

Stamp Duty on Transfers of Irish Securities

RELIEFS FOR CERTAIN MARKET PARTICIPANTS

Intermediary Relief

Central Counterparty Relief

GUIDANCE NOTES

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1. Introduction

1.1 Section 109 of the Finance Act 2007 contained provisions that modernised the interaction of the stamp duty code with the business of member firms of exchanges and other markets when dealing in Irish securities. The purpose of these Guidance Notes is to—

- summarise the relevant changes to the Irish stamp duty code – *paragraph 2*,
- set out in detail the relief for “recognised intermediaries” – *paragraph 3*,
- set out how a member firm of an exchange or market is to be approved as a “recognised intermediary” by the Revenue Commissioners – *paragraph 4*,
- set out how a recognised intermediary claims stamp duty relief in CREST – *paragraph 5*,
- set out in detail the relief for transfers in a settlement chain involving a Central Counterparty – *paragraph 6*, and
- set out how transfers involving the Central Counterparty are dealt with in CREST - *paragraph 7*.

2. Summary of reliefs-

2.1

- exemption for market makers on the Irish Stock Exchange Limited (ISE) and the London Stock Exchange plc (LSE) – section 74 of the Stamp Duties Consolidation Act 1999 - ceased to have effect;
- relief for member firms (known as “broker/dealer relief”) – old section 75 of the Stamp Duties Consolidation Act 1999 - ceased to have effect;
- “closings relief” – section 73(1)(b) of the Stamp Duties Consolidation Act 1999 – ceased to have effect;
- stamp duty relief – section 75 of the Stamp Duties Consolidation Act 1999 – is available for “recognised intermediaries”; and
- section 75A of the Stamp Duties Consolidation Act 1999 – for exempting certain transfers in a settlement chain involving a Central Counterparty.

3 Recognised Intermediary

The statutory provisions

3.1 Stamp duty relief is available to a recognised intermediary in accordance with section 75 of the Stamp Duties Consolidation Act 1999 (inserted by section 109(1)(d) of the Finance Act 2007). A copy of the text is set out in *Annex I*.

3.2 The core provision of section 75 is in subsection (3). This subsection grants an exemption from stamp duty on the transfer of securities to a person or a person's nominee, where—

- the person is a member firm of an exchange or market – *see paragraph 3.3, and*
- the person is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the exchange or market – *see paragraph 3.4, and*
- the transfer of securities is effected **either**—
 - on the exchange or market in respect of which the intermediary is a recognised intermediary, *or*
 - on any exchange or market operated by the Irish Stock Exchange Limited (e.g. the ISE Main Market and IEX) or the London Stock Exchange plc (e.g. the LSE Main Market and AIM), *or*
 - on any other exchange or market designated by the Revenue Commissioners for this purpose in regulations - *see paragraph 3.5, and*
- the transfer is not effected in connection with excluded business – *see paragraph 3.6.*

3.3 *a member firm of an exchange or market*

“Member firm” means —

- a member of the Irish Stock Exchange Limited,
- a member of the London Stock Exchange plc, or
- a member of such other exchange or market that is designated for this purpose by the Revenue Commissioners in regulations, that they are empowered (under section 75(5)), to make.

Any entity that seeks to be designated as an exchange or market, for the purposes of its members being entitled to seek approval as a recognised intermediary, should contact the Revenue Commissioners at the address set out in *paragraph 4.4.*

3.4 *the person is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the exchange or market*

An “intermediary” means a person who carries on a bona fide business of dealing in securities. The entering into derivative agreements referenced directly or indirectly to securities is treated, for the purposes of the definition of “intermediary” as the carrying on of a business of dealing in securities. The purchase of securities to hedge these derivative agreements would be considered as part of the carrying on of that business.

The Revenue Commissioners made arrangements with the Irish Stock Exchange Limited, the London Stock Exchange plc, and any other exchange or market designated by the Revenue Commissioners, by which a member of those exchanges or markets, who is an intermediary, can be approved by the Revenue Commissioners as a recognised intermediary in relation to the exchange or market concerned – *see paragraph 4.4.*

3.5 *the transfer of securities is effected either—*

- *on the exchange or market in respect of which the intermediary is a recognised intermediary, or*
- *on any exchange or market operated by the Irish Stock Exchange Limited (e.g. the ISE Main Market and IEX) or the London Stock Exchange plc (e.g. the LSE main Market and AIM), or*
- *on any other exchange or market designated by the Revenue Commissioners for this purpose in regulations; on or after 1 November 2007 regulated markets, multilateral trading facilities (MTFs) or systematic internalisers in each case as defined in the Markets in Financial Instruments Directive¹ (MiFID) may be so designated.*

A transfer of securities is effected on an exchange or market if—

- it is subject to the rules of the exchange or market, and
- it is reported to the exchange or market, in accordance with the rules of that exchange or market.*

For example, where a member firm of the ISE is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the ISE, that member firm may, where appropriate, claim an exemption from stamp duty on a transfer of Irish securities to it even if that transfer is effected on the LSE or on another exchange or market designated by the Revenue Commissioners for this purpose.

