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**Overpaid UK Stamp Duty Reserve Tax?****RSVP HMRC's invitation!**

21 January 2010

**Summary**

On 15 January 2010, Her Majesty's Revenue & Customs ("HMRC") published an invitation to taxpayers to reclaim tax paid in respect of unlawful charges to stamp duty reserve tax ("SDRT").

This invitation responds to the recent ruling of the European Court of Justice ("ECJ") in *HSBC Holdings plc, Vidacos Nominees Ltd v. The Commissioner of HMRC, Case C-569/07 ("HSBC")*, that the 1.5 percent "season ticket" SDRT charge on the issue of shares by a UK incorporated company into a clearance system within the European Union is contrary to the EU Capital Duty Directive 69/335/EEC.

It is thought that potentially millions of pounds may be reclaimed by UK listed companies.

**Who is invited?**

HMRC's invitation is addressed only to those companies which have paid the 1.5 percent charge on the issue of UK shares into a clearance or depository receipt system in the EU.

Potential gatecrashers to the party include companies who have paid the 1.5 percent charge on: (i) transfers of existing shares into EU clearance or depository receipt systems, (ii) the issue/transfer of shares into non-EU clearance or depository receipt systems, such as US ADR systems, and (iii) the issue of bearer instruments. The scope of the *HSBC* decision is unclear.

**Are there time limits?**

Those who wish to accept the invitation are subject to a statutory limitation period of approximately six years from the date on which the

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SDRT payment was made (SI 1986/1711, Regulation 14(2)). The HMRC note sets out details of the reclaim process.

It may, however, be possible to bring parallel/additional restitutionary claims in the High Court (within six years from the date of the ECJ ruling) going as far back as 1986 when SDRT was first introduced. Another potential advantage of such common law claims is that SDRT repayments may carry compound interest which can significantly increase recovery.

### ***Act now***

Claims for repayment of the unlawful SDRT "season ticket" charge should be made as soon as possible, including "protective" claims where the scope of the ECJ ruling in *HSBC* is unclear, or the payments were made outside the statutory six year time limit.

Recently announced and forthcoming changes introduce "blocking" measures in relation to the recovery of overpayments of other taxes. This confirms the UK Government's intention of stemming losses of revenue as a result of tax repayments. HMRC may try to extend such "blocking" measures to SDRT in the near future, although the legality of such measures may be questionable under European Community law principles.

*For more information, or specific advice relating to any of the above, please contact Judith Harger at +44 20 7459 5185 or [jharger@dl.com](mailto:jharger@dl.com), Graham Brough at +44 20 7459 5230 or [gbrough@dl.com](mailto:gbrough@dl.com), or Farheen Raza at +44 20 7459 5130 or [fraza@dl.com](mailto:fraza@dl.com), or your Dewey & LeBoeuf relationship attorney.*