Stamp Duty and Transfers of Partnership Interests

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Aims of Talk

• Overview of stamp duty (“SD”) law.
• Highlight areas of concern on transfers of LP interests.
• Identify ways of addressing SD issues.
• Exemplify how these might work.
• Summarise other ancillary issues.
Points to Note

• Dealing with old legislation – poorly drafted and difficult to apply to modern scenarios.
• Advice is generally more risk-management than definitive “solution.”
• Very fact-specific.
UK Stamp Duty – Basics

- Not a compulsory tax – can register LP changes without stamped document.
- Tax on ‘transfer on sale’ for a consideration – no consideration, no SD.
- Tax on documents – no document, no SD.
- Stampable but unstamped document cannot be given as evidence in court (apart from in criminal cases).
SD and LP Interests

• SD is payable on transfers of LP interests where the LP owns shares or marketable securities – if not then SD not payable.
• Wide definition of transfers of LP interests – can include changes in profit sharing ratios and carry.
• However, remember need for ‘transfer on sale’ for consideration and document.
• If LP owns another LP interest arguably not ‘shares or marketable securities’ but not technically tested so need to consider assets of “lower tier” LP.
SD and LP Interests – Amount Payable

• Based on consideration but subject to cap of stamp duty which would have been payable on direct transfer of securities – transfers of securities are subject to SD at 0.5%.

• Transfers of LP interests are subject to SD as follows:

  - Consideration $\leq \£125,000$ – 0%
  - $\leq \£250,000$ – 1%
  - $\leq \£500,000$ – 3%
  - $> \£500,000$ – 4%
SD and LP Interests – Amount Payable

• To qualify for a rate of SD at 0%, 1% and 3%, it is necessary to include a “Certificate of Value” in the transfer documentation.
• Certifies that transfer does not “form part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value” exceeds the value of consideration specified for SD purposes.
• Anti-avoidance.
SD and “Cap” on LP Transfer

- If consideration for LP transfer is £1 million and LP owns shares worth £1 mil, then SD payable is £5,000 – capped at 0.5% of £1 million, i.e. what would be paid on transfer of the shares directly and not £40,000 (i.e. 4% of £1 million).
- If consideration for LP transfer is £100,000, then SD payable is £4,000 – 4% of £100,000 is lower than cap of £5,000.
SD and Penalties/Interest

• SD must be paid within 30 days of the transfer.
• Penalty of £300 is payable following the expiry of 30 day period and is capped at this amount for one year after the 30 day period has expired. After this, the penalty will be higher of £300 and the amount of unpaid SD.
• A penalty of £300 is also payable if a stampable document needs to be registered for some purpose and the SD has not been paid.
• Interest accrues on unpaid SD.
SD and Jurisdictional Issues

- S14(4) Stamp Act 1891 – “… 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.”
- Clear as mud!
- Not correct to say if something executed offshore it is “exempt” from SD.
SD and Jurisdictional Issues – General Position

• Section 14(4) is widely drafted and HMRC could theoretically argue that the transfer relates to UK property or things to be done in the UK if, e.g., the LP owns UK assets or a transferor or transferee is in the UK. This is unlikely but also untested.

• Execution offshore can delay the imposition of penalties until 30 days after document is brought onshore, provided nothing is done in the UK, but does not stop interest from running.

• Remember – not stamping is legal – it just means a document cannot be used as evidence in court if stampable but not stamped!
Loan Exemption

• Transfers of loan capital in LP are exempt from SD.
• If the loan and capital in a typical English private equity LP are transferred in separate documents then SD may not be payable, since the bulk of the consideration can be allocated to exempt loan transfer not to the (stampable) capital transfer.
• However, cannot then use certificate of value – relying on not stamping, no interest and low penalties (£300).
Loan Exemption

- In most US partnerships, e.g. a typical Delaware LP, there is no loan/capital split.
- Thus the loan capital exemption cannot be used and execution offshore is the usual strategy.
Loan Exemption – Summary

- Loan and capital can be transferred separately to minimize SD risks – this can be helpful if the total consideration for loan and capital exceeds £125,000.
- The loan transfer document should not be stampable, whatever the consideration so that this can be executed without the need for stamping.
- A consideration of £125,000 or less would mean that a rate of 0% SD would be payable on the capital transfer.
- However, the capital transfer document could not be sent to the stamp office since the 0% can only be claimed if a “certificate of value” is included stating that the transaction is not part of a series of transactions the total consideration for which is more than £125,000.
- Hence, relying on interest of zero and maximum penalties of £300 if SD becomes an issue.
Example

- Transferor (A) owns an interest in an English LP which he is transferring to transferee (B). LP owns UK shares worth £500,000. LP is a private equity partnership with a loan/capital ratio of 0.001:99.999. A and B prepare a single transfer document and agree consideration of £200,000.
How much stamp duty is payable as the transaction stands?

- Consideration of £200,000; 1% rate £2,000.
- Cap? 0.5% of £500,000 would be £2,500 so cannot rely on cap.
- Will need certificate of value.
Could separate loan and capital transfer help?

• Loan transfer exemption and capital consideration could be below £125,000.
• However, cannot submit certificate of value – relying on minimal penalties.
Can execution offshore help?

- No – English LP and UK assets and hence likely to be within the scope of stamp duty.
- If this is more ambiguous (e.g., Guernsey LP) then might look to execute offshore although other factors might need to be considered.
Transfers of Carry

- Transfers of carry are subject to exactly the same rules as transfers of other LP interests.
- However, remember the need for transfer on sale, stampable consideration and documents – these may not be present when changes in carry are made.
- However, in the UK, interaction with the employment related securities legislation may lead to payments by executives for reallocated carry.
- Even a UK pure carry LP may not have the loan:capital split of a fund LP.
Capital Contributions

• The contribution of assets to a partnership by way of a capital contribution is not a transfer on sale since the payment of capital does not constitute stampable consideration.

• However, the contribution of assets to a partnership by way of paying up a loan commitment will be a transfer on sale and stampable, since there is consideration in the form of the debt.
Further information

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