CHAPTER 1

STAMP DUTY ON SHARES

1.1 Introduction

Stamp duty is a duty on documents (instruments) relating to stock (for example shares) or marketable securities. **Where there is a written instrument by which shares are transferred, there will normally be the requirement to pay stamp duty.** Failing to have an instrument correctly stamped is an **offence and can lead to large fines**.

1.2 The importance of stamping

Instruments are subject to stamp duty if they **relate to UK shares or securities** or if the instruments are **executed in the UK.**

If an instrument that is liable to be stamped is not so stamped, it **cannot be used as evidence in civil proceedings**. Therefore a failure to have a document properly stamped could lead to legal problems in the case of a dispute. A company secretary **will not register a transfer of shares or securities** if the document has not been properly stamped.

Although stamp duty is not directly enforceable, **interest and penalties** can be levied for a failure to ensure that documents are properly stamped. The interest and penalty rules will be covered later in this session.

1.3 The stamping procedure

Instruments that require stamping are normally either sent or taken to the **London Stamp Office**. The stamping officer will **physically stamp** the instrument - usually with a number of red stamps - once the document has been appraised and the duty paid.

The administration and collection of stamp duty is the responsibility of **HM Revenue and Customs (Stamp Taxes).**

1.4 Full details

Section 5 of the Stamp Act 1891 requires that **full details** of the facts and circumstances relating to an instrument are provided in order to allow the correct stamp duty to be calculated. Failure to do so can lead to a **fine of up to £3,000.** SA 1891, s. 5(a)

1.5 Amount of the duty

Ad Valorem duty

An instrument transferring **shares on a sale carries ad valorem duty at a rate of 0.5%**. This means that the stamp duty will be 0.5% of the consideration paid by the purchaser to the vendor for the transfer of the shares. The stamp duty is **paid by the recipient** – i.e. the purchaser of the shares. Any stamp duty paid by the purchaser will be an **allowable expense** when calculating any resulting capital gain or loss on the disposal of the shares. FA 1999, Sch 13 Para 3

Once the percentage figure has been, applied the **duty is rounded up to the nearest £5.**

Stamp duty is **not** payable if the consideration **does not exceed £1000.**

Stamp duty is **not payable when a company issues new shares** to its shareholders, for example on the initial creation of the company or when new shares are subscribed for.

Where shares are **repurchased by a company**, ad valorem duty at a rate of 0.5% is payable on the **Form 169** delivered to the Registrar of Companies.

Fixed duty

Where a fixed duty was charged, the amount of the duty was £5. This applied to, amongst other things, the situation where there was contingent consideration. However, the majority of fixed duties were abolished by s.99 of Finance Act 2008 and are now of minor importance to your studies.

In addition FA 2008 removed the need to present these documents to HMRC for Stamping. Thus the document can now be sent directly to company registrars.

1.6 Exemptions

No stamp duty is payable on certain transfers, for example:

- Transfers of shares by way of gift where no consideration is payable
- Transfers made otherwise than on a sale, such as a transfer to a trust or a nominee.

1.7 Consideration

Most commonly, the consideration payable by the purchaser to the vendor will **usually be in the form of cash**. However **"consideration" can take other forms** such as other shares and marketable securities, the release of debt or liability.

This means that stamp duty **cannot be avoided** by the purchaser paying for the new shares in **non-cash form**. Effectively the value of the non-cash assets offered in exchange for the shares is treated as consideration and is subjected to ad valorem stamp duty.

Sometimes the **consideration for a transfer of shares may be uncertain** at the time of the transaction. The stamp duty payable depends on how the deal is structured.

Illustration 1

Bill sells his shares in Bill Ltd to Bob for £100,000 plus an extra amount if the company's profits for the current year exceed £50,000. Assume first that the extra amount is **fixed** at £10,000. The total amount subject to duty would then be £110,000.

The same result would apply if Bill agreed to take a **% of the final sale price** up to a **maximum** of £10,000.

If Bill agreed to take the % of the final sale price with a **minimum** of £10,000, again duty would be payable on £110,000. This applies even if Bill actually receives, say, £15,000.

