HMRC - STSM053010 - When A Higher Rate Charge Arises

Although the commercial differences between depositary receipt and clearance services systems have given rise to separate provisions in statute, the rules governing the scope of a 1.5 per cent charge and when a charge can arise are very similar.

Stamp duty

A charge to 1.5 per cent stamp duty arises in respect of transfers (on sale or otherwise than on sale) of relevant securities of a company incorporated in the United Kingdom to:

a person (or his agent or nominee) whose business is exclusively that of holding securities for a bank’s depositary receipt business, or for a clearance service,

or

to certain other persons specified by Treasury Order (although no such orders have to date been made).

See FA86/S67 (1) and FA86/S70 (1).

As with stamp duty generally, a 1.5 per cent depositary receipt or clearance service charge does not apply to newly created shares and bearer instruments, or to bonus shares that are issued to a depositary receipt issuer or clearance service. See STSM060000 for information on bearer instruments.

Top of page

Stamp Duty Reserve Tax (SDRT)

A charge to SDRT arises where in pursuance of an arrangement:

chargeable securities of a company incorporated in the United Kingdom (UK) are transferred (on sale or otherwise than on sale), to a depositary receipt issuer (or his nominee), and

a depositary receipt is issued or is to be issued.

See FA86/S93 (1).\*

chargeable securities of a company incorporated in the UK are transferred (on sale or otherwise on sale ) to a clearance service (or its nominee) for the provision of clearing services.

See FA86/S96 (1).\*

\*Note:

Following the decisions by:

the European Court of Justice in October 2009 in the case of HSBC Holdings PLC and Vidacos Nominee Ltd v Commissioners for HM Revenue & Customs (HMRC) (C569/07); and

the First-tier Tribunal [Tax Chamber] in March 2012 in the case of HSBC Holdings PLC and the Bank of New York Mellon Corporation v Commissioners for HM Revenue & Customs (TC/2009/16584) ,

HMRC accepts that where shares in a UK incorporated company are issued to a clearance service or to a depositary receipt issuer anywhere in the world, the imposition of a 1.5 per cent Stamp Duty Reserve Tax (SDRT) charge (under sections 93(4)(a) and 96(4)(a) Finance Act 1986 is incompatible with EU law. In these circumstances, HMRC will not seek to collect 1.5 per cent SDRT.

For the meaning of ‘relevant securities’ and ‘chargeable securities’, see STSM053020 and STSM053030.

See STSM057040 for the meaning of bonus shares.

Next page