Stamp Duties Consolidation Act 1999

Part 7: Exemptions and Reliefs from Stamp duty

Part 7: Chapter 1: Instruments in respect of which a self-assessed Stamp Duty Return must be filed under the eStamping system in order to obtain exemption or relief

7.1 Section 79 of the SDCA

Conveyances and transfers of property between certain bodies corporate

This section provides for a relief from stamp duty on certain transfers of property in a corporate group.

(i) Body corporate

The term "body corporate" is not defined in legislation, however it includes:

- Limited and Unlimited companies,
- Foreign companies,
- Industrial and provident societies,
- Building societies,
- Incorporated associations.

Foreign bodies corporate which do not have a capital structure based on share capital may also claim the relief by reference to section 79 (9), provided they have a capital structure which is equivalent to a share capital structure and also comply with all other conditions of the relief.

(ii) Heads of charge

The relief is confined to instruments chargeable under or by reference to the heads of charge

- "Conveyance or Transfer on sale of any stocks or marketable securities"
- "Conveyance or Transfer on sale of a policy of insurance or a policy of life insurance where the risk to which the policy relates is located in the State"

- "Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance."

As "Lease" is a separate head of charge, leases **do not** come within the scope of the relief.

(iii) Stamp Duty Return

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief .

(iv) Beneficial ownership

Relief is available in relation to an instrument under which a beneficial interest in property is conveyed or transferred between associated bodies corporate.

A company will cease to be the beneficial owner of property if it is in liquidation or has entered into an un-conditional contract to sell the property.

(v) Associate status

To qualify for intra-group relief under section 79 SDCA both the primary test in Section 79(3) and the secondary test in Section 79(4) must be satisfied.

(vi) Primary test

The primary test (prior to 6 February 2003) was based on 90% of issued share capital.

Under the Finance Act 2003 (section 136) the basis for the primary test was amended to ordinary share capital, which means the issued share capital excluding "capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the body corporate".

(vii) Secondary test

The secondary test is provided for in Section 79(4) and must be satisfied in addition to the primary test in Section 79(3). The amendment introduced in the Finance Act 2003 did not impact on subsection (4). The secondary test focuses on the entitlement to 90% of (a) profits available for distribution and (b) assets available for distribution on a winding-up. Section 79(8) provides that, for the purposes of subsection (4), the required percentage to be held within the group is to be calculated in line with Sections 414 and 415 of the Taxes Consolidation Act 1997.

The percentage test in Sections 414 and 415 of the TCA is calculated on the basis of the entitlement of equity holders in the company and an equity holder takes its meaning from Section 413 of the TCA. An equity holder is a holder of shares other than fixed-rate preference shares as defined in Section 413.

(viii) Anti-avoidance provisions

The relief will not apply unless it can be shown that the instrument was *not* executed in pursuance of or in connection with an *arrangement* where:

- the consideration (or any part of it) for the transfer was to be provided or received directly or indirectly by an unassociated third party, or
- the beneficial interest was previously conveyed or transferred, directly or indirectly, by an unassociated third party, or
- the transferor and transferee were to cease to be associated.

The relief will not be denied where the consideration (or any part of it) is borrowed from a financial institution as part of an independent commercial transaction.

(ix) Intermediaries

Group relief under section 79 of the SDCA is not allowed on a transfer of Irish shares to a connected company by a recognised intermediary whose own purchase of the shares concerned was exempt from stamp duty by virtue of the "relief for intermediaries" in section 75 of the SDCA.

(x) Clawback of the relief

A clawback of section 79 relief arises where:

- it is found that the relief was not properly due, or
- the qualifying relationship between the transferor and the transferee ceases to exist within the period of two years from the date of the instrument.

The clawback provision in section 79(7)((b) of the SDCA, linked to the requirement to maintain the group relationship for a period of two years, is designed to enhance the other anti-avoidance provisions in section 79. There may be circumstances where the group relationship is broken without undermining the underlying rationale of the relief.

