Stamp Duties Consolidation Act 1999

Part 6: Special provisions relating to uncertificated securities

This document should be read in conjunction with Part 6 of the Stamp Duties Consolidation Act 1999.

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. Introduction

The provisions of **Part 6** of the Stamp Duties Consolidation Act 1999 (SDCA 1999) provide for Stamp Duty to be charged where an interest in securities is transferred by electronic means. The charge is applied by deeming the transfer order which effects the transfer of an interest in securities to be an executed instrument of conveyance or transfer of the securities concerned.

The purpose of this document is to provide general guidance on the application of the provisions of Part 6, which currently comprise **sections 75, 75A (in Chapter 1)** and **78A** to **78J (in Chapter 2)**. In addition, general guidance on the circumstances in which a conveyance or transfer of securities is chargeable with Stamp Duty is set out in Section 2. Finally, the background to the introduction of the Part 6 provisions is set out in Section 10.

2. Stamp duty on conveyance or transfer of securities

2.1 Conveyance or transfer on sale

Section 2 SDCA 1999 provides that any **instrument** which is specified in **Schedule 1** SDCA 1999 and -

- is executed in the State, or
- wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State,

will be chargeable to Stamp Duty.

Section 1 SDCA 1999 provides that an **instrument** "includes every **written** document".

Schedule 1 includes the heading "CONVEYANCE or TRANSFER on sale of any stocks or marketable securities". This refers to an instrument (i.e., written document) which, when executed[1], effects the conveyance or transfer **on sale** of any stocks or marketable securities (or any interest in stocks or marketable securities) to a purchaser, or any other person on such purchaser's behalf or by such purchaser's direction.

In order for an instrument of conveyance or transfer to be chargeable to Stamp Duty, it must be **on sale**. The generally accepted definition of the term "sale" (which is not defined in the SDCA 1999) is that provided in Benjamin's Sale of Goods, 8th Edition, as follows:

[1] Section 1 SDCA 1999 provides that ""**executed**" and "execution", in relation to instruments not under seal, mean signed and signature".

> "By the common law a sale of personal property usually termed a 'bargain and sale of goods'. It may be defined to be a transfer of the absolute or general property in a thing for a price in money."[2]

However, for the purposes of the SDCA 1999, it is generally accepted that there is a conveyance or transfer **on sale** where the consideration comprises:

- cash;
- stocks, marketable securities or securities (in accordance with **section 40** SDCA 1999 - Calculation of ad valorem duty on stock and securities);
- the satisfaction or discharge of a debt (in accordance with **section 41** SDCA 1999 - How conveyance in consideration of debt, etc., to be charged).

Stamp duty is chargeable on a conveyance or transfer on sale of stocks or marketable securities (or an interest therein) at the rate of 1% of the consideration[3]. Accordingly, where, for example, a sale of Irish shares is effected by means of a stock transfer form, the stock transfer form will be chargeable to Stamp Duty under section 2 at the rate of 1% of the consideration.

2.2 Deemed conveyance or transfer on sale

The SDCA 1999 makes provision for certain conveyances or transfers to be chargeable with Stamp Duty in circumstances where they are not "on sale". These include **section 30** SDCA 1999 ("Voluntary dispositions inter vivos chargeable as conveyances or transfers on sale") and **section 33** SDCA 1999 ("Conveyance or transfer in contemplation of sale").

Section 30 SDCA 1999 provides for a conveyance or transfer operating as a **voluntary disposition inter vivos** to be treated as if it were a conveyance on sale. Voluntary dispositions cover situations where no consideration has been paid, such as a gift of property, and situations where some consideration has been paid but it is insufficient and a substantial benefit has been conferred on the transferee(s). Where **section 30** applies to a transaction, the market value of the property being conveyed or transferred will determine the amount of Stamp Duty payable. Accordingly, where, for example, shares are transferred from one person to another for no consideration, a charge to Stamp Duty will arise at 1% of the value of the shares transferred.

[2] Approved in **Cherry Court v Revenue Commissioners** 5 ITR 180.

[3] Where a charge to Stamp Duty arises on a sale of shares, that charge may be relieved by a relief or exemption, such as relief for associated companies under section 79 SDCA 1999.

There are a number of exceptions to the application of **section 30**. These include situations where no beneficial interest passes in the property that is conveyed or transferred. Accordingly, where, for example, title to securities is transferred from one person to another for no consideration but without any beneficial interest in the securities passing, the conveyance or transfer will not be treated as if it were "on sale" under **section 30**.

