

# Procedures for Revenue Debt in the Small Companies Administrative Rescue Process

Document updated June 2024

---

## Table of Contents

<b>1</b>	<b>BACKGROUND – LEGISLATION</b> .....	<b>5</b>
1.1	Main provisions of the Act .....	5
1.2	Conditions to place a company into a SCARP.....	5
1.3	Application process .....	6
<b>2</b>	<b>THE PA AND THE INITIAL PA REPORT</b> .....	<b>6</b>
<b>3</b>	<b>SCARP NOTIFICATION – REVENUE REQUIREMENTS</b> .....	<b>7</b>
<b>4</b>	<b>THE ROLE OF THE SCARP UNIT</b> .....	<b>8</b>
4.1	Procedures for dealing with SCARP cases. ....	9
4.2	Proof of Debt .....	10
4.3	Excludable Debt.....	11
<b>5</b>	<b>SCARP AND S62A VAT ACT 2010</b> .....	<b>11</b>
<b>6</b>	<b>SETTING UP A CASE ON REVENUE SYSTEMS</b> .....	<b>11</b>
6.1	Debt at Enforcement .....	11
6.1.1	Debt at Enforcement -Sheriff or Solicitor in place prior to SCARP .....	12
6.2	The PA Report/Rescue Plan – Demonstrating the likely prospect of survival .....	12
<b>7</b>	<b>APPLICANT IS OCCUPYING A PROPERTY USED IN SUPPORT OF ITS TRADE AS TENANT</b> .....	<b>13</b>
<b>8</b>	<b>THE EXCLUDABLE DEBT DECISION</b> .....	<b>13</b>
8.1	Investment for a Rescue Plan .....	14
<b>9</b>	<b>REVENUE VOTE</b> .....	<b>14</b>
9.1	Minimum Revenue requirements in order to assist Revenue in its vote. ....	14
9.2	Creditor Objections against an approved rescue plan .....	15
<b>10</b>	<b>OTHER REVENUE CONSIDERATIONS</b> .....	<b>15</b>

10.1	Tax Clearance .....	15
10.2	Relevant Contracts Tax and the Rescue Plan .....	16
10.2.1	Subcontractors and SCARP .....	16
10.2.2	RCT Deductions post the date of PA appointment but prior to approval .....	16
10.2.3	The RCT rate and the Rescue Plan .....	17
10.2.4	Treatment of RCT Credits withheld post Rescue plan approval .....	17
10.3	Write off of Tax Debts and other Creditors .....	17
10.3.1	Tax Adjusted trading losses relating to the write off .....	18
10.3.2	Requirements of PA's in relation to Exceptional Income Gains .....	18
10.4	Revenue Dividend – Role of SCARP Caseworker prior to the Rescue Plan being finalised .....	19
11	<b>ROLE OF THE SCARP UNIT FOLLOWING APPROVAL OF A RESCUE PLAN .....</b>	<b>20</b>
12	<b>DIVIDENDS – POST SCARP .....</b>	<b>20</b>
13	<b>PAYMENT ARRANGEMENT FOR A SCARP DIVIDEND .....</b>	<b>20</b>
14	<b>COMPLIANCE WITH S62A VAT CONSOLIDATION ACT 2010 .....</b>	<b>21</b>
14.1	Annual, twice yearly (every 6 months) or 4 monthly filers .....	22
14.2	Annual Filers .....	22
14.3	Monthly VAT filers .....	22
14.4	Quarterly or bi-monthly filers .....	22
14.5	Requirements for compliance with S62A of the VAT Consolidation Act 2010 .....	22
15	<b>SCARP AND SECTION 997A TAXES CONSOLIDATION ACT 1997 ....</b>	<b>22</b>
16	<b>NON-COMPLIANCE WITH THE SCARP PROCESS .....</b>	<b>23</b>
17	<b>THE CORPORATE ENFORCEMENT AUTHORITY AND SCARP .....</b>	<b>23</b>
18	<b>HOW TO CONTACT THE COLLECTOR GENERAL'S SCARP UNIT .....</b>	<b>23</b>

APPENDIX 1 - SUMMARY OF THE SCARP PROCESS.....	27
APPENDIX 2 - THE STATEMENT OF AFFAIRS OF A COMPANY .....	28
APPENDIX 3 - SCARP – NOTICE OF APPOINTMENT OF PROCESS ADVISOR .....	30
APPENDIX 4 - PUBLIC NOTICE OF THE APPOINTMENT OF A PROCESS ADVISOR .....	32
APPENDIX 5 - NOTICE OF APPOINTMENT AS PROCESS ADVISOR .....	33
APPENDIX 6 - NOTICE OF MEETING TO CREDITORS .....	35
APPENDIX 7 - PROXIES .....	36
APPENDIX 8 - NOTICE OF APPROVAL OF RESCUE PLAN .....	37
APPENDIX 9 - NOTICE OF OBJECTION TO A RESCUE PLAN.....	39
APPENDIX 10 - SCARP TIMELINE.....	40

## 1 Background – Legislation

The **Companies (Rescue Process for Small and Micro Companies) Act 2021**, commenced on 8 December 2021 and provides a simplified corporate rescue mechanism specifically geared towards small and micro companies. The Act provides for a Small Company Administrative Rescue Process (SCARP) which mirrors key elements of examinership in an *administrative* context, thereby reducing court oversight resulting in efficiencies and lower comparable costs. It has limited court involvement where creditors are engaged in the process and positively disposed to a Rescue Plan.

### 1.1 Main provisions of the Act

The main provisions of the Act can be summarised as follows:

- designed for small and micro companies (as defined by the Companies Act 2014).
- commenced by resolution of directors rather than by application to Court.
- concluded within a shorter period than examinership.
- overseen and assisted by an insolvency practitioner – Process Advisor.
- the Rescue Plan can be passed by a majority in value and number of creditors.
- provides for format of [cross class cram down](#) of debts designed to reduce costs.
- does not require application to Court for approval of Rescue Plan (provided no creditor objections, in which case the courts will determine).
- gives safeguards against irresponsible and dishonest director behaviour.
- the company must be a small company based on eligibility criteria.

### 1.2 Conditions to place a company into a SCARP

The company must satisfy two of the following three conditions:

- (i) Annual turnover up to €12m
- (ii) A balance sheet total of up to €6m
- (iii) Up to 50 employees

The company must be able to show that it will be financially viable following the process.

