

Legal Updates & News

Legal Updates

Abolishment of the UK SDRT Charge for Clearing Systems

October 2009

HM Revenue & Customs has announced the abolition of the 1.5% Stamp Duty Reserve Tax (SDRT) on the entry of UK shares and some types of debt securities into certain clearing systems. This comes after the decision of the European Court of Justice (ECJ) yesterday in *HSBC Holdings plc, Vidacos Nominees Ltd v HMRC* ruling that the UK tax is unlawful under EU law on the basis that it infringes on EU principles of the free movement of capital. This case is the latest in a series of decisions against the UK government, the most notable being the ECJ decision in *Marks & Spencer plc v David Halsey* (HM Inspector of Taxes) on 7 April, 2005.

The decision of the ECJ yesterday was a success for HSBC who can now recover £27 million of UK SDRT it was charged in 2000 when it acquired French Bank CCF.

By way of background, in the UK, SDRT is charged at a rate of 1.5% when UK shares and certain types of debt securities are transferred or issued to the provider of a clearance service. Once SDRT has been charged, the shares can be subsequently sold free of SDRT. Article 11 of the Capital Duty Directive (69/335/EEC), however, prohibits the imposition of taxes on the issue of securities by a company and the 1.5% charge was found to be in breach of this provision. Going forward, HMRC remains committed to applying stamp duty on transfers and Article 12 permits EU member states to charge duty on the transfer of these securities.

It is also expected that the prohibition on tax on an issue of shares will equally apply in respect of UK companies issuing shares to a depository bank, which then issues depository receipts (ADRs) to investors in the United States. Such an issue attracts a similar 1.5% SDRT charge.

Companies that have paid the 1.5% SDRT charge in the past should consider making a claim for repayment, ideally within the normal 6 year time limit for claims. Also, in respect of future transactions, the decision leaves a gap in the UK stamp duty system where the tax may be avoided altogether by first depositing shares into a suitable clearing system, and then later being sold free of any stamp duty charge. We would expect, however, that this gap will quickly be closed by HMRC broadening the rules to impose a 0.5% stamp duty on all transfers.

Related Practices:

- ▶ [Corporate](#)
- ▶ [Mergers & Acquisitions](#)
- ▶ [Tax](#)

For more information please contact [Trevor James](#) or [Sonia Girgis](#).