Example

Subsidiary company A transfers all its assets to its parent company B and obtains relief under section 79. Company A is now dormant and it is to be liquidated. The liquidation and strike off of company A results in the cesser of the group relationship between company A and company B. A clawback will not be pursued in such circumstances where

- the transferred assets are retained within the company group for the period of two years from the date of the original transfer,
- the liquidation is effected for bona fide commercial reasons and
- the transaction is not part of a scheme or arrangement for the avoidance of any tax or duty.

The availability of the above treatment will be decided on a case-by-case basis having regard to the facts and circumstances of each individual case.

(xi) Procedure for claiming relief

In order to obtain the relief a self-assessed Stamp Duty Return is required to be filed under the eStamping system in respect of the instrument.

7.2 Section 80 of the SDCA

Reconstructions or amalgamations of companies

For various commercial reasons, a company may rearrange its business activities by

(A) merging with another company;

(B) acquiring another company, or

(C) reorganising its corporate structure.

These transactions generally involve transfers of either shares or property. When shares are issued as consideration for the shares or property transferred the transaction may be classed as a "reconstruction" or "amalgamation".

(i) Reconstruction

There is no statutory definition of a "reconstruction", however it has been held that a scheme for the reconstruction of a company comprises the transfer of the undertaking, or part of the undertaking of an existing company to a new company with substantially the same members, and must involve the carrying on by the new company of substantially the same business as that transferred (Brooklands Selangor Holdings Ltd v IRC [1970] 2 All ER 76 *and* Baytrust Holdings Ltd v IRC [1971] 3 All ER 76)

Reconstructions and amalgamations can be effected in two ways:

1. share for share exchange – in which the acquiring (transferee) company issues shares to the shareholders of the target (particular existing) company in exchange for their shares in the target company, or
2. share for undertaking exchange – where the acquiring company issues shares to either the target company or to shareholders in the target company in exchange for the undertaking or part of the undertaking of the target company.

(ii) Conditions

Availability of the relief is subject to meeting certain conditions, including

- There must be a bona fide scheme of reconstruction or amalgamation.
- The scheme must be effected for bona fide commercial purposes.
- The purpose of the reconstruction/amalgamation must not be tax avoidance.
- The acquiring company must be limited. It is to be incorporated or a pre-existing company has its nominal share capital increased, with a view to the acquisition of:
    - 90% of the issued share capital of the target company; or
    - the undertaking or part of the undertaking of the target company.

The issue of authorised (nominal) but unissued share capital by the acquiring company will be regarded as an increase in its nominal share capital.

The consideration for the acquisition (other than any portion comprising the transfer to or discharge by the acquiring company of liabilities of the target company) must consist of not less than 90% in the issue of shares in the acquiring company to

- the shareholders in the target company (where shares are being acquired), or
- the target company or holders of shares in the target company (where an undertaking is being acquired).

An instrument in respect of which the relief is being claimed must have been executed within 12 months of the date of the registration of the acquiring company or the date of the resolution increasing the nominal share capital of the acquiring company, or have been made for the purposes of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which have been filed, with the Registrar of Companies within the 12 month period. Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief.

A company will not be regarded as a target (particular existing) company unless it is provided in the memorandum of association of the acquiring company that, if it is registered or incorporated for the purposes of the acquisition, it has as one of the objects the acquisition of the undertaking of, or shares in, the target company. In the case of an increase in capital, the resolution must show that the increase is authorised for the purposes of acquiring the undertaking of, or shares in, the target company. The memorandum of association or the resolution of the acquiring company must identify the target company with reasonable certainty.

(iii) Undertaking

The term "undertaking" has a wide meaning. It involves a level of activity as opposed to the mere ownership of assets. The meaning of "undertaking" has been discussed in a number of cases, some of which are referred to in the table below.

(iv) Territoriality

For the relief to apply, the acquiring company must be incorporated in a member state of the European Union. The target company can be incorporated anywhere in the world. The Isle of Man, Channel Islands and Gibraltar **do not** come within the definition of Member State.

(v) Status of acquiring/target companies

The acquiring company must have limited liability. There is no requirement that the target company have limited liability.