Section 33 SDCA 1999 provides for Stamp Duty to be charged on any instrument, whereby property is conveyed or transferred **in contemplation of a sale** of that property. Where the section applies to a transaction, the instrument is charged to Stamp Duty as if it were a conveyance or transfer on sale for a consideration equal to the value of that property.

Further guidance on the application of **sections 30 and 33**, and other provisions that are applicable to particular instruments, is contained in Stamp Duty Manual Part 5: Provisions applicable to particular instruments and in Revenue's Notes for Guidance to the Stamp Duties Consolidation Act 1999 - Part 5 – Provisions Applicable to Particular Instruments.

3. Stamp duty on electronic transfer of securities

Where a sale of securities is secured and settled electronically by means of book entry transfer[4] (such that no written instrument of transfer is created), the provisions of **Part 6** (ss 78A – 78J), specifically **section 78B SDCA 1999**, provide for Stamp Duty to be charged by deeming the transfer order which effects the transfer of an interest in securities from seller to purchaser to be an executed instrument of conveyance or transfer, and therefore an instrument that is chargeable to Stamp Duty under the heading "CONVEYANCE or TRANSFER on sale of any stocks or marketable securities". In the absence of the Part 6 provisions, no Stamp Duty would be chargeable on such transactions as no instrument of transfer is created.

3.1 Terminology

Section 78A(1) SDCA 1999 sets out a number of definitions that apply for the purposes of Chapter 2 of Part 6, as follows:

- **central securities depository** or **CSD** has the same meaning as in the **CSD Regulation**. It means a person who operates a **securities settlement system** and provides at least one of the following services:
    - initial recording of securities in a book-entry system ('notary service');
    - providing and maintaining securities accounts at the top tier level ('central maintenance service');

[4] A book-entry system is a system which enables transfers of securities and other financial assets which do not involve the physical movement of paper documents or certificates (e.g. the electronic transfer of securities).

- **CSD Regulation** means Regulation 909/2014 of the European Parliament and of the Council of 23 July 2014[5] on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012;
- **depository receipt**, while linked to an underlying security, is a security in its own right that can be independently traded and held;
- **interest in securities** means:

  (a) any legal or equitable interest or right in, or in relation to, a security,

  (b) a depository receipt,

  (c) an indirect interest or right in, or in relation to, underlying securities arising from the immobilisation or dematerialisation of the securities, or

  (d) without prejudice to the generality of paragraph (c), an interest or right in, or in relation to, securities which are held in, or on behalf of, a CSD, the rules of which require holders of interests or rights in, or in relation to, securities to hold those interests or rights by way of a co-ownership interest in a fungible pool of underlying securities;
- **operator** means a person who operates a securities settlement system (normally a CSD);
- **participant** means a person permitted by an operator to input a transfer order. This would generally be a person who is a member of a CSD and thus authorised to execute transfer orders through the CSD's settlement system;
- **relevant system** means a securities settlement system that is operated by a CSD;
- **securities** means any stocks or marketable securities, e.g. company shares;
- **securities settlement system** means a formal arrangement with common rules and standardised arrangements for the execution of transfer orders by electronic means;
- **third country CSD** means a CSD located outside the European Union that would come within the CSD Regulation if it were located in the European Union. An example of a third country CSD is Euroclear UK & International (EUI) in the UK, which operates the CREST system;
- **transfer order** means a properly authenticated instruction to transfer an interest in securities.

Section 78A(2) provides that a reference to a **CSD** in Chapter 2 includes a reference to a **third country CSD**.

[5] OJ No. L257, 28.08.2014, p.1.

3.2 Deemed conveyance or transfer

The deeming provisions of **section 78B** apply in respect of a transfer order that effects the transfers of an interest in securities **through** a relevant system (**subsection (1)**) or **outside** a relevant system (**subsection (2)**). An example of a transfer outside a relevant system is a transfer recorded only as a book entry on the books of a CSD participant such as a stockbroker.

Subsection (3) requires the separation of a netted settlement into its individual contracts for the transfer of interests in the same type of securities. For example, where one transfer order is input representing the net position on 5 purchases and five sales of the same stock, **subsection (3)** provides that a Stamp Duty charge will be applied to each individual purchase of an interest in securities and not to the overall netted contract.