However, if the amount is **not ascertainable** (for example, just a % of the profits with no maximum or minimum) there will be **no charge** in relation to the potential extra consideration.

1.8 Exchanges

If **shares are exchanged,** then **two share transfers** will be executed. Both will be liable for ad valorem duty. **Each will be liable to stamp duty** by reference to the value of the shares transferred by the other document.

In both cases, the transaction may be documented as a sale of the **higher value shares.** The **transfer of the higher value shares** will be liable to **ad valorem duty** but the transfer of the shares in consideration will not be liable. To qualify as a sale of the higher value shares, there must be a **cash element to the sale** which is more than nominal. However, the cash element is not itself subject to duty.

Illustration 2

John has 100,000 shares in Green Limited which are valued at £4 per share. He agrees to exchange them with Peter for 200,000 shares in Blue Limited (worth £1.50 each) plus £100,000 in cash.

Structured in this way, the exchange will give rise to stamp duty of 0.5% on the shares in Green Limited (£400,000 x 0.5% = £2,000) and 0.5% on the shares in Blue Limited (£300,000 x 0.5% = £1,500). This gives a total of £3,500. There is no duty payable on the "equality money" of £100,000.

The transaction could be documented as a sale of the Green Limited shares in return for transfer of the Blue shares plus cash. Duty only will be payable on the Green Limited shares as before (ie, £2,000).

1.9 Groups

There is an **exemption from stamp duty** where shares pass **between two companies in a group**. A "group" here is broadly defined **as for group relief purposes**. Therefore no stamp duty is payable on transfers of property between companies where one company owns 75% of the shares of another, or both are under the 75% ownership of another company. This is sometimes referred to as **"stamp duty group relief".**

FA 1930, s. 42

The instrument of transfer **must be adjudicated**. The adjudication procedure is dealt with later in this session.

The exemption does not apply if, at the time the instrument is executed, arrangements are in existence which mean that **any person can gain control of the transferee company but not the transferor company**.

1.10 Adjudication

Section 12 of the Stamp Act 1891 provides for HMRC to **"adjudicate"** on any executed instrument if requested to do so. HMRC can be asked to adjudicate on a number of points such as;

SA 1891, s. 12

- whether the instrument is stampable;
- the amount of duty;
- whether a late stamping penalty is payable;
- what penalty is correct and appropriate.

If HMRC decides that an instrument is not chargeable to stamp duty, then it will be stamped to show this. Otherwise **it will be stamped with the amount adjudicated** and the relevant amount should be paid as appropriate.

Adjudication is the only way to **formally determine the amount of stamp duty due**. Adjudication is **compulsory for certain instruments**, such as intra group transfers.

If a person is unhappy with the adjudication, he has **30 days to bring an appeal**. However, an appeal can only be brought on payment of the stamp duty plus any penalty in conformity with HMRC's decision and any interest that would be payable following the adjudication. SA 1891, s. 13

1.11 Interest

Section 15A Stamp Act 1891 provides that **late stamping interest** is payable on documents subject to duty. SA 1891, s. 15A

The interest will begin to run **from the end of 30 days** from the date that the instrument is executed. The amount of interest due will be rounded down to the **nearest £5**. No interest is levied if the amount of interest due is **less than £25**.

1.12 Penalties

Penalties are payable for instruments that are stamped **more than 30 days late**. SA 1891, s. 15B

If the instrument is stamped **within 1 year** of the end of the 30-day period, the penalty is the **lower of £300 or the amount payable on the instrument**. If the instrument is stamped **more than one year** after the end of the 30 day period, the penalty it is the **greater of £300 and the amount payable on the instrument**.

Example 1

Sally sells some shares to her sister. Her sister pays £20,000 in cash, plus she transfers to Sarah a debt of £7,850 owed to her by her friend George.

What is the stamp duty position on the transfer?

Answer 1

The total consideration given is £(20,000 + 7,850) = £27,850.

Stamp duty is therefore £27,850 x 0.5% = £139 rounded up to nearest £5 = £140.