Finance Act 2008 provided for a change to section 80 of the SDCA for instruments executed on or after 1 June 2005. This change allows societies registered under the Industrial and Provident Societies Act 1893 to avail of relief under section 80.

(vi) Clawback

Section 80 provides for a claw-back of the relief in certain circumstances:

- Where it is found that the relief was not properly due or that the specified conditions are not fulfilled in the reconstruction or amalgamation as actually carried out.
- Where, in the case of a share for undertaking exchange, the target company ceases to be the beneficial owner of the shares issued to it by the acquiring company within two years of the date of incorporation, or the date of the authority for the increase in the capital, of the acquiring company (as the case may be) otherwise than in consequence of a further reconstruction or amalgamation or liquidation. It should be noted that there is no such two-year restriction in the case where shares have been issued to the holders of shares in the existing company – any disposal by them does not affect the exemption.
- Where, in the case of a share for share exchange, the acquiring company ceases to be the beneficial owner of the shares acquired in the target company within two years of the date of incorporation, or the date of the authority for the increase in the capital, of the acquiring company (as the case may be) otherwise than in consequence of a further reconstruction or amalgamation or liquidation.

(vii) Extended reconstructions or amalgamations

In some instances a scheme of reconstruction or amalgamation may take place over an extended period. In such circumstances, stamp duty must be paid on any stock transfer forms the execution of which do not bring the % of the issued share capital acquired over the 90% threshold. The duty will be refunded if it can be shown that, under the provisions of the scheme, at least 90% of the issued share capital of the target company has been acquired within a period of six months from the earlier of:

- the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition, or
- the date on which the invitation was issued to the shareholders of the target company to accept shares in the acquiring company.

(viii) Definitions/explanations of terms used in section 80

Some of the terms used in section 80 and a number of the concepts associated with reconstruction and amalgamation transactions are not legally defined. In some cases, their meanings have been established in case law. In others, they have been elaborated in textbooks. The references set out below are the authoritative sources for meanings and interpretations.

Term/Concept	*References*
RECONSTRUCTION AND AMALGAMATION	• Swithland Investments Ltd. V IRC [1990] STC 448.
	• Re South Africa Supply and Cold Storage Co. Ltd. [1904] 2Ch. 268.
	• IRC V Kent Process Control Ltd. [1989] STC 245.
	• Crane Freuhauf Ltd. V IRC [1975] STC 51.
	• Brooklands Selangor Holdings V IRC [1970] 2 All ER 76.
	• Baytrust Holdings Ltd. V IRC [1971] 3 All ER 76.
	• Thomas Firth & John Brown (Investments) Ltd. V IRC [1971] 3 All ER 76.
	• Re Walkers Settlement [1935] Ch. 567.
	• IRC V Ufitec Group Ltd. [1977] 3 All ER 924.
	• Keane (PW) & Co Ltd. v Revenue Commissioners [2008] ITR 57

PARTICULAR EXISTING COMPANY	• Chelsea Land and Investment Company Ltd. V IRC [1978] 2 All ER 113.
UNDERTAKING	• Baytrust Holdings Ltd. V IRC [1971] 3 All ER 76.
	• E. Gomme Ltd. V IRC [1964] 3 All RE 497.
	• Salaried Person's Postal Loans v HMRC
	• McGregor v Adcock [1977] STC 206
	• Mannion v Johnston [1988] STC 758
ISSUE OF SHARES	• Murex V IRC [1933] 1 KB 173.
	• Oswald Tillotson V IRC [1933] 1 KB 134.
	• Baytrust Holdings Ltd. V IRC [1971] 3 All ER 76.
	• Crane Freuhauf Ltd. V IRC [1975] STC 51.
	• Brotex Cellulose Fibres V IRC [1933] 1 KB 158.
CONSIDERATION FOR THE ACQUISITION	• Central and District Properties Ltd. V IRC [1966] 2 All ER 433.

The following textbooks (which may be found in the Revenue library) contain extended discussions on section 80 relief or its UK equivalent:

Sergeant and Sims on Stamp Duties (Pub: LexisNexis Butterworths).