Subsection (4) was inserted by Finance (No. 2) Act 2023. It provides that **section 78B** will not apply in respect of a transfer order effecting the transfer of an interest in securities **through** a relevant system where:

- the securities are dealt in on a recognised stock exchange located in the United States of America or Canada, and
- the relevant system is operated by a CSD located in the United States of America or Canada.

The effect of **subsection (4)** is that where shares are traded on a recognised stock exchange in the United States of America or Canada such as the New York Stock Exchange or NASDAQ, and the trade is cleared and settled through a securities settlement system in the USA or Canada such as the Depository Trust Company, no charge to Stamp Duty will arise under **section 78B**.

It is important to note that the deeming provisions of **section 78B** also apply in the case of **voluntary dispositions inter vivos** (section 30 refers) and **transfers in contemplation of sale** (section 33 refers). Accordingly, where, for example, a transfer order effects the transfer of an interest in securities in the case of a voluntary disposition inter vivos and a specific exclusion from section 30 does not apply, it is to be treated as a conveyance or transfer **on sale** of the securities concerned and therefore chargeable to Stamp Duty. Similarly, where a transfer is in contemplation of sale of the securities (or interest in the securities), the transfer order is to be treated as a conveyance or transfer on sale of the securities concerned and therefore chargeable to Stamp Duty.

Section 78D SDCA 1999 provides that where the "CONVEYANCE or TRANSFER on sale of any stocks or marketable securities" head of charge applies to a transaction, Stamp Duty will be charged at the rate of 1% of the consideration (or 1% of the value if the consideration is below market value), rounded to the nearest cent. This differs from Stamp Duty on instruments of transfer where there is an exemption from Stamp Duty if the consideration does not exceed €1,000.

The transfer order is deemed to be stamped when the Stamp Duty and any interest charged is paid to Revenue.

Section 78A(3) SDCA 1999 confirms that the deeming provisions of Chapter 2 apply only where an interest in securities is transferred by electronic means. This provision ensures that where an interest in securities is transferred by means of a written instrument of transfer, a double charge to Stamp Duty will not arise under the provisions of the SDCA 1999.

3.3 Payment of Stamp Duty

3.3.1 Accountable person

In accordance with **section 1 SDCA 1999**, the **accountable person** (or persons) in relation to a transfer order is generally **the purchaser** or **transferee**. This means that if the Stamp Duty payable in respect of a transfer order is not paid, the purchaser(s) / transferee(s) will be liable to pay the amount of Stamp Duty outstanding. However, where a transfer order is in relation to a voluntary disposition inter vivos, all parties to the transaction (i.e. the transferor(s) and transferee(s)) are accountable persons.

An exception to this general rule is where Revenue has entered into a composition agreement with a person for the payment of Stamp Duty in accordance with **section 5 SDCA 1999** and the transfer order is covered by the agreement. In such cases, any Stamp Duty liability in respect of the transfer order will rest with the person with whom Revenue has entered into the composition agreement.

3.3.2 Due date

Section 78E(1) SDCA 1999 provides that any Stamp Duty that is charged by virtue of section 78B will be due and payable on the date the transfer order is executed.

3.3.3 Agreement with Central Securities Depository (CSD) or other party for payment of Stamp Duty

Section 78E(2) allows Revenue to enter into an agreement with a Central Securities Depository (CSD) or other party for the payment of Stamp Duty on transfer orders. The agreement will be in such form and on such terms and conditions as Revenue considers appropriate.

Where such an agreement is in place, any Stamp Duty that is paid in accordance with the agreement will be deemed to have been paid to Revenue on the date when it became due and payable under the agreement.

Currently, Revenue has two agreements in place under 78E(2); one with Euroclear Bank in Belgium (which operates the Euroclear Bank system) and the other with Euroclear UK and International in the UK (which operates the CREST system).

Please see the operational guidelines contained in the Euroclear Manual and the Crest Manual for information on electronic transfers of interests in securities within the respective settlement systems.

4. Relief for intermediaries

Section 75 SDCA 1999 provides for a relief from Stamp Duty for intermediaries on the transfer of securities. As defined in section 75, an "intermediary" means a person who carries on a bona fide business of dealing in securities and includes entering into derivative agreements referenced directly or indirectly to securities.

The section 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,
- 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,
- 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 ESM) or the London Stock Exchange plc (e.g. the LSE Main Market and AIM), **or**
    - on any other exchange or market designated by Revenue for this purpose in regulations (A list of Designated Exchanges and Markets can be found on the Revenue website),

  and
- the transfer is not effected in connection with excluded business.