The company will engage an Independent Insolvency Practitioner to act as the Process Advisor. The Process Advisor must have the same qualifications for appointment as a liquidator.

### 1.3 Application process

A director of the company will prepare a [Statement of Affairs \(SOA\)](#) by statutory declaration, which is submitted to the Process Advisor (PA). The designated PA, in a consultative capacity, meets with the directors to discuss and then issues a report. Directors then pass a resolution to commence the process and appoint the PA.

This process involves the following:

- As soon as practicable after the passing of the resolution but not later than 5 days <sup>1</sup>, the PA shall give notice to creditors with excludable debt requiring the creditor to inform the PA, within 14 days, if the creditor objects to the inclusion of the [excludable debt](#) in the Rescue Plan on any of the [grounds specified](#) in paragraph 4.3
- The directors pass a resolution to cease all payments to creditors accumulated to the date of the appointment of the PA for the duration of the process.
- The directors, in consultation with the PA, decides which court would have jurisdiction: Circuit Court or High Court.
- There is no requirement to apply to court to commence the process (as is the case in Examinerships).
- The directors' resolution is filed with the relevant court, notified to creditors and employees and delivered to the Companies Registration Office (CRO) to be publicly advertised on the company's website (if any) and Iris Oifigiúil.
- Creditors/employees receive the Statement of Affairs and the PA's Report.
- The PA will issue a [Proof of Debt](#) (POD) form to Revenue, which must be completed and returned.
- A Rescue Plan is deemed to be approved if at least 60% of creditors in number representing a majority in value vote in favour.

A PA may apply for a [Protective Certificate](#) in relation to a specific creditor before notifying a creditor of the intention to enter a SCARP. If a Protective Certificate issues from the Court, all collection must be put on hold, including debt at Revenue enforcement. The Debt Management Unit (DMU) caseworker should contact the relevant enforcement agency and inform them of the Protective Certificate and proposed Rescue Plan.

## 2 The PA and the initial PA Report

The PA is required to compile an initial report to accompany their notification to the creditors of their appointment. The Companies Act 2014 as amended by the Companies (Rescue Process

---

<sup>1</sup> S558K Companies Act 2014

for Small and Micro Companies) Act 2021 sets out a minimum level of detail that this report should include. In this context Revenue draws specific attention to the following:

1. The European Union (Preventative Restructuring) Regulations which have been codified in Irish law via amendments to the 2014 Companies Act.

Section 224A requires a director of a company 'who believes, or who has reasonable cause to believe' that the company is, or is likely to be, unable to pay its debts to have regard to:

- the interests of the creditors.
- the need to take steps to avoid insolvency and
- the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business of the company.

Section 228(1) of the Companies Act 2014 provides that a director of a company shall "have regard to the interests of its creditors where the directors become aware of company's insolvency". Revenue expects that the report prepared by the PA would include sufficient detail to assist in evaluating the compliance of the Directors with these statutory requirements.

Both the PA and the Directors should have regard to paragraph 14 below referring to the Corporate Enforcement Authority in the context of the requirements of S224A and S228 of the Companies Act 2014.

### 3 SCARP Notification – Revenue Requirements

Initial Information required by Revenue to accompany a formal request:

- Company name, address, and tax registration number.
- Confirmation from the company that the Process Advisor can act on their behalf.
- All tax returns must be up to date prior to submitting the notice as otherwise it may lead to Revenue excluding its debt.
- Process Advisor costs in the SCARP must be expressly outlined in a rescue plan.
- Confirmation that all current taxes will be filed and paid as they fall due.
- The last two full sets of signed off financial statements.
- The value of PAYE/PRSI for period from the end of the most recently completed PAYE/PRSI return submitted to the date of the PA appointment.
- The value of any S62A VAT adjustment that will arise on any undischarged creditors on the approval of a rescue plan.
- The value of VAT payable (T3) for period from the end of the most recently completed VAT return submitted to the date of the PA appointment,

These are Revenue's minimum requirements and additional information may be sought by the caseworker to confirm the taxpayer's financial position as per the Statement of Affairs.

On receipt of the SCARP application, the Insolvency Unit caseworker will:

- Notify the Process Advisor if any of the debt is currently being enforced and will provide the contact details of the enforcement agency.

Once the formal application is made, the SCARP Unit caseworker must acknowledge receipt of the application within 7 days and has 14 days to:

- review the request.
- seek clarification or further information.
- decide whether or not to consent to be involved in the process and
- notify the Process Advisor of Revenue's decision.

On reviewing the information provided, the following will occur:

- Where a company has a history of non-compliance outside of Debt Warehousing, Revenue may opt to exclude its debt from the process.
- Where some of the required information is not provided, the SCARP Unit contacts the Process Advisor and requests additional information to enable a decision.
- Where a substantial amount of necessary information is not included to enable Revenue to determine the success of the Plan, Revenue may vote against the plan.
- Where the information does not match with Revenue records, SCARP Unit contacts the Process Advisor to verify the information provided.
- Where all the information is received, the SCARP Unit caseworker reviews the case and provides the Process Advisor with a decision within 14 days.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 4 The role of the SCARP Unit

The SCARP Unit will:

- be the first point of contact for all PAs.
- contact the PA and request confirmation from the company that the PA can act on their behalf.
- maintain a record of all cases that have applied for SCARP.
- liaise with the PA.

- issue Proof of Debt to the PA.
- make the decision as regards voting at the creditors' meeting and issue a proxy to the PA.
- monitor the Rescue Plan until it is finalised.

#### 4.1 Procedures for dealing with SCARP cases.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

A review of the company's compliance history is carried out to determine Revenue's approach to the SCARP. This includes consideration of:

- The number of times the company has been referred to enforcement.
- The liability owing to Revenue.
- Have returns been filed on time?
- How long the company has been trading and the number of years it has been insolvent.
- Other directorships of the directors and the compliance status of those companies.
- Documents filed with the Companies Registration Office, such as details of charges held by a bank on company assets or judgements registered against the company.
- The company's historic interaction with Revenue Debt Management. Where a company is in a Phased Payment Arrangement (PPA), or has applied for one, a copy of the PPA1 should be examined to ensure the details of the PPA1 are in line with the details outlined in the Statement of Affairs.

Following a review of the company, the SOA should be examined to ascertain whether the company has a reasonable prospect of survival. When examining the SOA, the SCARP caseworker will consider the following:

- Has the Process Advisor had access to the books and records to make an informed decision?
- The reason for the company becoming insolvent.
- Are the figures on the cashflow projections realistic? Are the VAT and PREM payments in line with the returns filed by the company?
- The number of employees in the company.