The Law of Stamp Duties (O'Connor & Cahill).

The Law and Practice of Irish Stamp Duty (Power, Tom & Scully, Emmet)

The Law of Stamp Duties (Monroe).

Irish Stamp Duty Law (Donegan & Friel).

7.3 Section 80A of the SDCA

Demutualisation of assurance companies

Section 80A of the SDCA provides for an exemption from stamp duty on any instrument made for the purposes of or in connection with the demutualisation of an assurance company which carries on a mutual life business.

A demutualisation is an arrangement between an assurance company and its members whereby the business carried on by the assurance company is transferred to a limited company and shares or the right to shares in that company or its parent are issued or, as the case may be, granted to members of the assurance company.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief.

7.4 Section 81AA of the SDCA

Young Trained Farmer

This section provides for relief on the transfer of land to a "Young Trained Farmer".

The purpose of the relief is to encourage the transfer of land into the hands of a younger, more trained generation of farmers.

Leaflet SD2B describes the relief available for deeds of transfer executed on or after 2 April 2007 and on or before 31 December 2018.

Under section 63 of the Finance Act 2015 the relief has been extended for a further three-year period until 31 December 2018.
The eStamping System has been updated to accept claims in respect of transfers made on or after 1 January 2013.

Under section 62 of the Finance Act 2015 an additional course have been added to the list of qualifications in Schedule 2B of the SDCA. The title of the course is Bachelor of Science (Honours) in Agriculture awarded by the Dundalk Institute of Technology.

For deeds of transfer executed on or after 25 March 2004 and before 2 April 2007, please see the leaflet SD2A.

For deeds of transfer executed prior to 25 March 2004, please see the leaflet SD2.

7.5 Section 81C of the SDCA

Farm Consolidation This relief, which applied to instruments executed on or after 1 July 2007 and on or before 30 June 2011, is no longer applicable.

7.6 Section 81D of the SDCA

Relief for Certain Leases of farmland. Section 74 of Finance Act 2014 introduced a stamp duty relief, in respect of certain leases of farmland.

This relief is subject to a commencement order by the Minister for Finance.

The relief reflects one of the recommendations of the Agri-taxation Review that stamp duty relief be given in relation to certain leases of farmland to encourage more productive use of farmland.

This recommendation is now reflected in Section 81D of the Stamp Duties Consolidation Act 1999. The section provides, subject to certain conditions, for relief from stamp duty to encourage the long-term leasing of land to active farmers.

The conditions that must be satisfied are:

- The term of a lease must be for a period of not less than 6 years and not more than 35 years.
- The land must be used exclusively for farming carried on by the lessee.
- The land must be farmed on a commercial basis and with a view to the realisation of profits – thus confining the relief to genuine farmers.

It may be accepted that the lease may be to an individual, to a partnership or to a company whose main shareholder and working director farms the land on behalf of the company. Where land is leased to a company that is owned equally by an individual and that individual's spouse or civil partner, and at least one of them satisfies the working director and the farming requirements, the relief may be granted.

- The lessee (be it an individual, partners or a main shareholder and working director) must also:
  - ✓ Have an agricultural qualification (a qualification of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999) or
  - ✓ Farm the land for not less than 50% of his or her normal working time.

Normal Working Time" Test.

In considering whether the normal working time requirement is fulfilled, it is appropriate to be flexible. It can be accepted that "normal working time" (including on-farm and off-farm working time) approximates to 40 hours per week. This will enable farmers with off-farm employment to qualify for the relief provided they spend a minimum of 20 hours working per week, averaged over a year, on the farm. If a farmer can show that his or her "normal working time" is somewhat less than 40 hours a week, then the 50% requirement will be applied to the actual hours worked – subject to being able to show that the farm is farmed on a commercial basis and with a view to the realization of profits.

It is expected that in the majority of situations it should be clear from the level of farming activity being carried on that the normal working time requirement is satisfied. If there is any doubt Revenue will consider all information (including farming records) provided by a farmer in relation to his or her normal working time and farming activities.