For an exemption from Stamp Duty to be available to a recognised intermediary on any transfer to it of interest of Irish securities, it is necessary that the transfer is 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. An "excluded business" means any business which consists in:

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

Section 78C SDCA 1999 provides that intermediary relief applies in relation to transfer orders.

Any person wishing to avail of this relief is required to forward an application to the Revenue CREST Unit. Details of the relevant forms are available in the Euroclear Manual and the Crest Manual.

5. Relief for clearing houses

Section 75A SDCA 1999 provides for an exemption from Stamp Duty for transfers of securities to and from a clearing house or central counterparty commonly known as a "CCP", in specified circumstances. A CCP is an entity which introduces post-trade anonymity on exchanges or markets where member firms submit orders for shares.

The exemption includes the transfer of securities "from a recognised clearing house or a nominee of a recognised clearing house, to another recognised clearing house or a nominee of that clearing house".

Subsection (1) contains the definitions -

- **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, or a Member State of the European Communities or the United Kingdom.
- **recognised clearing house** identifies the current CCPs for Euronext Dublin and the London Stock Exchange and gives scope for Revenue to designate further CCPs as recognised clearing houses by regulations.[6]

Other definitions of "clearing participant", "client", "nominee" and "non-clearing participant" are self-explanatory.

Section 78C(b) provides that relief for recognised clearing houses under section 75A(2) applies in relation to transfer orders or deemed transfer orders per section 78B.

Any person wishing to avail of this relief is required to forward an application to the Revenue CREST Unit. Details of the relevant forms are available in the Euroclear Manual and the Crest Manual.

6. Overpayment of Stamp Duty

Section 78G SDCA 1999 provides for the repayment of Stamp Duty overpaid in relation to a charge to Stamp Duty by virtue of section 78B.

Subsection (1) provides that where a claim for repayment of Stamp Duty is made in accordance with subsection (2) and it is proved to the satisfaction of Revenue that Stamp Duty was overpaid in relation to a charge to Stamp Duty by virtue of **section 78B,** the overpayment will, subject to **section 159A SDCA 1999**, be repaid. Where a claim for repayment of Stamp Duty is made, **section 159A** sets out the general requirements that must be met before Revenue will make a repayment of Stamp Duty.

[6] A full list of the clearing houses designated by the Revenue Commissioners for the purposes of clearing house relief is listed on the Revenue website here.

Subsection (2) provides that repayment claims are to be made in such form and manner as may be decided by Revenue.

Subsection (3) provides that repayment claims must be made within the period of 4 years from the date of execution of the transfer order giving rise to the claim.

7. Obligation to retain records

Section 78H SDCA 1999 makes provision for the retention of certain records. The purpose of the provision is to ensure that the Stamp Duty treatment of a transfer order can be checked by Revenue, particularly in cases where an exemption from Stamp Duty has been claimed.

The section provides that where a transfer order effects a transfer of an interest in securities, a CSD, a transferee or a person acting on behalf of a transferee is required to retain records, in legible written form (or readily convertible to such a form), which contain sufficient detail to establish the applicable Stamp Duty liability. These records must be retained for a period of 6 years after the date of execution of the transfer order. The records must be made available to Revenue on request. A fixed penalty of €1,265 applies for non-compliance with the obligation to retain records.

Notwithstanding the foregoing, **subsection (1A)** provides that where a transfer order effects the transfer of an interest in securities through a system that is operated by a CSD that Revenue has entered into an agreement with for the payment of Stamp Duty under section 78E, the obligation to retain the records (and associated penalties for non-compliance) applies solely to the participant who entered the transfer order in that system. As noted above, Revenue currently has two of these agreements in place, one with Euroclear Bank in Belgium and the other with Euroclear UK and International in the UK.

Where a transfer order effects the transfer of an interest in securities **outside a relevant system**, the obligation to retain records does not apply in relation to a CSD. Furthermore, Revenue accepts that the obligation to retain records does not apply in respect of any transfer order which is excluded from the scope of **section 78B** by virtue of **subsection (4)** of that section.

8. Assessments and appeals

Section 78F SDCA 1999 in subsections (1) and (2) enable Revenue to make assessments, and amend assessments, to collect outstanding Stamp Duty. This is in line with the assessment and appeals provisions in section 20 and 21 SDCA 1999 and other tax Acts.

