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.

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