If in exceptional situations if it can be shown that, on an on-going basis, certain farming activities, e.g. farming involving the occupation of woodlands on a commercial basis, are carried out on a commercial basis and with a view to the realisation of profits, but do not require 50% of normal working time / 20 hours per week to be spent on such farming activities, Revenue will take this into consideration in deciding whether the relief is due.

Farming on a Commercial Basis

Whether a person is farming on a commercial basis and with a view to the realisation of profit can only be determined by reference to the facts in each case. It is expected that based on the facts, it will normally be clear whether this requirement is satisfied. The fact that a farmer may make a loss in any year will not in itself result in relief being refused or withdrawn. Clearly, if a farmer continuously makes losses year on year, the circumstances would have to be examined carefully to see whether that person is farming on a commercial basis and with a view to the realisation of profit.

EU Single Farm Payment Entitlements (paid under Regulation (EU) No. 1037/2013 of the European Parliament and of the Council of 17 December 2013)

will be included as farming income in the computation of profits or losses in the normal way.

Withdrawal of Relief

Stamp duty that would, but for this relief, have been chargeable on the grant of the lease, becomes payable with interest in the event that the conditions of the relief are not fulfilled for the first 6 years of a lease.

Failure to fulfil the conditions of the relief due to the death or incapacity of the lessee by reason of mental or physical infirmity, will not give rise to assessment.

In accordance with self assessment principles it is the taxpayer's duty to make any necessary amendment to returns / self assessments to ensure relief is withdrawn where appropriate.

See also Paragraph 4 of the Revenue Guide to Farming Taxation Measures in Finance Act 2014.

7.7 Section 82 of the SDCA

Charities

This section provides an exemption from stamp duty for conveyances, transfers and leases of land for charitable purposes in the State or Northern Ireland to a body of persons established for charitable purposes only or to the trustees of a trust so established.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief.

7.8 Section 82A of the SDCA

Donations to approved bodies

Section 82A of the SDCA exempts from stamp duty donations of publicly quoted securities to approved bodies which come within the scheme of tax relief for donations to charities, schools and third level colleges as well as other approved bodies under section 848A of the Taxes Consolidation Act 1997.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief.

This exemption applies to instruments transferring such securities executed on or after 31 March 2006.

7.9 Section 82B of the SDCA

Approved Sports Bodies

This section provides for an exemption from stamp duty for conveyances, transfers and leases of land to an approved sports body approved under section 235 of the Taxes Consolidation Act, where that land will be used for the sole purpose of promoting athletic or amateur games or sports.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief.

7.10 Section 82C of the SDCA 1999

Pension Schemes and Charities

Section 82C provides for an exemption from stamp duty in respect of certain transfers of property involving pension schemes and charities where, following the transfer, the property continues to be held for the benefit of the pension scheme or charity.

The section confirms the existing stamp duty treatment which applied in relation to in specie transfers of pension and charity scheme assets between certain investment vehicles (including unit trusts). The exemption also applies where the investment vehicle is a corporate entity.

The section contains definitions of "charity" and "pension scheme" and specifies the different types of investment vehicles which can avail of the exemption.

7.11 Section 83A of the SDCA

Transfer of a site to a child

This exemption has been abolished with effect from 8 December 2010.

7.12 Section 83B of the SDCA

Certain Family Farm Transfers

Section 83B provides for an exemption from stamp duty for transfers of farmland from a child to a parent in the context of certain family arrangements to which the provisions of section 599 of the Taxes Consolidation Act 1997 (as amended by section 52 of the Finance Act 2007) apply for capital gains tax purposes. A child for the purposes of section 599 includes a child of a deceased child, certain nephews and nieces and foster children.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed Stamp Duty Return is required to be filed under the eStamping system to claim this relief.

7.13 Section 83C of the SDCA

Property "trade in" scheme

This relief, which applied to instruments executed on or after 7 May 2009 and on or before 31 December 2010, is no longer applicable.

