfers of interests in partnerships or limited liability partnerships.

We appreciate that some guardrails may be required to prevent abuse of any such exclusion but feel it would be proportionate to deal with this through a targeted anti-abuse rule focused on partnership transactions. This rule should be restricted in scope to arrangements involving equity securities in UK-incorporated companies (which would otherwise be within the scope of the new single tax) and partnership transactions one of the main purposes of which is to avoid the imposition of the relevant tax. It should be clear that commercial transactions involving transfers of partnership interests (including interests in UK limited partnerships and limited liability partnerships and interests in partnerships that hold securities in UK-incorporated companies, other than those involved in transactions one of the main purposes of which is to avoid the imposition of the relevant tax) are not caught by this targeted anti-avoidance rule.

Loan Capital and Debenture Exemptions

Stamp Duty and SDRT are generally understood to target transactions in shares. Accordingly, in our view, the initial scope of any new single tax should exclude debt securities. To the extent that debt securities are not excluded, and therefore require a degree of "reverse engineering" to back them out through some form of exemption, we believe that this would be a missed opportunity for welcome simplification.[13]

We appreciate the need to ensure that equity is not inappropriately labelled as debt to circumvent the application of the new single tax, but we view this as being (in substance) an anti-avoidance measure. Subject to that proviso, it should otherwise be straightforward for taxpayers to determine whether a relevant security is within the scope of the new single tax. In this regard, whilst some of the long-standing elements of the current "loan capital exemption" will remain relevant, we do not feel that the loan capital exemption should be carried across to the new single tax unamended in its current form. As stated above, we would prefer this construct of an "exemption" for relevant debt securities to be enshrined within the underlying scope of the new single tax, rather than operating by way of exception from an otherwise overbroad scope.

We would also welcome the modernisation of certain aspects of the current loan capital exemption to reflect the types of commercial instruments in which our members commonly invest in the capital markets. Our members are commonly engaged in the acquisition of debt securities in the syndicated loan markets (where banks and other initial providers of financing look to reduce their exposure to loans they have originated) and in other secondary market transactions (such as distressed debt trading below par). The universal market expectation of our members on these commercial transactions (for "regular" debt) is that no UK stamp taxes are payable, and any reform to the UK's stamp tax regime should support taxpayers in reaching that conclusion in order to facilitate the efficient functioning of these markets.

As it stands, the loan capital exemption is not as easy for taxpayers to rely on as might be expected, since some of the applicable conditions are complex and do not neatly align with the common commercial terms of securities which are very much viewed in the markets as being "regular" debt securities (to which the parties would not expect UK stamp taxes to apply). For example, many commercial loans contain features such as "make whole" premium provisions on early redemption premia and/or complex ratchets which do not clearly fall within the terms of the current exemption. As a result, and particularly for foreign parties who are less familiar with UK stamp taxes, it would be necessary to obtain specialist tax advice to determine whether the loan capital exemption is actually available which introduces administrative friction to a market which is fast-moving and in which timely execution and, in some cases, volume of trades matters. Appropriate advice on the availability of the loan capital exemption cannot always be procured on a timely basis which risks introducing artificial illiquidity to the capital markets. These are markets in which the participants are UK (and overseas) borrowers and unconnected lenders acting in the ordinary course of their business as lenders. Their expectation is overwhelmingly that transactions in these "regular" debt securities should not attract UK stamp taxes, and

[13] ***Question 12***: "Do you agree that the government should explore a different approach to the loan capital exemption? Do you foresee any issues with such an approach?"

therefore, there is no incentive or appetite for market participants to seek to avoid a properly crafted new single tax which clearly does not apply to such debt securities.

The uncertainty around the current loan capital exemption does mean that, in practice, many of our members will be relying on the "debenture exemption" when they enter transactions in the relevant markets. This exemption, which currently needs to be pieced together from historic legislation, provides that debentures that are not marketable securities are exempt from Stamp Duty[14] and, therefore, do not fall within the scope of SDRT.[15] In practice, this is a straightforward means for a lender to determine whether stamp taxes are payable before it purchases a loan since it should be relatively easy to determine whether the relevant loan is in fact a marketable security (which, of course, will be very rarely, if at all).

In response to ***Question 38***, we therefore strongly disagree with the government's proposal not to include specific relief or an exemption for debentures and, instead, suggest that either an express exemption should be included for transfers of debentures that are not capable of being listed on the Main Market of the London Stock Exchange (to mirror the existing position), or a new exemption should be included in place of the existing debenture exemption for transfers of unlisted loan capital originally advanced by an entity that does not control the borrower. As stated above, to the extent that such an "exemption" can be incorporated upfront in the scope of the new single tax, that would be welcomed in the interest of simplicity for taxpayers. Such a clarification of scope would maximize government resources and enhance efficiency by obviating the need for applications for exemptions based on fragmented or otherwise redundant legislation.

Grant of Security Interests

We agree that the grant of security interests is outside the scope of Stamp Duty and SDRT. We therefore would welcome a specific exclusion to this effect being included for the new single tax in the interest of clarity (especially now that this position has been mooted in the Consultation).[16, 17] We note that the grant of security interests is already treated as exempt for Stamp Duty Land Tax purposes, and we are not aware that this exemption has resulted in any tax avoidance behaviour in this context. Where a security interest is enforced, there will commonly be stamp taxes payable when the secured interest is transferred (depending on the mechanism of enforcement).

Options and Warrants

With respect to ***Questions 19-21***, we agree that the SDRT treatment of call options and warrants is correct (*i.e.*, that their grant should not be subject to stamp tax, but their transfer would be chargeable). We consider that such treatment aligns with current market practice and, therefore, would not, in practice, result in new routes to avoidance. We understand that the current SDRT options regime works well and ensures that tax is paid on transactions where in-scope securities are transferred in substance through the grant and exercise of options.

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[14] Paragraph 25, Schedule 13 Finance Act 1999, Section 64(1)(c) Finance Act 1971; Paragraph 4, Schedule 1 Stamp Act 1891

[15] Section 99(5) Finance Act 1986.

[16] ***Question 13***: "Do you agree that the granting of security interests is currently out of scope?"

[17] ***Question 14***: "Do you think that the government should specify that the granting of security interests is out of scope in legislation and that it wouldn't open up any route for avoidance?"

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We appreciate the opportunity to submit feedback to HMRC, and we would be pleased to meet with the Stamp Taxes on Shares Policy Team to discuss our comments. If the Stamp Taxes on Shares Policy Team have questions or comments, please do not hesitate to contact Joseph Schwartz, Director and Counsel, or the undersigned at +001 (202) 730-2600.

Respectfully submitted,

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