Once the SCARP caseworker has reviewed all relevant information, he or she will submit a report to the line manager advising of the approach Revenue should take and instruct the Process Advisor accordingly.

## 4.2 Proof of Debt

The SCARP Unit caseworker will issue a Proof of Debt to the PA at the earliest possible opportunity.

The Proof of Debt will include:

- All the specified tax outstanding, including the tax that is with an enforcement agency for collection up to the date of appointment of the PA.
- A breakdown of Super-Preferential, Preferential and Non- Preferential debt.
- All interest charged on the tax debt. For debt at enforcement, the interest figure will be the amount included on the referral. Where the debt was included in a judgment, court interest will also be included in the Proof of Debt. For debt not at enforcement, the interest will be calculated to the date Revenue consents to inclusion in the SCARP.

There are a number of different classes of creditors in every SCARP, for example secured creditor, retention of title creditor, unsecured creditor etc. Revenue usually has a liability in up to four classes: Super-Preferential, Preferential, Contingent Preferential and Unsecured.

- Super-Preferential is the employee's portion of all unpaid PRSI.
- Preferential is:
  - PAYE/Employer PRSI/USC for the previous 12 months from the date of the appointment
  - highest Corporation Tax liability where there is a liability owing for more than one year.
  - RCT for the previous 12 months from the date of notification of the SCARP process.
  - VAT for the previous 12 months ending in the period prior to the date of notification of the SCARP process.
  - Interest on each of the foregoing.
  - Interest on the Super preferential category of debt is also categorised as preferential debt.
- Contingent Preferential is any VAT due under Section 62A VATCA 2010.
- Unsecured is:
  - PAYE/Employer PRSI/USC owing for more than 12 months prior to the date of notification of the SCARP.
  - Corporation Tax, which is not included in Preferential class.
  - RCT owing for more than 12 months prior to the date of notification of the SCARP process.
  - VAT owing for the VAT period in which the Plan falls in and any owing for more than 12 months prior to the date of notification of the SCARP process.
  - All other taxes where legislation has not classified the tax as preferential.

Once the Process Advisor notifies the creditors of the commencement of the SCARP, they must also request evidence of any preferential debt claim to be made by the creditors. The onus will be on Revenue to prove that a debt is preferential.

### 4.3 Excludable Debt

An Excludable Debt<sup>2</sup> shall be included in a proposal for a Rescue Plan unless the creditor objects on one of the following grounds:

- The company has failed at any time to comply with a requirement relating to tax.
- Where there is an ongoing tax audit or intervention.
- Where taxes are under appeal.

## 5 SCARP and S62A VAT Act 2010

Where a company entering into SCARP has undischarged creditors which are more than 6 months old as at the date of appointment of the Process Advisor it will be necessary for the company to ensure compliance with S62A of the Value Added Tax Consolidation Act 2010.

In the event that a company entering into SCARP claims during the SCARP process that compliance with S62A of the aforementioned Act was achieved in a previous VAT return it will be necessary to demonstrate this to the satisfaction of the Insolvency Unit of the Revenue Commissioners in the first 14 days otherwise it may affect Revenue's position in relation to whether to exclude our debt. Additionally, where it has not been demonstrated to the satisfaction of Revenue ahead of a vote on a Rescue Plan at a creditors meeting Revenue would reserve its right to vote against a rescue plan where a S62A amount contended as due by Revenue has not been accepted by the Process Advisor on behalf of a company as being validly part of Revenue's claim meaning it has not been included in a Rescue Plan.

### Setting up a case on Revenue Systems

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### 6.1 Debt at Enforcement

The appointment of a Process Advisor (PA) does not provide automatic protection from a company's creditors. There may be cases where it may not be possible for the Collector General's division to pause enforcement under way. However, where possible once an application is made for a SCARP, the Debt Management caseworker following consultation with the SCARP Unit may liaise with all enforcement agencies that are pursuing the taxpayer's debt and may request that the enforcement action be put on hold. The caseworker will also request a figure for the fees due. It should be expressly understood however that the action of pausing enforcement processes is a concession by the Collector General's division.

---

<sup>2</sup> S558L(4)(a) any liability of the eligible company arising out of any tax, duty, levy or other charge of a similar nature owed or payable to the State

### 6.1.1 Debt at Enforcement -Sheriff or Solicitor in place prior to SCARP

The appointment of the Revenue Sheriff or a Solicitor as part of Revenue Debt Enforcement procedures gives rise to costs. Typically, those costs are borne by the taxpayer. In circumstances where either enforcement option is underway prior to the appointment of a Process Advisor Revenue will, in its initial acknowledgement of the PA appointment, advise the PA:

1. That either the Sheriff or Solicitor is involved.
2. That the PA should seek to confirm with the sheriff whether their costs have already been discharged prior to his/her appointment.
3. That they request that the Sheriff lodges his/her claim for costs with the PA where the costs were not discharged prior to the date of appointment of the PA.

## 6.2 The PA Report/Rescue Plan – Demonstrating the likely prospect of survival

The SCARP legislation sets out the minimum content of a PA Report. However, this does not mean that the PA cannot provide more detail around their conclusions for likely survival and how that survival is to be achieved. What follows is a non-exhaustive indication of content additional to the minimum that Revenue would expect to see in the initial PA Report and the subsequent rescue plan.

For a company to succeed with its SCARP application it must demonstrate that it has a likely prospect of survival. The question of how that survival is to be achieved must be clearly set out within the body of the Rescue plan in clearly defined sections. Examples of the clearly defined sections expected to be in a plan are as follows:

### **1. What cost cutting does the company propose**

The plan must set out the cost cutting proposed for implementation and the timeframe for those cost reductions. Where a range of different measures are proposed then the financial benefits of each measure should be shown separately. The reason for this expectation is that invariably companies entering the SCARP process have been loss making over a period and so survival is dependent on reducing these recurring losses/commencing to make profits.

