HMRC - STSM067060 - Bearer Instruments-SDRT: Depositary Receipt Issuers/Clearance Services- Non-Sterling Currency United Kingdom Bearer Instruments

The issue of a United Kingdom (UK) bearer instrument denominated in currency other than sterling is not subject to a stamp duty charge by virtue of FA99/SCH15/PARA17. Furthermore, no charge to stamp duty arises when a bearer instrument is issued to a depositary receipt scheme or a clearance service because no instrument of transfer is required.

Similarly, no 1.5 per cent Stamp Duty Reserve Tax (SDRT) charge under the provisions of FA86/S93 or FA86/S96 will generally arise on the issue, transfer or appropriation of a UK bearer instrument denominated in currency other than in sterling that is deposited with a depositary receipt scheme i.e. a depositary bank, or a clearance service.

But in response to situations in which mergers involving a UK company taking over a foreign company were arranged in such a way as to avoid 1.5 per cent charges on the issue of new shares in the UK company, a 1.5 per cent charge to SDRT is re-instated by virtue of FA86/S95 (2) and FA86/S97 (3) if the issue of the non-sterling currency UK bearer instrument does not ‘raise new capital’, and is not issued in exchange for an instrument raising new capital. The purpose of the exemption is to assist UK companies borrowing overseas, in currencies other than sterling.

A bearer instrument is treated as ‘raising new capital’ and therefore exempt from a 1.5 per cent SDRT charge if, and only if:

it is issued in conjunction with an issue of securities subscribed for solely in cash; or

it is issued in conjunction with the grant of rights to subscribe for securities which are granted for cash only consideration and exercisable only by means of a cash subscription; and

it relates to shares which carry a right to a dividend at a fixed rate but no other right to participate in profits; or

it relates to loan capital within the meaning of FA86/S78. It should be noted that loan capital means the definition in FA86/S78 (7) and not the narrower scope of ‘exempt’ loan capital to which the provisions of FA86/S79 (4) apply; and

the shares or loan capital cannot be converted or exchanged for chargeable securities other than non convertible fixed rate shares or non convertible loan capital.

By virtue of FA86/S95 (2C) and FA86/S97 (3C), a bearer instrument is considered to be issued in exchange for an instrument raising new capital if, and only if, it satisfies the new capital requirements and is exchanged for an instrument that satisfies those requirements.

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