Subsection (3) in section 78F provides the taxpayer with the right to appeal such assessments to the Tax Appeals Commission.

9. Interest and penalties

Where Stamp Duty is paid late, interest will be charged on the duty calculated in accordance with **section 159D SDCA 1999** from the date on which the transfer order was executed until the date the Stamp Duty is paid. Further details for calculating the amount of interest due are contained in the Revenue Notes for Guidance dealing with section 159D here.

Section 134A SDCA 1999 provides for a penalty of €1,265 plus a tax geared further penalty where a participant acts deliberately or carelessly, in relation to the entering of an incorrect transfer order in a securities settlement system.

The section provides for a specific level of penalty to be applied depending on whether the category into which the participant's duty default falls is deliberate or careless. It is aligned with section 1077F Taxes Consolidation Act (TCA) 1997 which provides for tax-geared penalties in relation to taxes such as income tax, corporation tax, local property tax and capital gains tax.

When considering a tax-geared penalty, defaults in relation to value-added tax, capital acquisitions tax and the taxes covered by the TCA 1997 are taken into account. Where the aggregate amount of a person's total tax and duty default (value added tax, capital acquisitions tax and the taxes covered by the TCA 1997) does not exceed €6,000 and the default is not in the deliberate behaviour category, the person shall not be liable to a penalty under section 134A. Further details of section 134A may be viewed in the Tax and Duty Manual Part 10: Enforcement.

10. Background to introduction of Part 6 provisions

The Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) established a legal framework under which title to shares and other securities in Irish companies could be transferred by means of an electronic system. The Regulations provided that the operator of the electronic system was to be approved by the Minister for Enterprise, Trade & Employment or by the appropriate authority in another EU Member State. The approved operator was CREST in the UK, which acted as the central securities depository (CSD) for Irish securities and provided related services such as settlement in the securities when they were traded on the Irish Stock Exchange (now Euronext Dublin) and the London Stock Exchange.

To ensure that transfers of Irish securities effected via the CREST system were chargeable to Stamp Duty, legislation was introduced. The legislation, which was subsequently comprised in **Chapter 1 of Part 6** (sections 68 to 78) of the SDCA 1999, deemed such electronic transfers to be executed instruments of conveyance or transfer, and therefore chargeable to Stamp Duty.

EU law requires that electronic transfers of securities in EU companies are settled in an electronic system located in the EU. Accordingly, the exit of the UK from EU meant that the transfer and settlement of securities in Irish companies could no longer take place in the CREST system.

In its place, Euroclear Bank in Belgium was approved to operate a system (the Euroclear Bank System) through which interests in Irish securities that are dealt with on Euronext Dublin could be transferred and settled electronically.

The transfer and settlement of interests in Irish securities through the Euroclear Bank system commenced on 15 March 2021, in accordance with the Migration of Participating Securities Act 2019.[7]

To ensure that electronic transfers of Irish securities continued to be chargeable to Stamp Duty following their migration from the CREST system to the Euroclear Bank System in 2021, a new **Chapter 2 of Part 6** (comprising sections 78A to 78J) was inserted in the SDCA 1999 by Finance Act 2020, and certain sections of Chapter 1 Part 6 were repealed. As with the provision of Chapter 1, the provisions of Chapter 2 operate by deeming transfer orders to be executed instruments of conveyance or transfer, and therefore chargeable to Stamp Duty.

Under the system that has operated since the migration of Irish securities in March 2020, Irish securities are issued to Euroclear Bank, which holds the securities in trust. Trading then take place in interests in the securities in accordance with Belgian law. In addition, separate securities relating to Irish companies continue to be held and settled through the CREST system in the UK, which are held by a trustee. The trustee holds interests in shares on behalf of Euroclear UK and International and trading in these interests (which are referred to as CREST Depository Interests or CDIs) takes place in the CREST system in the UK. Trading in these securities is also chargeable to Stamp Duty.

The provisions of **Chapter 2 of Part 6** became effective on 15 March 2021. As they provide for Stamp Duty to be charged where a sale of Irish securities is effected by electronic means, most of the existing provisions of Chapter 1 became redundant. For this reason, sections 68 to 73 and 76 to 78 in Chapter 1 were repealed by Finance Act 2022, whilst sections 75 (relief for intermediaries) and 75A (relief for clearing houses) remain in force.

[7] Additional information on the migration is set out in the TSG 21 - 12 Brexit Readiness – Taxation and Customs Issues.