HMRC - STSM057070 - Exemptions/ Reliefs: Replacement Securities

By virtue of FA86/S95A and FA86/S97AA there is no Stamp Duty Reserve Tax (SDRT) charge at the rate of 1.5 per cent when securities in a United Kingdom (UK) incorporated company held in a depositary receipt or clearance service scheme are cancelled and replaced by ‘new securities’ that are issued, transferred or appropriated by the same company.

This situation commonly occurs where a company decides to undertake a ‘stock split’ of its issued share capital, for example, by cancelling, say, every ordinary 50p share in circulation and replacing it with two ordinary 25p shares to the same value, or by re-denominating its share capital into a different currency.

The exemption applies if, and only if, all of the following conditions are fulfilled:

The ‘old securities’ are held under a depositary receipt or clearance service scheme; and

There was a charge to SDRT at 1.5 per cent when the ‘old’ securities were initially issued\*\* or transferred (on sale or otherwise than on sale) to a depositary receipt issuer or clearance service, or a 1.5 per cent charge arose of earlier securities issued\*\* or transferred to either scheme in relation to which on a previous application of FA86/S95A or FA86/S97AA those securities were the new securities; and

There would have been a charge to 1.5 per cent SDRT but for the provisions of FA86/S95 (2) or (3), or FA86/S97 (3) or (4), and

The ‘new securities’ are issued\*\*, transferred or appropriated to a depositary receipt or clearance service scheme and the old securities are cancelled; and

The value of the new securities does not exceed the value of the old securities.

\*\*Note: Following the decisions by the European Court of Justice (ECJ) 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 the charging of 1.5 per cent Stamp Duty Reserve Tax (SDRT) on UK incorporated share issues is incompatible with European Law.

In these circumstances, and notwithstanding the provisions of sections 93(4)(a) and 96(4)(a) Finance Act 1986, HMRC does not seek to collect 1.5 per cent SDRT UK company shares that are issued to a depositary receipt issuer or to a clearance service located anywhere in the world.

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