HMRC - STSM067030 - Bearer Instruments-SDRT: Issue Of A Bearer Security By A Non-United Kingdom Company

A bearer instrument stamp duty charge at the rate of 1.5 per cent arises when a sterling denominated bearer instrument relating to stocks and shares is issued by or on behalf of a United Kingdom (UK) company by virtue of FA99/SCH15.\*\*

The bearer instrument stamp duty charge also extends to a transfer on sale of a bearer issued by or on behalf of a company that is not incorporated in the UK, if the transfer is undertaken in, or relates to anything to be done in the UK, subject to any stamp duty relief being available under the provisions of FA99/SCH15.\*\*

But, unlike stamp duty, an agreement to transfer a security constituted by or transferable by means of a bearer instrument issued by or on behalf of a non-UK incorporated company, is not subject to a principal 0.5 per cent Stamp Duty Reserve Tax (SDRT) charge by virtue of FA86/S90 (3). The reason for no SDRT charge is because the security is not issued or raised by a company that is incorporated in the United Kingdom.

\*\* 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 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.

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