***Note:** Where the rules of an exchange or market permit reporting to or via a third party entity, provided that reporting in this way is in accordance with the rules of that exchange or market, this will be treated as being reported to the exchange or market for these purposes. The requirement that a transaction be reported to the exchange or market in accordance with the rules of the exchange or market will be treated as satisfied if the transaction is reported in accordance with the MiFID.

¹ Directive 2004/39/EC of April 2004

3.6 *the transfer is not effected in connection with excluded business*

3.6.1 For an exemption from stamp duty to be available to a recognised intermediary on any particular transfer to it of Irish securities, as a general rule, it is necessary that the transfer to it must be in connection with the intermediary's business of dealing in securities and not in connection with various business activities termed "excluded business" carried on by the intermediary. That does not mean that the intermediary cannot carry on an excluded business. However, any transfer of Irish securities to the intermediary in connection with such business is not relieved from stamp duty

3.6.2 Excluded business means any business which—

- consists in the making or managing of investments,
- consists in providing services for connected persons,
- consists in insurance business, or assurance business,
- consists in administering, managing or acting as trustee in relation to pension business,
- consists in operating or acting as trustee in relation to collective funds.

As a general rule, relief is only available to a recognised intermediary where its acquisition of Irish securities is not in connection with any of these businesses carried on by the intermediary.

3.6.3 *The making or managing of investments*

The category of "excluded business" which "consists in the making or managing of investments" is designed to ensure that the relief is available to an intermediary on the acquisition of Irish securities when it is operating in the course of its business of dealing in securities, but not when it is itself an end-investor.

For example, the acquisition by a recognised intermediary of Irish securities which are then held in an appropriately segregated trading book, with a view to later sale-on, would not be regarded as an acquisition in connection with a business which "consists of the making or managing of investments", notwithstanding that the securities might be held by the intermediary for some time.

Furthermore, the acquisition by an intermediary of Irish securities, in the course of its business of dealing in securities, in order to hedge derivative contracts which it has made, would not be regarded as being in connection with a business of "the making or managing of investments".

3.6.4 *Providing services for connected persons*

If the acquisition of Irish securities by the intermediary is for or on behalf of a connected person, then the intermediary's acquisition is not an acquisition in connection with its business of dealing in securities – here the intermediary is acting as an agent or nominee. Such acquisitions are not relieved from stamp duty.

However, the fact that a counterparty is a party connected with an intermediary does not in itself mean that an acquisition of securities by an intermediary is connected with excluded business, provided that the intermediary is acting in the course of its business of dealing in securities.

For example, acquisitions of securities by an intermediary from a connected person, and sales of securities by an intermediary to a connected person, will not be considered to be in connection with excluded business simply by virtue of the fact that the counterparty is a connected person, provided that the transfers are effected on terms equivalent to those which would be entered into between the intermediary directly with the market.

As a further example, the acquisition by an intermediary of Irish securities, in the course of its business of dealing in securities, in order to hedge derivative contracts (or other similar arrangements) which it has entered into with a connected person would not be regarded as providing, or as being in connection with providing, services for the connected person, provided that such contracts (or such other similar arrangements) are entered into on terms equivalent to those which would be entered into with a person acting at arm's length.

4 Approval by the Revenue Commissioners of a member firm of an exchange or market as a “recognised intermediary”

4.1 The procedure whereby a member firm of the Irish Stock Exchange Limited, the London Stock Exchange plc or any other exchange or market designated by the Revenue Commissioners for this purpose is approved by the Commissioners as a recognised intermediary is set out in *paragraph 4.4*.

4.2 Any entity that seeks to be designated as an exchange or market, for the purposes of its members being entitled to seek approval as a recognised intermediary, should contact the Revenue Commissioners at the address set out in *paragraph 4.4*.

4.3 Where a member firm of an exchange or market has been approved by the Revenue Commissioners as a recognised intermediary in relation to that exchange or market, it is not necessary that a separate recognition be sought in relation to any other exchange or market of which that firm is also a member where the other exchange or market is the ISE, LSE, or a designated exchange or market – *see paragraph 3.5*.

