HMRC - STSM064050 - Bearer Instruments Denominated In Currency Other Than UK Sterling

By virtue of FA99/SCH15/PARA17, there is no bearer instrument stamp duty charge on a bearer instrument (or on the transfer of the stock constituted by or transferable by means of such an instrument) relating to stock expressed:

in a currency other than sterling, or

in units defined by reference to more than one currency (whether or not one of them is sterling).

Furthermore, if the bearer instrument is for stock consisting of a loan and there is an option to repay the loan in sterling or in one or more currency, no stamp duty is due on the issue of the bearer instrument if the option can only be exercised by the holder of the stock. But, if the option can be exercised by anyone else, the issue of the bearer instrument may, in strictness, attract a bearer instrument stamp duty charge under FA99/SCH15/PARA1 at the rate of 1.5 per cent.

However, 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 United Kingdom (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.

While a bearer instrument falling within the exempt provisions of FA99/SCH15/PARA17 is generally also exempt from a stamp duty reserve tax (SDRT) charge, the principal 0.5 per cent or higher 1.5 per cent rate SDRT charge can be re-instated in specific circumstances as described in STSM067040, STSM067050, STSM067060 and STSM067070.

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