### **2. Does the company propose any revenue raising measures.**

Revenue raising measures should be clearly detailed and identified.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 7 Applicant is occupying a property used in support of its trade as tenant

A key focus and objective of the SCARP legislation is to enable eligible companies to restructure their operations to enable them to operate on a going concern basis in the future. Revenue may seek details of the landlord/tenant relationship in the case of companies who occupy properties to conduct their trade as tenants. This detail may include:

1. The likely risk of any disputes jeopardising the approval of the plan.
2. The likely risk of a landlord objecting to a rescue plan presented, and or

The likelihood that the arrangement under which the property is occupied provides a landlord with an opportunity to increase the annual rent for example on a fixed date annually. If it does is there a pre-determined increase provided for in the lease agreement? If so efforts to restructure is information Revenue would find beneficial in determining viability of the business prior to Revenue's decision to exclude its debt.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 8 The Excludable Debt Decision

It is important that the SCARP Unit caseworker notifies the Process Advisor when Revenue decides to exclude its debt from the Rescue Plan because if Revenue fail to notify the Process Advisor of our decision, we will remain part of the process.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 8.1 Investment for a Rescue Plan

Is the proposed investment from a source that is in compliance with legislation other than the SCARP legislation? Although a PA may not handle monies equal to an investment envisaged for a rescue plan, they are nevertheless the person tasked with formulating a rescue plan which may or may not include a provision for investment. It is incumbent therefore that the PA takes steps to establish that the funds proposed for investment are from a source that is legitimate and that the funds are in compliance with Acts of the Oireachtas such as but not limited to the Companies Acts, the various taxes acts and that the PA indicates in the rescue plan that they are or are not satisfied that the source of the proposed investment is legitimate and is in compliance with aforementioned legislation. There will be an expectation that a PA would set out in the Rescue Plan an account of how they satisfied themselves in relation to compliance.

## 9 Revenue Vote

### 9.1 Minimum Revenue requirements in order to assist Revenue in its vote.

- Details and supporting documentation for all assets (including any charges) and liabilities (including Process Advisor fees) must be supplied.
- Details and supporting documentation for all future projections made.
- Details of any corporate investments in the Rescue Plan including setting out full details of the identity of the investor.
- Confirmation that current taxes will be paid as they fall due.
- Details of measures taken prior to the appointment of the process advisor to address debt and to prevent the accumulation of future debt such as cost cutting to be undertaken.
- Company's Statement of Affairs.
- All returns filed.

All additional information must be supplied by the Process Advisor within the 14-day period, including confirmation that current taxes will be paid as they fall due. Any taxes that fall due during the setting up period must be filed and paid as they are not included in the specified debt.

The Process Advisor will issue a Proxy Form (see Appendix 7) to each creditor when asking them to vote on the Rescue Plan.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

The Rescue Plan is approved without the requirement for court approval provided that 60% in number representing the majority in value of claims of an impaired class of creditors vote in favour of the proposal and no creditor raises an objection to the plan within the 21-day cooling off period which follows the vote.

If the company defaults on current taxes or payments cancel under the Rescue Plan, then the Process Advisor should be contacted to resolve the issues. If they cannot be resolved, the Collector-General may go to the Court and request that the SCARP be terminated.

## 9.2 Creditor Objections against an approved rescue plan

When a creditors meeting has been held at which a rescue plan has been presented and approved by Creditors of the SCARP company (no later than day 49 following the passing of the resolution to appoint the PA), a creditor who votes against the plan has an option to lodge an objection (using the document at Appendix 9) with the Courts.

In circumstances where the Process Advisor (PA) advises the Revenue SCARP Unit of a creditor having lodged an objection to an approved Rescue Plan, the Unit will advise the Revenue Solicitors Division (RSD) of same and will proceed thereafter in consultation with the RSD.

## 10 Other Revenue Considerations

### 10.1 Tax Clearance

When a company seeks to avail of the SCARP scheme the company in question may not be in possession of a Tax Clearance Certificate (TCC). If a company, following the approval of a rescue plan, applies for a tax clearance certificate the following would be applicable in relation to qualifying for a certificate:

1. Normal e-tax clearance procedures in relation to the compliance of the company for periods post SCARP will apply.
2. In relation to the agreed dividend there may be 3 payment scenarios,
  - a. A lump sum and a mix of a phased payment arrangement,
  - b. Solely a lump sum or
  - c. Solely a phased payment arrangement.

Depending on the scenario for discharging the agreed dividend it would be the case that a TCC granted under point 1 would continue to be applicable where:

- a. The lump sum is paid by the agreed date and in the agreed amount,
- b. Each periodic instalment is paid by the agreed date and in the agreed amount each month etc.
- c. Where post SCARP compliance is in order.

In all other circumstances tax clearance may cease to be applicable with the TCC **being withdrawn** until compliance is regularised in all respects.

## 10.2 Relevant Contracts Tax and the Rescue Plan

RCT is a withholding tax that applies to certain payments by principal contractors to subcontractors in the construction, forestry and meat-processing industries. The rates of tax are 0%, 20% and 35%.

An eRCT system is operated by Revenue whereby a tax deduction at source system that applies to payments made by principals to subcontractors under relevant contracts in the sectors referenced above.

Ahead of each payment by a principal to a subcontractor the principal is required to provide advance notification to Revenue of the payment to be made and at that time Revenue will confirm to the principal the withholding tax rate to be applied to the payment.

### 10.2.1 Subcontractors and SCARP

It may be the case that a subcontractor, who seeks to avail of the SCARP process, has been benefitting from a Zero/20% rate of RCT withholding tax up to the date at which a PA has been appointed. It should be noted that the relevant Division of Revenue that handles the affairs of the SCARP company may review the withholding tax rate under the RCT regime that is to be applied to payments to the sub-contractor by reference to the subcontractor's compliance history. Therefore, a PA should be cognisant, when preparing the rescue plan and associated cashflows, of the risk that a Zero/20% rate could be increased to as much as 35%.

### 10.2.2 RCT Deductions post the date of PA appointment but prior to approval

Where a company availing of the SCARP process is within the RCT regime and it's RCT withholding rate as a subcontractor is reviewed upwards from 0 to 20% or 35% or from 20% to 35% then the RCT amount deducted from the payment made by the principal is treated as a payment on account against the company's Corporation Tax liability<sup>3</sup>. As the company's final Corporation Tax liability for the first post SCARP period may not be established until well after the date an RCT withholding is applied the rescue plan should not factor in the possibility to use RCT credits suffered post the appointment of the PA against amounts agreed under the plan.

---

<sup>3</sup> Section 530P Taxes Consolidation Act 1997

### 10.2.3 The RCT rate and the Rescue Plan

A change in an RCT withholding rate from that in force prior to the PA appointment may create additional cashflow pressure for the company so it is of vital importance that the PA expressly indicates in their PA Report/Rescue Plan/Cashflow documentation the RCT rate (where the SCARP company is within the RCT regime) that has been factored into the plans of the PA. In preparing such plans/cashflows it may be prudent to factor in the highest RCT rate as the Insolvency Unit has no role in setting this rate.

