HMRC - STSM066010 - Introduction

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 instruments/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 FA99/SCH15/PARA1 are amended, HMRC will not seek to collect 1.5 per cent stamp duty on the issue of a bearer instrument.

Moreover, completion of a Stamps BI.2 form along with a remittance of stamp duty that would otherwise have been due under FA99/SCH15/PARA21(4), is no longer required.

Notwithstanding this position, failure to comply with the remaining statutory requirements described in paragraph 21(2) of FA99/SCH15 for information on, and forwarding to HMRC, the original bearer instrument, or under paragraph 23 of FA99/SCH15 for assessment and payment of stamp duty on the transfer in the UK of the stock constituted by or transferable by means of a bearer instrument, can render the company by or on whose behalf the instrument is issued and its agent for the purpose of the issue, liable to an interest charge and a penalty.

The imposition of a penalty can also apply to anyone who wilfully or negligently furnishes Stamp Taxes with false particulars regarding an issue of a bearer instrument.

The raising of an interest and/or penalty charge is covered in STSM066020, STSM066030, and STSM066040.

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