HMRC - STSM057050 - Exemptions/ Reliefs: Unsecured Loan Capital

While a 1.5 per cent Stamp Duty Reserve Tax (SDRT) under FA93(1) and FA86/S96(1) charge applies in respect of transactions involving chargeable securities that are delivered to a depositary receipt issuer or clearance service, the higher rate charge does not generally arise where the transaction involves the issue or transfer of loan capital, the transfer of which would be exempt from all stamp duties. See FA86/S99 (5)(a).

STSM071020 explains the meaning of loan capital.

The 1.5 per cent SDRT charge can be re-instated however where:

loan capital carries a right of conversion into shares or other securities, or to the acquisition of shares or other securities including loan capital of the same description (see FA86/S79 (5) )

loan capital carries a right to receive interest above a reasonable commercial return or carries a right on maturity to a capital amount which exceeds what generally is repayable on a similar class of loan capital. (see FA86/S79 (6) (a) & (c)

loan capital carries a right to receive interest the amount of which has been, or will be, determined by reference to the results of, or to any part of, a business or to the value of any property. (see FA86/S79 (6) (b) ); and

the loan capital is transferred (on sale or otherwise than on sale) to a depositary receipt issuer or clearance service. The 1.5 per cent charge is calculated in accordance with FA86/S93 (4)(b) or (c), or FA86/96 (2)(b)(c).\*

\*Note:

Following the decisions by:

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

HM Revenue & Customs (HMRC) accept that where loan capital is 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 ‘chargeable securities’ for SDRT purposes, see STSM053030.

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