### 10.2.4 Treatment of RCT Credits withheld post Rescue plan approval

The primary purpose and treatment RCT withheld is that it is regarded as a payment on account against Corporation Tax for the period in which it is withheld<sup>4</sup>. It may be up to 18 months after the approval of a SCARP Rescue Plan before Revenue has visibility as to the Corporation Tax liability for the SCARP period and the period in which RCT credits are withheld. Consequently, it will not be possible to agree to requests to use RCT credits to discharge agreed SCARP liabilities. It should also be noted that it may not be possible for Revenue to agree to offset RCT deductions suffered post plan approval against taxes declared post plan approval.

For example, a company with a year end of 31/01/24 sees a rescue plan become legal binding in June 2023. If that company suffers an RCT deduction in say August 2023 the company should not assume that they will be able to offset that RCT amount against other taxes given the primary purpose of RCT. This is something that should be considered in the context of cashflow planning by the Process Advisor.

#### Further guidance

- [Relevant Contracts Tax for subcontractors](#)
- [Electronic Relevant Contracts Tax System](#)

## 10.3 Write off of Tax Debts and other Creditors.

The purpose of SCARP is to enable the business/company that avails of either process to restructure their trade<sup>5</sup> /non trade debts (possibly capital related<sup>6</sup> or expensed amounts) as well as any tax debts<sup>7</sup>. Either process invariably returns the business to solvency thus enabling it to continue trading. This restructuring often leads to the write down of the debts of the business<sup>8</sup> such that significant portions of each are permanently written off. This write off has

---

<sup>4</sup> S530P TCA 1997

<sup>5</sup> Previously expensed to the P&L

<sup>6</sup> If such debts were used to finance the purchase of equipment that qualified for capital allowances, then perhaps, if such debts are reduced consideration will need to be given to whether the amount that qualify for capital allowances needs to be reviewed and therefore possibly prior capital allowances might need to be proportionately clawed back (within the 4 year timeframe for assessments)

<sup>7</sup> PAYE/PRSI/USC which would have been expensed to the P&L in the past and so, post SCARP will not be discharged in full.

<sup>8</sup> Trade related and or possibly capital related debts as referenced in prior footnotes.

consequences for trading losses forward and possibly capital allowances also which is covered below.

### 10.3.1 Tax Adjusted trading losses relating to the write off

Accounting rules require businesses in circumstances set out above to recognise the benefit of any write off in the accounting period in which the write off is agreed via a “write back” of the expenses to the accounts as an “exceptional income item” in the period where this is agreed. A key requirement of a revenue expense qualifying as a tax deduction is that the cost must be “wholly and exclusively **laid out or expended** for the purposes of the trade or profession”<sup>9</sup>. Therefore, where a cost that previously met this condition is being written off, the recording of the Exceptional Income Gain reverses the effect of the initial deduction in the accounts. The recognition in the accounts of an exceptional income gain would be consistent with Section 87 Taxes Consolidation Act 1997.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### 10.3.2 Requirements of PA’s in relation to Exceptional Income Gains

Process Advisors in the case of SCARP will be required to undertake the following:

#### 1. **Previously expensed costs**

For previously expensed costs the PA will be required to include a reference in the rescue plan for approval by creditors to the fact that, in the event of approval, previously expensed costs need to be recognised in the accounts as an Exceptional Income item under accounting rules. The value of the exceptional income gain to be included in the accounts must be included in the rescue plan.

Previously expensed costs being written back into the accounts no longer qualify as a tax deduction under S81(2) Taxes Consolidation Act 1997 on the basis that these costs previously claimed as expenses are now no longer incurred where they have been written off. Consequently, an adjustment in the adjusted profit computations to reverse out the exceptional income gain from the accounting profit/loss inclusive of the exceptional income gain to preserve trading losses forward is not permitted.

#### 2. **Non expensed or Capital Debts being written off.**

There may be circumstances where some or all of non-expensed debts (capital debts/borrowings or unpaid invoices) benefitting from a write off in the SCARP will have been used to purchase equipment for use in the business. Where this equipment

---

<sup>9</sup> S81(2)(a) Taxes Consolidation Act 1997

qualifies for Capital Allowances and or where the business has claimed capital allowances in respect of such costs the PA will be required to undertake the following:

- a. In relation to the costs of such equipment determine the amount of the debt proposed for write off, that relates to such equipment, which remains unpaid on the date of appointment of the PA.
- b. The value of the unpaid costs that relate to equipment in respect of which Capital Allowances have or are yet to be claimed which are proposed for write off should be recorded in the rescue plan to be presented to creditors for approval of the value.
- c. The PA will be expected to highlight the need for the company/it's advisors to adjust for previously claimed capital allowances by including the written off costs in the exceptional income item in the accounts at a value that effectively claws back any tax saved in the past.

Additionally, the PA will be expected to highlight the value of any downward adjustment to tax written down values for any equipment in respect of which Capital Allowances are yet to be claimed in the rescue plan for approval.

#### 10.4 Revenue Dividend – Role of SCARP Caseworker prior to the Rescue Plan being finalised

The caseworker will liaise with the Process Advisor in the lead up to the finalisation of the Rescue Plan in order to establish:

- a) Revenue's dividend percentages across the different categories of debt.
- b) Details of the exact payment timelines and mix (it is a lump sum in full or a mixture of Phased Payment arrangement and lump sum)

Using this information, the caseworker will compute Revenue's expected dividend and will prepare a timeline document, where an element of the dividend is being discharged in instalments, which shows the following:

- A. The Instalment Amount
- B. The payment date for each month of the phased payment timeframe

Revenue requests that this Instalment information is added to the Rescue Plan as an appendix ahead of issuing in the notice to Creditors. It is hoped this will assist the directors in meeting their tax compliance obligations in that it will give clear information on the date each month a payment is to be made and the amount required each month.

All instalment payments under a SCARP must be made by Electronic Funds Transfer (EFT). All Process Advisors must be notified of payments, by e-mail, by the SCARP Unit caseworker.

