

Stamp Duty Reserve Tax (SDRT): claims for refund following the decision of the European Court of Justice HSBC Holdings and Vidacos Nominees Ltd v HMRC

Background

On 1 October 2009, the European Court of Justice released its judgment in Case C-569/07 HSBC Holdings Ltd and Vidacos Nominees v The Commissioners for HM Revenue & Customs. In the light of the ruling HM Revenue & Customs (HMRC) accepts that Article 11(a) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985 (now Council Directive 2008/7/EC) ('the EC Capital Directive'), must be interpreted as meaning that it prohibits the levying of a duty such as the charge to SDRT imposed by section 96 Finance Act 1986 on the issue of shares into a Community clearance service.

Implications

HMRC invites statutory claims for repayment under Regulation 14 of the Stamp Duty Reserve Tax Regulations 1986 ('the SDRT Regulations') from persons who pursuant to sections 93 or 96 Finance Act 1986 have **paid** SDRT pursuant to the issue of shares in a United Kingdom incorporated company to a depositary receipt issuer or a clearance service located within the European Union.

Time limit for repayment claims

Regulation 14 of the SDRT Regulations requires any claim for a refund of SDRT to be sent to HMRC Stamp Taxes within a period of six years beginning with the later of the date on which the payment was made and the relevant accountable date for payment of SDRT under the SDRT Regulations. Any claims made after the expiry of that period will be time-barred.

Interest on SDRT refunds

Where the amount of SDRT to be refunded is £25 or more, interest calculated at the rate applicable under section 178 Finance Act 1989 will be paid on the amount of any repayment, calculated from the time at which the SDRT was paid.

Making a Claim

In the first instance the information and documents listed in the Appendix to this statement should accompany any claim for repayment. It may be that in certain circumstances further information is required by HMRC before a given claim will be processed.

Claims should state the subject matter as 'Claim made as a result of the ECJ decision in HSBC and Vidacos Nominees v HMRC' and should be addressed to Adam Shooter at HMRC Stamp Taxes, 9th Floor, City Centre House, Union Street, Birmingham B2 4AR.

Appendix

Information and documents required in support of a claim to SDRT paid at 1.5 per cent on the issue of shares to a clearance service or depositary receipt issuer within the EU

A claim must include the information and documents set out below:

1. **Transactions reported to and settled in the CREST system:**
 - a) The reason(s) to support the request for a refund of SDRT, which includes copy evidence/information to demonstrate that shares were issued (rather than transferred),
 - b) the CREST transaction reference ID,
 - c) the trade date,
 - d) the intended settlement date,
 - e) the full name of issuer,
 - f) the full name of purchaser/transferee i.e. name of clearance service (or depositary receipt issuer) within the European Union (see below),
 - g) the full name and description of security,
 - h) the share quantity,
 - i) the agreed price per share,
 - j) the consideration paid (if any)
 - k) the amount of SDRT debited in CREST,
 - l) a signed declaration (see below)

2. **Transactions reported outside of the CREST system to HMRC Stamp Taxes:**
 - a) The reason(s) to support the request for a refund of SDRT, which includes copy evidence/information to demonstrate that shares were issued (rather than transferred),
 - b) the trade date,
 - c) the intended settlement date,
 - d) the full name of issuer,
 - e) the full name of purchaser/transferee, i.e. name of clearance service (or depositary receipt issuer) within the European Union (see below),
 - f) the full name and description of security,
 - g) the share quantity,
 - h) the agreed price per share,
 - i) the consideration paid (if any),
 - j) the amount of SDRT originally paid,
 - k) the date when notification and payment of SDRT was sent to HMRC Stamp Taxes,
 - l) the original (**not** a paper copy, fax, facsimile or email of the original) SDRT receipt issued by Stamp Taxes,
 - m) A signed declaration (in the attached form)

A declaration must be included in the claim which has been signed by an appointed officer of the claimant organisation to confirm that 1.5 per cent SDRT has been paid on the issues of UK securities in respect of the transactions outlined in the claim and that no earlier claim and subsequent

refund (either partially or in full) in respect of those transactions has been received by the organisation from HMRC Stamp Taxes or Euroclear UK and Ireland.

EU Clearance Services and Depositary Receipt Issuer

Nominee	Clearance Service
Vidacos Nominees Ltd	Clearstream Frankfurt Germany (formerly DBC)
Euroclear 2	Euroclear Bank (formerly Euroclear France)
Askas Nominees Ltd	Amsterdam Stock Exchange (KAS Associates)
VPC	Swedish CSD
Necigef	Netherlands CSD
HSBC	VaerdiPapircentralen (VP) – Danish Clearance Service

Depositary Receipt Issuer (within the European Union)

HSBC Issuer Services (Depositary) Nominees Ltd

Company Declaration

Declaration

I declare that, in relation to the claim for repayment from HMRC of Stamp Duty Reserve Tax (SDRT), all of the following is true in relation to each and every aspect of the claim:

- That the SDRT to be reclaimed was paid on the issue of UK securities into a clearance service or depositary receipt issuer established in a European Union (EU) member state (and that the country was a member of the EU at the time the securities were issued into the clearance service or depositary receipt issuer),
- That the SDRT to be reclaimed was paid at the rate of 1.5 per cent,
- That the SDRT claim is made within 6 years beginning with the later of the date on which the payment was made, and the relevant accountable date ,
- That no previous refund of SDRT has been made either by HMRC or Euroclear UK and Ireland, whether in part or fully, in respect of the transactions to which this refund of SDRT is claimed.

Signature:

Name (printed):

Position held in claiming organisation:

Date: