HMRC - STSM065040 - Bearer Instruments: Production Of Substitute Bearer Instruments

A substitute bearer instrument dated on or after 13 March 2008 is not liable to stamp duty by virtue of FA99/SCH15/PARA12A(1) if, and only if, it is to replace a similar but earlier instrument upon which ad valorem stamp duty was paid (under FA99/SCH15 or otherwise) and impressed. A substitute bearer instrument dated 12 March 2008 or earlier which replaces an original bearer instrument is subject to £5 fixed stamp duty under FA99/SCH15/PARA6.

A substitute bearer instrument must however be sent to HM Revenue & Customs (HMRC), Stamp Taxes, Stamp Duty (Bearers), 9th Floor, City Centre House, 30 Union Street, Birmingham B2 4AR to indicate that the original instrument was duly stamped\*\* with the correct amount of stamp duty, together with

the original stamped instrument upon which it is to replace; and

completion of a Stamps B1.1 (HMRC website) form where the substitute bearer instrument is chargeable on issue.

A substitute bearer instrument will only be considered duly stamped if the above information is sent to Stamp Taxes, Birmingham.

A substitute bearer instrument normally comprises of two types:-

• A substitute bearer instrument chargeable on issue, and

• A substitute bearer instrument other than on issue.

Substitute bearer instrument chargeable on issue

In addition to providing the above information, evidence must also be forwarded to satisfy HMRC, Stamp Taxes that the new bearer instrument is given to the same owner in substitution for the bearer instrument previously held. This normally takes the form of a letter of request given to the company by the owner for the issue of the new instrument. This document usually requires full particulars of the holding to be given and identifies the instrument by quoting the number thereon.

In particular cases i.e. where the whole of an issue of new instrument is to take the place of an existing instrument, production of individual letters of request may be dispensed with and a certificate by a bank or other responsible agent that such letters have been received from holders of old instruments to whom the new instruments will be issued may be accepted.

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Substitute bearer instrument other than on issue

In addition to providing the above information, the substituted instrument should be dated the same day as or prior to, the date of maturity of the original instrument (if the original discloses a maturity date). If, however, the new instrument is of a later date than the maturity date, evidence must be forwarded to show that negotiations for renewal commenced prior to the maturity date. A copy of the correspondence between the parties or a copy of the circular issued to holders is normally satisfactory evidence of negotiation.

Both the original and substitute instruments must be in bearer form, and in broad terms, the two instruments should contain similar features.

The original bearer instrument must bear a particular stamp denoting that it has been produced to HMRC Stamp Taxes.

\*\* 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] (FTT) 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 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 .

For advice on processing and stamping substitute bearer instruments, see STSM065050

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