Once the SCARP has been successfully completed, the SCARP Unit will ensure all periods on the Proof of Debt, not in receipt of a dividend, are written off. These written off periods can never be pursued or collected in the future, unlike tax which has been written out.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 11 Role of the SCARP Unit following approval of a Rescue Plan

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 12 Dividends – Post SCARP

In a SCARP, all creditors should receive a higher dividend than they would expect to receive if the company was placed into liquidation or receivership. The typical scheme will usually involve a secured creditor receiving most, if not all, of the debt owing to them. However, the repayment terms may be restructured in some way e.g., payable over a longer period, reduction in interest payable etc. It should be noted that a secured creditor's debt can only be written down to the value of the underlying security it holds.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 13 Payment arrangement for a SCARP Dividend

The rescue plan proposed by the Process Advisor must clearly set out the manner in which the dividend to Revenue will be discharged, i.e., whether by way of single lump sum amount, a lump sum plus an instalment arrangement or solely by instalment arrangement. Where any element of the dividend is being discharged in instalments the process advisor is required to include a schedule/table showing the payment amount and the date in each month that the payment proposed is to be made. This will be for the benefit of all parties and will avoid circumstances arising where a company operator is uncertain about payment terms. This also minimises the scope of the SCARP to fall into arrears.

The PA should, in respect of any lump sum amount to be used to discharge a dividend, either in full or in part, set out the lump sum amount due to Revenue within the plan (possibly as an appendix showing all amounts owing to individual creditors) and also stipulate the payment date amount as some company operators may not link back to the definitions of certain terms. This is requested in light of the fact that the role of the PA ceases in a technical sense on the expiration of the SCARP period and it therefore ensures that the company operator has a clear understanding of the obligations under the plan that must be met by specified dates.

It would also be desirable if the PA shared a copy of the approved rescue plan with the accountants of the SCARP company even if they are not creditors of the SCARP company as this will assist said accountants in their role as advisors to the SCARP company.

It should be noted that a SCARP payment arrangement can constitute a lump sum or be paid monthly or quarterly depending on the terms.

Details of the account to which payments should be made and what Revenue requests taxpayers to do after each payment are as follows:

- **Bank Account Name:** Office of The Revenue Commissioners – UTD EFT Public Bank Account
- **IBAN:** IE37DABA95159920003514
- **B.I.C:** DABAIE2D

Each payment should be accompanied by e-mail to [moneytrans@revenue.ie](mailto:moneytrans@revenue.ie) and copied to [scarp@revenue.ie](mailto:scarp@revenue.ie) with the following details included in order to facilitate correct allocation of payment:

- **Ref:** SCARP Arrangement
- Date payment was sent.
- Tax Registration number

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 14 Compliance with S62A VAT Consolidation Act 2010

### Recording a S62A liability post SCARP

Notwithstanding that a company should have accounted for VAT in respect of a S62A VAT liability in a period prior to the date of appointment of a Process Advisor Revenue is prepared to operate an exceptional concession for SCARP companies only to the effect that a company must account for S62A VAT due in the first full VAT period immediately following the end of the VAT period in which a rescue plan is approved.

## Operation of the Concession

### 14.1 Annual, twice yearly (every 6 months) or 4 monthly filers

In the case of a SCARP company that was either an annual VAT filer or a twice-yearly VAT filer immediately prior to the date of appointment of a Process Advisor it would be the policy of the Revenue Commissioners to immediately revert that company to a bimonthly filing frequency on compliance grounds in accordance with Revenue's risk management procedures.

Following the implementation, a change to the VAT filing frequency the following will apply:

### 14.2 Annual Filers

Where a rescue plan is approved and becomes binding prior to the commencement of 31 October in a given year then a company will be expected to reflect compliance with S62A in the first bi-monthly VAT period that becomes available to the company for completion on Revenue's ROS systems where they are a ROS filer.

### 14.3 Monthly VAT filers

Where a rescue plan becomes binding prior to expiration of the 6 monthly VAT period in place on the date on which the company entered SCARP then, in line with the policy to revert such companies to bi-monthly filing a SCARP company will be required to comply with the provisions of S62A in the first bi-monthly return that becomes available for completion on ROS by the company.

### 14.4 Quarterly or bi-monthly filers

Revenue will not seek to implement any filing frequency changes in the case of quarterly VAT filers.

### 14.5 Requirements for compliance with S62A of the VAT Consolidation Act 2010

The S62A amount (referred to as the "gross amount" hereafter) confirmed to Revenue by the Process Advisor will be included in the Rescue Plan and be covered by the dividend rates provided for in the Plan. When completing the VAT returns that include amounts for compliance with S62A a company will only be required to record the amount equal to the following formula:

Gross amount x dividend rate applied in the approved rescue plan<sup>10</sup>

## 15 SCARP and Section 997A Taxes Consolidation Act 1997

It is the policy of the Revenue Commissioners and the SCARP Unit specifically in all SCARP cases to consider the provisions of S997A and take all necessary steps to facilitate the issuing of S997A assessments in the future to all parties under the scope of the Section.

---

<sup>10</sup> Provided that the debt has been correctly categorised by the Process Advisor in their Plan

In this regard the Insolvency Unit operates a cross divisional referral programme of notifying the home tax division (Business Division of Medium Enterprises Division) of the fact that PAYE/PRSI affecting individuals covered by the provisions of S997A Taxes Consolidation Act 1997 has not been discharged by the company and has seen a write down of the company. This referral enables the division to take issue the necessary assessment under the legislation.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 16 Non-Compliance with the SCARP Process

Revenue will engage with taxpayers in relation to compliance with the SCARP agreement in relation to the discharge of dividends. Where there is non-compliance with the implementation of the agreement, whether that involves non-payment or partial payment a reasonable opportunity will be extended to the company to allow time to bring the SCARP back into line with the agreement. Revenue will consider all enforcement options open to it where the company fails to bring its compliance record into line with the obligations of the SCARP in accordance with the opportunities extended.

Revenue will not hesitate to pursue liquidation under S569 of the Companies Act 2014 or S570 of the Companies Act 2014 as amended.

## 17 The Corporate Enforcement Authority and SCARP

Revenue has a Memorandum of Understanding (MOU) with the Corporate Enforcement Authority (CEA) and will report any of the offences by either the company or Process Advisor as part of the SCARP process:

- **Category 1 offences:** include offences such as false documentation/information.
- **Category 2 offences:** include offences such as the company failing to disclose information to the Process Advisor which has the effect of misleading him or her. It also includes the offence of acting as a Process Advisor without the appropriate qualification.
- **Category 3 offences:** include non-filing of documents and failure to send various notices throughout the rescue process. For example, if a Process Advisor failed to send a notice of his or her appointment to creditors, he or she would be guilty of an offence.
- **Category 4 offences:** include failure to make routine filings.