Procedure for approval as a “recognised intermediary”

4.4 The Irish Stock Exchange Limited, the London Stock Exchange plc or, as the case may be, a designated exchange or market will forward to its member firms these Guidance Notes to which will be attached an application form for approval by the Revenue Commissioners of a member firm as a “recognised intermediary”. The member firm must satisfy itself², by reference to the legislation (*see Annex 1*) and explanatory notes (*see paragraph 3*), that it falls

² Where a member firm is not certain that it is entitled to apply for approval as a “recognised intermediary” it should seek clarification from the Crest Unit.

within the statutory definition of an intermediary and, on having done so, completes the application form and forwards it to:

Crest Unit
Large Cases Division
Office of the Revenue Commissioners
Ballagh House
73/79 Lower Mount Street
Dublin 2
Ireland
Telephone + 353 1 6087819
Email crest@revenue.ie

4.5 The Revenue Commissioners will advise the applicant, in writing, of the outcome of the application. From the “*commencement date*” a member firm who has been approved as a “recognised intermediary” may claim stamp duty relief as a recognised intermediary on qualifying transfers (i.e. not effected in connection with excluded business) to it of Irish securities whether such transfer takes place on the Irish Stock Exchange Limited, the London Stock Exchange plc or on any other exchange or market designated by the Revenue Commissioners.

5. Claiming intermediary relief in CREST

General

5.1 Irish stamp duty is a transaction-based duty. A liability to stamp duty arises on the *transfer* of securities. The person liable and accountable for stamp duty in all cases is the transferee. In general stamp duty should be paid on the market leg of a trade (however, *see paragraph 5.4*). The CREST system operates on the basis that a stamp duty liability arises on a transfer unless the CREST participant indicates otherwise by inputting additional information.

5.2 An automated mechanism to claim Irish intermediary relief is accommodated in CREST. The automated relief is currently not applied to over the counter [OTC] trades.

5.3 The data to be input by a CREST user claiming intermediary relief on a transfer to it of Irish securities is as follows:

➤ **Agent Indicator (P)**

The Agent Indicator denotes the capacity in which the participant is acting. Intermediary relief is only available to a recognised intermediary acting in a Principal capacity buying securities onto its own books.

➤ **Stampable consideration (Value input / No value input)**

A recognised intermediary taking a transfer of Irish securities in a Principal capacity and claiming intermediary relief on such transfer should continue to input this field in line with their current practice (i.e. 0.00 or value).

CREST Inputs

5.4 Where the receiving broker (transferee) is approved as a recognised intermediary, the inputs required in the scenarios outlined below will apply:

(a) Receiving broker purchasing securities from the market in a Principal capacity and the transaction is eligible for intermediary relief.

AGENT INDICATOR	TRANSACTION STAMP STATUS	STAMPABLE CONSIDERATION	Effect of input
P	NONE	Input value or 0.00	<i>Broker purchasing as Principal claims intermediary relief</i>

(b) Receiving broker purchasing securities from the market in a Principal capacity elects to pay stamp duty as the trade is not eligible for intermediary relief (*viz. connected to excluded business*).

AGENT INDICATOR	TRANSACTION STAMP STATUS	STAMPABLE CONSIDERATION	Effect of input
P	1	Input value or 0.00	<i>Broker purchasing as Principal pays stamp duty at 1% of stampable consideration</i>

(c) Custodians act in an agency capacity and may not input a ‘Q’ flag to claim stamp duty exemption in CREST, *unless acting on behalf of a client who is entitled to claim intermediary relief*. If the underlying client is a recognised intermediary, the custodian may exceptionally input Agent Indicator ‘P’ and a stamp status flag ‘Q’.

AGENT INDICATOR	TRANSACTION STAMP STATUS	STAMPABLE CONSIDERATION	Effect of input
P	Q	Input value or 0.00	<i>Custodian claims stamp duty relief on instruction of underlying client who is a recognised intermediary.</i>

It should be noted that if the custodian is not itself approved by the Revenue Commissioners as a recognised intermediary, this input will trigger periodic audit queries from the Revenue Commissioners. The custodian should therefore retain details to identify the underlying client, along with a copy of the client’s instruction to use the ‘Q’ flag on their behalf in relation to each such transaction.

Settlement Agents

5.5 Settlement Agents may facilitate trades in CREST for other participants who may or may not be recognised intermediaries. If a Settlement Agent facilitates a claim to intermediary relief it must, therefore, maintain details sufficient to verify that such exempted transactions relate to participants who are recognised intermediaries.

