HMRC - STSM041180 - Exemptions: Depositary Interests In Foreign Securities

Depositary Interest

A UK depositary interest is a UK registered security that enables trading in non-UK incorporated/registered shares to be undertaken and settled within the UK. Essentially, a UK ‘wrapper’ is put around another security (generally non-UK shares) and the UK wrapper, or depositary interest as it is called, is traded instead of the underlying security.

The UK depositary interest is a chargeable security for Stamp Duty Reserve Tax (SDRT) purposes (they are not generally transferred by executing a stock transfer form so stamp duty charges do not arise). However, the Stamp Duty Reserve Tax (UK Depositary Interests in Foreign Securities) Regulations (SI 1999/2383) exclude UK depositary interests from being chargeable securities if certain conditions are met.

The underlying security must be a ‘foreign security’. For this purpose, a security is a foreign security if it satisfies the following conditions.

The security must be issued or raised by a body corporate that is not incorporated in the UK, nor ‘centrally managed and controlled’ in the UK.

The security must not be kept and maintained on a company register in the UK by, or on behalf of, the non-UK company by which they are issued or raised.

The security is of the same class, in the company concerned, as securities that are either listed on a recognised stock exchange (under section 841 ICTA 1988) or are of a type that would have been treated as so listed immediately before 28 November 2001.

When considering whether a company is ‘centrally managed and controlled’ in the UK, the focus must be on establishing where the highest level of control or decision over the company’s business is exercised, as distinct from the place where its main operations or day to day management are to be found. ‘Central management and control’ is a concept that has arisen from UK tax case law on company residence. It is necessary to consider the organisation of the company, the nature of its business and where it is in substance actually managed, for the purpose of determining the ‘centrally managed and controlled’ qualification.

(This content has been withheld because of exemptions in the Freedom of Information Act 2000)

The Alternative Investment Market (AIM) is not a recognised stock exchange. So depositary interests of securities traded on AIM alone cannot qualify for the relief. But if shares of the same class in the foreign company are also listed on a recognised stock exchange, then the relief can apply.

‘Foreign securities’ includes units or shares in collective investment schemes (which meet the other conditions).

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