Part 7: Chapter 2: Other instruments

7.14 Section 85 of the SDCA

Certain Loan Capital and Securities

Section 85 provides for an exemption from stamp duty on

- the issue of loan capital or any Government loan;
- the transfer of loan capital (where the conditions in subsection (2)(b) are satisfied);
- the issue or transfer of securities issued by a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997;
- the issue, transfer or redemption of an enhanced equipment trust certificate which is defined as “loan capital issued by a company to raise finance to acquire, develop or lease aircraft”.

7.15 Section 85A of the SCDA

Certain Investment Certificates

Section 85A of the SDCA was inserted into the SDCA by Finance Act 2010. The section provides that stamp duty shall not be chargeable on the issue, transfer or redemption of an investment certificate within the meaning of section 267N of the Taxes Consolidation Act 1997.

7.16 Section 86A of the SDCA

Enterprise Securities Market

Section 86A, which was inserted into the SDCA by section 70 of the Finance (No. 2) Act 2013, provides for an exemption from stamp duty on the transfer of stocks or marketable securities admitted to the Enterprise Securities Market operated by the Irish Stock Exchange Limited.

The exemption does not apply where the admission of the stocks or marketable securities to the Enterprise Securities Market has been cancelled by the Irish Stock Exchange Limited.

The exemption will apply from a date to be specified in a Commencement Order to be made by the Minister for Finance.

7.17 Section 87B of the SDCA

Merger of Companies

This section provides an exemption from stamp duty on the transfer of assets pursuant to three types of mergers:

- A "cross-border merger" as defined in Regulation 2(1) of the European Communities (Cross-Border Mergers) Regulations 2008 which give effect to Council Directive 2005/56/EC. While the above definition caters for a cross-border merger involving at least one Irish company and a least one EEA company, the exemption will also be extended to a cross-border merger, within the meaning of the 2005 Directive, which does not involve an Irish company provided at least two of the companies are governed by the laws of different Member States.
- A "merger", involving two or more Irish public limited companies, as defined in Regulation 4 of the European Communities (Mergers and Divisions of Companies) Regulations 1987. It is accepted that the exemption also extends to a merger by absorption as provided for in Regulation 13(8) of the 1987 Regulations.
- An "SE merger" under which an SE is formed by the merger of two or more companies in accordance with Article 2(1) and subparagraph (a) or (b) of Article 17(2) of Council Regulation (EC) No. 2157/2011 of 8 October 2001 on the Statute for a European company (SE).

Mergers/dissolutions of foreign companies

The merger or dissolution of foreign companies can sometimes involve the transfer of Irish property, such as shares, buildings or land. Normally, the transfer of Irish property will attract a charge to stamp duty. However, in certain jurisdictions, a merger or dissolution can be effected by an act of law or an administrative act which will transfer the *beneficial* interest in the property held by one company to some other company. Transfer of the *legal* interest in the property will still require the execution of a formal instrument of transfer and the question arises as to the stamp duty treatment of the instrument. The point at issue is whether the instrument will attract a liability to ad valorem duty.

It is not possible to give a definitive answer because the mechanisms for dissolving or merging companies vary considerably from jurisdiction or jurisdiction. There can even be variations within a jurisdiction. The incidence of duty will depend on the nature and effect of the legal or administrative act and the documentation associated with it. This is particularly the case with mergers. Thus, it will be necessary to consider the precise form of the act, the circumstances in which it is carried out and the effect of the foreign law before the stamp duty liability can be determined. In short, each case must be considered on its merits.

Several jurisdictions have the necessary company law provisions to enable companies to merge or dissolve by legal or administrative act, including: France, Holland, Finland, Switzerland, Canada, Delaware and Ohio (this is not an exhaustive list). It must be emphasised that because a merger can be carried out by a legal or administrative act it does not necessarily follow that any instrument executed in connection with such an act will not attract a liability to ad valorem duty.

Where it can be shown to the satisfaction of the Revenue that, as a consequence of a legal or administrative act effecting a dissolution or merger, the beneficial interest in Irish property is transferred from one company to another, any instrument executed to transfer the legal interest in the property will not attract a liability to duty.