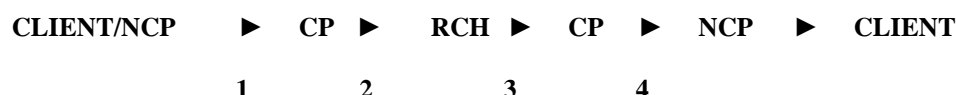
Broker as Transferor

5.6 A broker as transferor should *not* input TSS exemption flags ‘Y’ or ‘Q’ as it is a matter for the transferee to allege the appropriate flag.

6 Settlement chain involving a Central Counterparty

6.1 Section 75A of the Stamp Duties Consolidation Act 1999 inserted by section 109(1)(d) of the Finance Act 2007. The text of that section is set out in *Annex II*. The interposition of a Central Counterparty (CCP), or a clearing member of a CCP, in the settlement chain gives rise to stamp duty charges unless appropriate relief is available. Section 75A provides such relief.

6.2 Section 75A provides for a stamp duty exemption for each transferee in Legs 1, 2, 3 and 4 (in the settlement chain shown below) so long as that transferee is required, on receipt, to transfer the securities concerned to another person under a matching contract.



NCP = a non-clearing participant; CP = a clearing participant; RCH = a recognised clearing house

6.3 Provision has also been made for a stamp duty exemption in respect of transfers from the NCP directly to the RCH and from the RCH directly to the NCP where the transferee is required, on receipt, to transfer the securities concerned to another person under a matching contract.

6.4 An additional feature is where the CP fails to deliver securities to the RCH in Leg 2 and the RCH purchases the securities from another person. In that case, the RCH is exempt from stamp duty on that purchase and while required to transfer the securities to the next person in the settlement chain, need not do so under a matching contract.

6.5 Eurex Clearing AG, LCH Clearnet Limited and SIS SegalInterSettle AG are recognised clearing houses by virtue of section 75A. In addition, the Revenue Commissioners may designate other clearing houses as “recognised” clearing houses. A clearing house seeking such designation should contact the Revenue Commissioners at the address set out in *paragraph 4.4*.

7. Central Counter Party Transactions and CREST

The CREST inputs required in the settlement chain, are as follows:

- The Recognised Clearing House (RCH) receives securities from the Non-Clearing Participant (NCP) (*see paragraph 6.3*). The CREST system automatically exempts this transaction.
- In the event that the Clearing Participant (CP) is part of the settlement chain in CREST, and receives securities from the NCP, - the transfer to the CP is exempt from stamp duty and the CP should input the TSS 'J' flag on this transaction. The CP must hold details of the matching contract on file for possible Revenue inspection. When the CP transfers on the securities to the RCH, the CREST system automatically exempts this transaction.
- The CP or, as the case may be, the NCP (*see paragraph 6.3*) receives securities from the RCH. The transfer to the CP/NCP is exempt from stamp duty and the CP/NCP should input the TSS 'J' flag on this transaction. The CP/NCP must hold details of the matching contract on file for possible Revenue inspection.

ANNEX I

Relief for
intermediaries.

75.—(1) In this section—

“excluded business” means any of the following:

- (a) any business which consists in the making or managing of investments;
- (b) any business which consists in, or is carried on for the purpose of, providing services to persons who are connected with the person carrying on the business; and the question of whether a person is connected with another person shall be determined in accordance with the provisions of section 10 of the Taxes Consolidation Act 1997;
- (c) any business which consists in insurance business, or assurance business within the meaning of section 3 of the Insurance Act 1936;
- (d) any business which consists in administering, managing or acting as trustee in relation to, a pension scheme, or which is carried on by the administrator, manager or trustee of such a scheme, in connection with or for the purposes of the scheme;
- (e) any business which consists in operating, or acting as trustee in relation to, a collective investment scheme (within the meaning of section 88), or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme;

“intermediary” means a person who carries on a *bona fide* business of dealing in securities and for the purpose of this definition, the entering into derivative agreements referenced directly or indirectly to securities shall be treated as carrying on a business of dealing in securities;

“member firm” means a member of —

- (a) the Irish Stock Exchange Limited,
- (b) the London Stock Exchange plc, or
- (c) any other exchange or market which is designated for the purposes of this section in regulations made by the Commissioners;

“operator”, in relation to a collective investment scheme, means an administrator, manager or other such person who is authorised to act on behalf of, or in connection with, or for the purposes of, the scheme and habitually so acts in that capacity;

“recognised intermediary”, in relation to an exchange or market, means a member of the exchange or market who is an intermediary

and who is approved by the Commissioners as a recognised intermediary in accordance with arrangements made by the Commissioners with the exchange or market.

