HMRC - STSM067070 - Bearer Instruments-SDRT: Renounceable Letter Of Allotment

A rights issue usually involves a corporate body offering new allotted shares or bearer shares to its existing shareholders, in proportion to their existing holding. The offer gives a shareholder a right but not the obligation to subscribe for additional shares. The terms of a renounceable letter of allotment may provide the holder with an opportunity to renounce his/her rights in the letter before the offer closes, to a third person.

By virtue of FA99/SCH15/PARA16, there is no bearer instrument stamp duty charge on renounceable letters of allotment, letters of rights or other similar instruments in respect of a sterling denominated United Kingdom (UK) bearer security, where the rights are renounceable not later than six months after the issue of the letter or instrument.

While the issue of a renounceable letter of allotment is not chargeable to Stamp Duty Reserve Tax (SDRT), an agreement to transfer rights under a renounceable letter of allotment, letter of right, or other similar instrument in respect of a sterling denominated UK bearer security after its issue can, unlike stamp duty, be subject to a charge to SDRT at the rate of 0.5 per cent by virtue of FA86/S90 (3A) and FA86/S90 (3B). This is because ‘rights to allotments of or to subscribe for’ stocks shares and loan capital is a SDRT ‘chargeable security’ (by virtue of FA86/S99(3)(c) )

A higher 1.5 per cent SDRT charge FA86/S93 (4)(b) or FA86/S96 (2)(b) can apply where the rights in respect of a sterling denominated United Kingdom bearer security represented by an allotment letter are renounced and transferred to another person and the letter is simultaneously lodged with a depositary receipt issuer or clearance service system. The charge is calculated by reference to the consideration paid in money or money’s worth for the rights transferred.

While the provisions of FA86/S93(4)(a) or FA86/S96(2)(a) provide for a 1.5 per cent charge when, on take-up of the allotment, bearer shares are issued to the depositary receipt issuer or clearance service which holds a letter of acceptance or allotment, HMRC do not seek to collect the 1.5 per cent tax. This is because, 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), HMRC accepts that where shares and, by extension, bearer shares in a UK incorporated company are issued to a clearance service or to a depositary receipt issuer anywhere in the world, the imposition of a 1.5 per cent SDRT charge is incompatible with European Union law.

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