7.18 Section 88 of the SDCA

Certain Stocks and Marketable securities

Transfers of shares in companies or other bodies corporate registered outside the State are not chargeable to Irish stamp duty. For example, a transfer of shares in British Gas plc is not chargeable to Irish stamp duty - even if the stock transfer form is executed in Ireland. The exemption does not apply if the transfer of the foreign shares “relates” to Irish immovable property or to Irish stocks or marketable securities (other than shares in (i) an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997 or (ii) a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997).

7.19 Section 90 of the SDCA

Certain Financial Services Instruments

This section provides for an exemption from stamp duty for a wide range of instruments used primarily in the financial services industry. These exemptions do **not** apply if the instruments concerned relate to Irish immovable property or Irish stocks of marketable securities (other than shares in (i) an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997 or (ii) a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997).

7.20 Section 90A of the SDCA

Greenhouse gas emissions

This section, introduced under Finance Act 2008, provides for an exemption from stamp duty on the sale, transfer or other disposition of a "greenhouse gas emissions allowance". Any contract or agreement for the sale of a "greenhouse gas emissions allowance" is covered by the exemption.

A "greenhouse gas emissions allowance" has the meaning assigned to "carbon offsets" in section 110(1) of the Taxes Consolidation Act 1997.

The section applies to instruments executed on or after 5 December 2007.

7.21 Section 91A of the SDCA

New houses or apartments with a floor area compliance certificate

This exemption has been abolished with effect from 8 December 2010.

7.22 Section 92 of the SDCA

New dwellinghouses and apartments with no floor area compliance certificate

This exemption has been abolished with effect from 8 December 2010.

7.23 Section 92B of the SDCA

First time buyer relief

This exemption has been abolished with effect from 8 December 2010.

7.24 Section 95 of the SDCA

Commercial Woodlands Relief

Section 95 provides partial relief from stamp duty in respect of an instrument "being" a conveyance or transfer on sale, or a lease of land, on which commercial woodlands are growing. It was Revenue's view that the relief did not extend to a gift of land.

In a recent appeal before the Appeal Commissioners, they determined that the relief is also applicable to a conveyance or transfer operating as a voluntary disposition. Revenue have decided to accept the Appeal Commissioners' determination. Accordingly, the relief will now apply where the conveyance or transfer is on sale or the conveyance or transfer operates as a voluntary disposition (gift).

The woodlands must be growing on a substantial part of the land (a substantial part is regarded as not less than 75% of the land) and the woodlands must be managed on a commercial basis and with a view to the realisation of profits.

The relief applies to the portion of the consideration, which represents the value of the trees growing on the land.

7.25 Section 96 of the SDCA

Transfers between spouses and civil partners

This section provides that all transfers/leases of property between spouses and civil partners (unless the transfer is a subsale) are exempt from stamp duty. If any other person is a party to the instrument the exemption does not apply.

7.26 Section 97 of the SDCA

Certain transfers following the dissolution of marriage or civil partnership

Following a divorce or dissolution of a civil partnership, property may be transferred between spouses/civil partners pursuant to a court order. These transfers are exempt from stamp duty. If any other person is a party to the instrument the exemption does not apply.

7.27 Section 97A of the SDCA

Certain transfers by cohabitants

This section provides for an exemption from stamp duty where a property is transferred pursuant to an order under section 174 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 by a cohabitant to his or her cohabitant.

If any other person is a party to the instrument the exemption does not apply.

This section applies to transfers made on or after 1 January 2011.

7.28 Section 101 of the SDCA

Intellectual Property

This section provides for an exemption on the sale, transfer or other disposition of intellectual property as defined in the section. The term "intellectual property" has the meaning assigned to "specified intangible asset" in section 291A(1) of the Taxes Consolidation Act 1997.

Contracts and agreements for sale of intellectual property are also covered by the exemption.

Goodwill may also be exempt, but only to the extent that it is **directly attributable** to the intellectual property. Where there is business goodwill and goodwill that is attributable to the intellectual property, the consideration must be apportioned between the two on a just and reasonable basis.

