HMRC - STSM064040 - Renounceable Letter Of Allotment

A rights issue usually involves a corporate body offering or inviting its existing shareholders to subscribe for new shares allotted to them, which may be in bearer form, in proportion to their existing holding. The offer, in the form of an allotment letter or a renounceable letter of allotment, gives a shareholder a right but not the obligation to subscribe for additional shares or bearer shares. The terms of a renounceable letter of allotment may provide the holder with an opportunity to renounce his/her rights under the letter before the offer closes, to a third party.

The issue of an allotment letter or renounceable letter of allotment in respect of bearer shares is not regarded as being a transfer of ‘stock or marketable securities’ for the purposes of a 1.5 per cent bearer instrument stamp duty charge under FA99/SCH15/PARA1 .

Similarly, by virtue of FA99/SCH15/PARA16, there is no 1.5 per cent bearer instrument stamp duty charge on a renounceable letter of allotment, a letter of rights or other similar instruments in respect of bearer shares, where the holder renounces and transfers his rights under the letter, provided the rights are renounceable not later than six months after its issue.

A shareholder, to whom further bearer shares have been provisionally allotted under the terms of a company offer for sale, may decide to deposit the allotment letter or renounceable letter of allotment with a depositary receipt issuer or clearance service. Alternatively, he may agree to renounce and transfer the rights under the allotment letter to another person who lodges it with a depositary receipt issuer or clearance service. In these circumstances, no stamp duty charge under FA86/S67 or FA86/S70 arises.

When United Kingdom (UK) bearer shares are issued upon subscription and immediately delivered to a depositary receipt issuer or clearance service which holds the letter of acceptance or allotment, no bearer stamp duty under FA99/SCH15/PARA1 (or stamp duty under FA86/S67 or FA86/S70) at the rate of 1.5 per cent will arise on delivery of the issued bearer shares to a depositary receipt issuer or clearance service. This is because 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) accepts that where shares and, by extension, bearer shares in a UK incorporated company are issued, the imposition of a 1.5 per cent stamp charge is incompatible with European Union law.

In these circumstances and until such time as the provisions of Schedule 15 are amended, HMRC will not seek to collect 1.5 per cent stamp duty on the issue of a bearer instrument under FA99/SCH15/PARA1 which is delivered to a depositary receipt issuer or clearance service.

Advice on stamp duty reserve tax implications on issues and transfers of a renounceable letter of allotment is described in STSM067070

The Glossary in STSM999999 provides guidance as to the meaning of an ‘allotment letter’ and ‘renounceable letter of allotment’.

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