## 18 How to contact the Collector General's SCARP Unit

**All Queries (external or internal) shall be directed to:**

[SCARP@revenue.ie](mailto:SCARP@revenue.ie)

**OR**

Through MyEnquiries to the **CGs Insolvency Unit – Insolvency Query**

## Glossary

### **Cross Class Cram Down**

Is the approval mechanism for the Rescue Plan. This means that where one class of impaired creditor votes in favour of the plan, this decision can then be imposed on all classes of creditors. However, creditors who do not vote in favour of the plan may still make an objection.

### **Excludable Debts**

These debts can only be included in the Rescue Plan with the creditors' consent:

- any liability of the eligible company arising out of any tax, duty, levy, or other charge of a similar nature owed or payable to the State,
- any debt or liability of the eligible company arising under the Redundancy Payments Acts 1967 to 2014,
- any debt or liability of the eligible company arising under the Protection of Employees (Employers' Insolvency) Acts 1984 to 2020,
- any debt or liability of the eligible company arising under the Social Welfare Consolidation Act 2005, or
- any debt or liability of the eligible company arising under such other enactment as may be prescribed.

### **Protective Certificate**

A Certificate issued by a Court which protects the debtor against legal proceedings or other actions by a specified creditor in respect of debts for a limited time while a SCARP is being put in place.

### **Secured Creditor**

A creditor who holds a specific claim (usually a property interest) over one or more of a debtor's assets as security for a secured debt. An example would be a mortgage or charge over a house.

### **Secured Debt**

A debt backed or secured by an asset to reduce the risk associated with the debt by use of arrangements which make the asset available to the secured creditor to discharge the debt before general/unsecured creditors (e.g. a mortgage or charge over a house used as security for a housing loan). If the debtor defaults or fails to meet one of the terms of repayment, the bank may seize the debtor's house to sell, using the proceeds towards the settlement of outstanding debts.

### **Specified Debt**

In relation to SCARP, specified debt means a debt that is specified in the rescue plan. Any debt due after the date Revenue opts into a SCARP will be considered current taxes and will have to be paid by the company.

**Unsecured creditor**

A creditor who does not have a specific claim (usually a property interest) over the debtor's assets.

**Unsecured debt**

A debt where the unsecured creditor would not be entitled to seize specific assets if the debtor fails to make repayments because that creditor does not hold security over those assets.

## Appendix 1 - Summary of the SCARP Process

### Small Companies Administrative Rescue Process Case (SCARP)

1. A SCARP allows you to settle and or restructure company debts over a set period.
2. You must apply for a SCARP through a Process Advisor.
3. Here is how it works:
  - You apply for a SCARP through your Process Advisor.
  - The PA gets 49 days to develop a proposal to be put to your creditors.
  - Your creditors do not have to agree to inclusion in the proposal. Certain classes of creditors are Excludable Creditors for the purpose of a SCARP.
  - Creditors representing 60% of your debt must agree with the proposal.
  - Creditors have a further 21 days in which to lodge an objection to the proposal.
  - After 70 days, the Rescue Plan comes into effect.

## Appendix 2 - The Statement of Affairs of a Company

### STATEMENT OF AFFAIRS OF [COMPANY NAME] Section 558B (4) of the Companies Act 2014

	ESTIMATED REALISABLE VALUE
	€
ASSETS SPECIFICALLY CHARGED (as per List "A")	-
Freehold property	-
Leasehold property	-
Other assets (see List "A"):	-
TOTAL	-
ASSETS NOT SPECIFICALLY CHARGED (as per List "B")	
Freehold property	-
Leasehold property	-
Investments	-
Motor vehicles	-
Plant & machinery	-
Fixtures & fittings	-
Office Equipment	-
Balance at bank	-
Cash in hand	-
Trade debtors	-
Directors loans/connected party loans	-
Stock in trade	-
Work in progress	-
Other assets (see List "B")	-
TOTAL	-
TOTAL ASSETS	-
Deduct amounts due to SECURED CREDITORS (List "A") to extent to which claims are estimated to be covered by assets specifically charged <b>Balance available for preferential creditors</b>	-
Deduct amounts claimed to be due to PREFERENTIAL CREDITORS (List "C") <b>Balance available for debenture holders secured by a floating charge</b>	-
Deduct amounts due to such DEBENTURES HOLDERS (List "D") after deducting any sums estimated in List "A" to be covered by assets specifically charged. <b>Balance available for unsecured creditors</b>	-
<i>Deduct</i> amounts claimed to be due to UNSECURED CREDITORS (List "E")	-
Amounts claimed to be due including unsecured balance of claims of creditors secured by assets specifically charged	
Deduct amounts claimed to be due in respect of CONTINGENT LIABILITIES (List "F")	-
Deduct amounts claimed to be due in respect of PROSPECTIVE LIABILITIES (List "G")	-
<b>Estimated SURPLUS/(DEFICIT)</b>	-

- (i) The forgoing estimates are subject to the costs of the Rescue Process/Winding Up and to any surplus or deficiency on trading pending realisation of the assets
- (ii) (There is no unpaid capital liable to be called up or The nominal amount of unpaid capital liable to be called up is estimated to produce € ,which is/is not charged in favour of debenture holders.(strike out option that does not apply)

**Signed**

**Date**

**Signed**

**Date**

## Appendix 3 - SCARP – Notice of Appointment of Process Advisor

Section 558J(2)(a) of the Companies Act 2014

<b>SCARP1 – Notice of Appointment of Process Advisor Section 558J(2)(a) of the Companies Act 2014</b>	
<b>1. Company Details</b>	
Company Number:	
Company Name:	
Company Size:	Small <input type="checkbox"/> Micro <input type="checkbox"/>
Number of employees on the date of submission:	
Has the company operations outside Ireland/EU:	yes <input type="checkbox"/> no <input type="checkbox"/>
<b>2. NACE Code</b>	
Nature of Business:	
NACE Code:	
<b>3. Appointment Details</b>	
I, hereby give notice to the Registrar of Companies, that I have been appointed Process Adviser to the above-names company effective from and by virtue of the resolution passed on following mentioned date by the directors, in accordance with section 558E of the Companies Act 2014.	
Effective date:	
<b>4. Add Process Adviser</b>	
First name:	
Last name:	
Phone number:	
Email address:	
<i>Process Adviser Address</i>	
Address 1:	
Address 2:	
Address 3:	
Town/City:	