7.29 Section 101A of the SDCA

Single Farm Payment

Section 101A of the SDCA provides for an exemption from stamp duty on the sale, transfer or other disposition of an EU Single Farm Payment Entitlement [paid under Regulation (EU) No. 1037/2013 of the European Parliament and of the Council of 17 December 2013)].

Where the Single Farm Payment Entitlement forms part of a transaction consisting also of chargeable property, the consideration is to be apportioned on a just and reasonable basis as between the Single Farm Payment Entitlement and the other

property and the part of the consideration attributable to the Single Farm Payment Entitlement should be disregarded when determining the liability to stamp duty on the chargeable property.

The apportionment provisions in Section 45 of the SDCA also apply where relevant.

This exemption applies to instruments executed on or after 1 January 2005.

(i) Milk quotas

The transfer of a milk quota gives rise to a charge to stamp duty as the milk quota is intangible property for stamp duty purposes and a conveyance or transfer of a milk quota would fall into the "Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of insurance of a policy of life insurance" head of charge and would be chargeable at the non-residential property rates. Stamp duty will arise on an instrument of transfer of a milk quota on the consideration payable for the transfer of the milk quota or the market value of the milk quota in the case of a gift. A liability to stamp duty may also arise, under section 31 of the Stamp Duties Consolidation Act 1999, on a contract for sale of a milk quota.

7.30 Section 106B of the SDCA

Housing Authorities/Affordable Homes Partnership

Section 106B was inserted into the SDCA under Finance Act 2008. Section 106B replaced the existing exemption relating to housing authorities in section 8 of the Housing (Miscellaneous Provisions) Act 1992 and also provided for a similar exemption for the Affordable Homes Partnership

Section 64 Finance Act 2011 substituted a new section 106B for the old section 106B.

The new section 106B retains the exemption from stamp duty in respect of a conveyance, transfer or lease of a house, building or land ***to***

- a Housing Authority in connection with any of its functions under the Housing Acts 1966 to 2004 or
- the Affordable Homes Partnership in connection with the services specified in article 4(2) of the Affordable Homes Partnership (Establishment) Order 2005 as amended.

However, the new section also provides, with effect from 1 April 2011, for a maximum stamp duty charge of €100 in respect of a conveyance, transfer, or lease of a house, building or land ***by***

- a Housing Authority in connection with any of its functions under the Housing Acts 1966 to 2004 or
- the Affordable Homes Partnership in connection with the services specified in article 4(2) of the Affordable Homes Partnership (Establishment) Order 2005 as amended.

7.31 Section 108 of the SDCA

Section 108 of the SDCA was repealed by Section 73 Finance Act 2014.
However Section 73 also specifically provided that neither:

(a) the National Treasury Management Agency, nor

(b) the Minister in relation to a function exercised by the Minister which is capable of being delegated to the National Treasury Management Agency under section 5 of the National Treasury Management Agency Act.",

are accountable persons for stamp duty purposes.

7.32 Section 111 of the SDCA

Oireachtas Funds

If the stamp duty payable on an instrument would be payable out of funds provided by the Oireachtas, then this section exempts the instrument from duty. To qualify the entirety of the stamp duty would have to be payable out of Oireachtas funds.

7.33 Section 113 of the SDCA

Miscellaneous instruments

Section 113 contains a number of miscellaneous instruments that are exempt from duty. These are:

- instruments transferring shares or any other interest in:
  - ✓ stocks, funds or securities of the Government, the Oireachtas, the Minister for Finance or any other Minister of the Government
  - ✓ Stocks or funds of the Government or Parliament of the late United Kingdom of Great Britain and Ireland which are registered in the books for the Bank of Ireland in Dublin,
  - ✓ in the stock or other form of security to which section 39 or section 40 of the TCA 1997 applies.
- Instruments for the sale, transfer or other disposition (including a transfer by way or mortgage) of any ship, vessel or aircraft or any part, interest, share or property of or in any ship, vessel or aircraft,

▪ Wills and codicils, and

▪ Instruments made by, to, or with the Commissioners for Public Works.