HMRC - STSM057030 - Exemptions/ Reliefs: Non-Sterling Currency United Kingdom Bearer Instruments

In broad terms, the issue of a United Kingdom bearer instrument denominated in currency other than sterling is not subject to bearer instrument stamp duty by virtue of FA99/SCH15/PARA17. Furthermore, no charge to stamp duty arises when a bearer instrument is issued to a depositary receipt scheme or clearance service because no instrument of transfer is required.

Similarly, no 1.5 per cent Stamp Duty Reserve Tax (SDRT) charge will generally arise on the issue or transfer of a United Kingdom bearer instrument denominated in currency other than sterling into a depositary receipt scheme or clearance service. The purpose of the exemption is to assist United Kingdom companies borrowing overseas, in currencies other than sterling.

But a 1.5 per cent charge under FA86/S93(1) or FA86/S96(1) to SDRT can be re-instated if the non-sterling currency United Kingdom bearer instrument is transferred to or appropriated by a depositary receipt issuer or transferred to a clearance service and, does not ‘raise new capital’, or is not issued in exchange for such an instrument. See FA86/S95 (2) and FA86/S97 (3)

A bearer instrument is treated as ‘raising new capital’ if:

it is issued in conjunction with an issue of securities subscribed for solely in cash (see FA86/S95 (2B) and FA86/S97 (3B)); or

it is issued in conjunction with the grant of rights to subscribe for securities which are granted for cash only consideration and exercisable only by means of a cash subscription (see FA86/S95 (2B) and FA86/S97 (3B)); and

it relates to shares which carry a right to a dividend at a fixed rate but no other right to participate in profits (see FA86/S95 (2D) and FA86/S97 (3D)); or

it relates to loan capital within the meaning of FA86/S78. It should be noted that loan capital means the definition in FA86/S78 (7) and not the narrower scope of ‘exempt’ loan capital to which the provisions of FA86/S79 (4) apply; and

the shares or loan capital cannot be converted or exchanged for chargeable securities other than non convertible fixed rate shares or non convertible loan capital (see FA86/S95 (2D) and FA86/S97 (3D)).

A bearer instrument is considered to be issued in exchange for an instrument raising new capital if, and only if, it satisfies the new capital requirements and is exchanged for an instrument that satisfies those requirements. See FA86/S95 (2C) and FA86/S97 (3C).

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