HMRC - VBNB60440 - Shares With The Right To Nominate A Member

Clubs may join membership supplies with a financial supply by attaching the right to nominate a person for membership to a share, bond, or debenture issue.

Someone who buys a share or stipulated number of shares is entitled to nominate someone to membership of the club. The successful nominee will then be expected to pay any subscription and other fees. There may or may not also be a requirement for an initial joining fee.

It might be argued that the payment for the shares is a separate supply because:

there is only a supply of shares. The right to nominate is said to be merely an inducement to attract people to a financial investment; and/or

there is a supply of shares and a right but the latter has no value or its value is sufficiently small to be disregarded upon a de minimis basis.

HMRC does not accept this argument for the reasons given at VBNB60430.

A club may also contend that the right to nominate is worthless. This is because:

the club committee can reject a share-holder’s nominee; or

any successful nominee pays fully for the supply of benefits by the subsequent subscription and other payments.

Before HMRC can consider these arguments we need to see a copy of the share prospectus or other offer document. These should set out in detail precisely what a share-purchaser gets. Also the documents should contain evidence of the value of the right.

You then need to consider these questions:

a. How does total proposed membership compare to the total number of shares being issued?

You will usually find that the total membership is the same as the number of shares issued or number of minimum multiple share-holdings. For example a club with a proposed 500 member ceiling may issue 2,500 shares that have to be bought in multiples of at least 5 shares. The 500 possible holdings is equal to the proposed membership even though more than 500 shares have been issued.

The significance here is that the right to nominate has a value. No one can become a member without holding shares or being nominated by a shareholder.

b. Does membership terminate when the shares are transferred to someone else?

As with a., this shows whether there is an inextricable link between purchasing shares and the end supply of membership benefits.

c. Are shareholders specifically entitled to nominate themselves?

The prospectus will often specifically state that it is anticipated that a share purchaser will exercise their right of nomination in favour of themselves.

It is extremely unlikely that someone would have subscribed for shares if their membership were likely to be refused. Even if that were to happen the share purchaser still has a valuable, substantive right because they can continue nominating potential members until someone has been accepted.

d. Is the right to nominate attached to the share or a debenture/bond issued with the share?

Some clubs have issued shares and debentures simultaneously as single units. A purchaser has to buy the complete unit. A club may then say that, of the total purchase price for the unit, so much is for the share and the remainder is for the debenture.

The nomination right will be said to be attached solely to the debenture, which will then be arbitrarily allocated a small fraction of the total purchase price. It will then be said that the larger sum is attributed to the share issue.

The flaw in this argument is that the standard-rated nomination right cannot be acquired with the debenture alone. The purchase of the share element of the unit is as compulsory as the debenture.

HMRC will therefore not accept that the debenture price alone determines the value of the right.

You must look at the consideration supplied for the whole unit. Each unit consists of three distinct supply elements:

a share;

a debenture; and

a right of nomination.

An apportionment may be possible under section 19(4) of the VAT Act 1994 if the same body supplies the shares and the debentures. However, if the supplies are made by separate suppliers it is not always possible to do this.

Any difficulties with this issue should be referred by VAT staff to Registration Policy in VATAPPS. The normal route for HMRC staff for this is through the General Advice Request (GAR) or Technical Advice Request (TAR) as outlined in VPOLADV

When you have thought about the questions at a. to d. you might decide that the nomination right does have significant value. If this is the case, the money paid for the share constitutes monetary consideration both for the share and the nomination right.

The next issue to consider is the valuation issue. You will find guidance about this in VBNB60600.

Previous page

Next page