

European Union: ECJ rules on U.K. Stamp Duty Reserve Tax

The European Court of Justice (ECJ) issued its decision in the case of *HSBC Holdings and Vidacos Nominees* (Case C-569/07) on 1 October 2009, concluding that the U.K. Stamp Duty Reserve Tax (SDRT) on the creation of capital (the issue of shares) violates article 11 of the EU Capital Duty Directive.

Under the facts of the case, HSBC, a U.K.-resident company, acquired a French bank, partly in exchange for the issue of shares. As the shares were issued into the French stock exchange clearance system, U.K. SDRT was levied in the amount of GBP 27 million. The U.K. imposes an SDRT entry charge on share transactions involving European clearance services and American Depositary Receipts (ADRs) at a rate of 1.5%, three times the standard transfer rate of 0.5%. The ECJ concluded that the U.K. charge infringed the Capital Duty Directive and was therefore unlawfully levied. The Court noted that the Directive provides for complete harmonization of the cases in which Member States may levy indirect taxes on the raising of capital. Where a matter is harmonized at the Community level, national measures must be assessed in light of the provisions of that harmonizing measure and not those of the EC Treaty.

The U.K. tax authorities have accepted the ruling in relation to share issues into EU clearance systems. However, they do not accept that the decision covers non-EU clearance systems or ADRs and will amend the law to prevent shares intended for, say, the U.S. market being routed via an EU clearance service. Companies that have paid SDRT on the issue of shares into an EEA clearance service should consider seeking refunds. As article 11 of the Directive is arguably an absolute prohibition, there would also appear to be opportunities for reclaiming SDRT charged on the issue of U.K. shares in exchange for ADRs.

— Michael Quinlan (London)
Partner
Deloitte United Kingdom
+44 (20) 7007 0889
mquinlan@deloitte.co.uk

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu, a Swiss Verein, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in 140 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte's 165,000 professionals are committed to becoming the standard of excellence.

Deloitte's professionals are unified by a collaborative culture that fosters integrity, outstanding value to markets and clients, commitment to each other, and strength from cultural diversity. They enjoy an environment of continuous learning, challenging experiences, and enriching career opportunities. Deloitte's professionals are dedicated to strengthening corporate responsibility, building public trust, and making a positive impact in their communities.

Disclaimer

This publication contains general information only, and none of Deloitte Touche Tohmatsu, its member firms, or its and their affiliates are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

None of Deloitte Touche Tohmatsu, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on this publication.