(2) For the purposes of this section, a transfer of securities is effected on an exchange or market if—

- (a) it is subject to the rules of the exchange or, as the case may be, the market, and
- (b) it is reported to the exchange or, as the case may be, the market, in accordance with the rules of the exchange or market concerned.

(3) Stamp duty shall not be chargeable on an instrument of transfer whereby any securities are on the sale of such securities transferred to a person or a nominee of such person, where—

- (a) the person is a member firm of an exchange or market,
- (b) the person is a recognised intermediary in relation to the exchange or market,
- (c) the transfer of securities is effected—
 - (i) on the exchange or, as the case may be, the market,
 - (ii) on any exchange or market operated by the Irish Stock Exchange Limited or the London Stock Exchange plc, or
 - (iii) on any other exchange or market designated by the Commissioners for the purposes of this section,

and

- (d) the transfer of securities is not effected in connection with an excluded business.

(4) (a) The Commissioners may, from time to time, make arrangements with an exchange or a market setting out how a member firm is to be approved by the Commissioners as a recognised intermediary.

(b) Every recognised intermediary shall, whenever and wherever required to do so, make available for inspection by an officer of the Commissioners authorised for that purpose, all books, documents and other records in the possession of or under the control of, the recognised intermediary, as are relevant for the purposes of the Commissioners ensuring compliance by the intermediary with this section.

(5) (a) The Commissioners may, from time to time, make regulations to designate an exchange or market for the purposes of this section.

(b) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

ANNEX II

Relief for
clearing
houses.

75A.— (1) In this section—

“clearing house” means a body or association which provides services related to the clearing and settlement of transactions and payments and the management of risks associated with the resulting contracts and which is regulated or supervised in the provision of those services (in this section referred to as “clearing services” by a regulatory body, or an agency of government, of a Member State of the European Communities;

“clearing participant” means a member of a recognised clearing house who is permitted by the clearing house to provide clearing services in connection with a transfer of securities;

“client” means a person who gives instructions for securities to be sold;

“nominee” means a person whose business is or includes holding securities as a nominee for a recognised clearing house acting in its capacity as a provider of clearing services or, as the case may be, a nominee for a clearing participant or a non-clearing participant;

“non-clearing participant” means a member of an exchange or market when not acting as a clearing participant;

“recognised clearing house” means—

- (a) Eurex Clearing AG,
- (b) LCH.Clearnet Limited,
- (c) SIS SegInterSettle AG, or
- (d) any other clearing house designated as a recognised clearing house for the purposes of this section by regulations made by the Commissioners.

(2) Stamp duty shall not be chargeable on an instrument of transfer whereby any securities are on the sale of such securities transferred in the circumstances referred to in subsection (3) where the conditions referred to in subsection (4) are satisfied.

(3) The circumstances referred to in this subsection are that the transfer of securities is—

- (a) from a clearing participant or a nominee of a clearing participant, to another clearing participant or a nominee of that other clearing participant,
- (b) from a client or a non-clearing participant or a nominee of a non-clearing participant, to a clearing participant or a nominee of a clearing participant,

- (c) from a non-clearing participant or a nominee of a non-clearing participant or a clearing participant or a nominee of a clearing participant, to a recognised clearing house or a nominee of a recognised clearing house,
- (d) from a person other than a clearing participant, to a recognised clearing house or a nominee of a recognised clearing house, as a result of a failure by a clearing participant to fulfil that clearing participant's obligations in respect of the transfer of securities to the recognised clearing house or a nominee of the recognised clearing house,
- (e) from a recognised clearing house or a nominee of a recognised clearing house, to a clearing participant or a nominee of a clearing participant or a non-clearing participant or a nominee of a non-clearing participant, or
- (f) from a clearing participant, or a nominee of a clearing participant to a non-clearing participant or a nominee of a non-clearing participant.

(4) The conditions referred to in this subsection are that the person to whom the securities are transferred under a transfer of securities referred to in paragraphs (a) to (f) of subsection (3) (in this section referred to as the “relevant transfer” is required on receipt of those securities to transfer securities under a matching transfer to another person, or in the case of a relevant transfer falling within paragraph (d), would have been so required if the failure referred to in that paragraph had not occurred.

(5) For the purposes of subsection (4), a “matching transfer” means a transfer of securities under which—

- (a) the securities transferred are of the same kind as the securities transferred under the relevant transfer, and
 - (b) the number of and consideration paid for, the securities transferred are identical to the number of and consideration paid for, the securities transferred under the relevant transfer.
- (6) (a) The Commissioners may, from time to time, make regulations to designate a clearing house as a recognised clearing house for the purposes of this section.

(b) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