Postal Code:	
<b>5. Verification Details</b>	
<i>This form must be certified by the process adviser of the company.</i>	
I hereby certify that the particulars contained in this form are correct <input type="checkbox"/>	
<b>6. Signature Method</b>	
<i>Please select the appropriate signature method.</i>	
Sign this form with a certificate issued by Revenue Online Services (ROS) <input type="checkbox"/>	
Print and sign a signature page which must then be uploaded <input type="checkbox"/>	
<i>WARNING: ROS cert names must match the name on the form below. As the Process Adviser is signing then the ROS cert must be in their own names and not that of the company.</i>	
<b>7. Signature Details</b>	
Signature Type:	Signature as Process Adviser
Process Adviser Name:	
Email Address:	
<b>8. Presenter Details</b>	
First name:	
Last name:	
Email:	
Address:	
Telephone number:	
Reference number:	

## Appendix 4 - Public notice of the appointment of a Process Advisor

### **Section 558J(3) of the Companies Act 2014**

#### **Public notice of the appointment of a process adviser Section 558J(3) of the Companies Act 2014**

Pursuant to the passing of a resolution of the board of directors of [**Company Name**], Company Number [**Company Number**], on [**Date**], and being satisfied that [**Process Adviser**], [**name of firm, if applicable**] is qualified in accordance with section 633 of the Companies Act 2014 ('the Act') for appointment as a process adviser, [**Process Adviser**] has been appointed as process adviser for the company, in accordance with section 558E of the Act for the purpose of preparing a rescue plan in accordance with the provisions of Part 10A of the Act.

## Appendix 5 - Notice of appointment as Process Advisor

### Section 558K(2)(a) of the Companies Act 2014:

#### 1. General

I hereby give notice that I [**process adviser name**] of [**name of firm, if applicable**] have been appointed as process adviser to [**Company Name**], Company Number [**Company Number**], following the passing of a resolution of the board of directors on [**Date**] in accordance with section 558E of the Companies Act 2014 ('the Act'), for the purpose of preparing a rescue plan for the company.

You are requested to acknowledge in writing receipt of this notice within 7 days in accordance with section 558O of the Act. Where you fail to make such an acknowledgement you will receive a reminder notice, requesting acknowledgement within 72 hours. Where you fail to acknowledge receipt of this reminder notice, you will be deemed to have received the notice. You are requested to provide the information set out in Part 4 of this form within 14 days of the giving of this notice. Where you fail to respond within 14 days, I will estimate the value of your claim and send you a notice which:

- (a) Specifies the estimated value of your claim, and
- (b) Specifies that unless you supply the information required within 72 hours of the notice being given, then I may use the estimated value for the purpose of preparing a rescue plan in respect of the company.

It is in your interest to submit all information requested and you are strongly urged to respond within the timeframes outlined in the notice.

Upon receipt of all necessary documentation, I will prepare a rescue plan in respect of the company. The rescue plan must be prepared by day 49 of my appointment. You will be furnished with further notices outlining the content of the rescue plan and inviting you to vote on it.

#### 2. Payments

Having reviewed the Statement of Affairs provided by the Directors of [**Company Name**], I consider the following payments are required in order for [**Company Name**] to continue trading.

Company/Person	Description of payment	Frequency	Amount

Any liabilities arising after my appointment which have been properly incurred by me, shall be paid in full unless there is a subsequent liquidation of the company. Where a liquidation occurs, payments will be made in accordance with the provisions of Part 11 of the Act.

#### 3. Relevant Court

I am required by section 558H(2) of the Act to determine whether any proceedings brought in relation to the company during the period of my appointment should be brought in the Circuit Court or High Court. I confirm that the [**High Court/Circuit Court**] shall be the relevant Court for this purpose. Any documents you may seek to file with the [**High Court/Circuit Court**] should be sent to [**insert address for Central Office of High Court/Circuit Court**].

#### 4. Creditors

Creditors of the company are requested to send me the following information:

- (a) The nature of your claim against the company,
- (b) The nature of evidence supporting the claim; such evidence may include invoices, correspondence with the company etc.,
- (c) Any credit terms offered by you to the company,
- (d) Any security held by you over the assets of the company,
- (e) Any related party transactions with the company, and
- (f) Any further information you consider relevant to the preparation of a rescue plan for the company.

Information provided by you in accordance with this request will be used to verify the information provided to me by [**insert Company Name**] and assist in preparing a rescue plan.

Where your debt is an excludable debt in accordance with section 558L of the Act, your response to this notice must specify whether you consent to your debt being included in the rescue plan. You may object to the inclusion of your debt in the rescue plan in the following circumstances:

- (a) the company has failed at any time to comply with a requirement relating to tax imposed by or under the Act or any other enactment,
- (b) the Revenue Commissioners are conducting an audit or intervention into the company, or
- (c) the company is party to an appeal in relation to a requirement relating to tax imposed by the Act or any other enactment.

#### 5. Repudiation (If applicable)

[Insert statement confirming the creditor is party to a contract to which section 558P of the Act applies and the process adviser is considering repudiation, if applicable]

#### 6. Documents

Enclosed with this notice are the following documents for your information:

- (a) A copy of my determination under section 558C of the Act, and
- (b) A copy of my report prepared under section 558D of the Act

**Signed: Date:**

**Process adviser to [Company Name]**

## Appendix 6 - Notice of meeting to creditors

### Section 558U(2) of the Companies Act 2014

Notice is hereby given that a meeting of **[creditors and/or members]** of **[Company Name]**, Company Number **[Company Number]** will be held at **[Place]** on **[Date]** at **[Time]**.

This meeting is scheduled in accordance with section 558T of the Companies Act 2014 ('the Act'), following the completion of a rescue plan for **[Company Name]** in accordance with section 558Q of the Act.

The purpose of the meeting is to consider the rescue plan prepared for **[Company Name]**. In accordance with section 558U of the Act the following documents are enclosed with this notice:

- (a) a copy of the rescue plan,
- (b) a statement of the assets and liabilities of the company,
- (c) a description of the likely financial outcome of a winding up of the company or of the application of a receivership to that company for each class of members and creditors,
- (d) a statement explaining—
  - i. the effect of the rescue plan,
  - ii. the reasons why it is fair and equitable and not unfairly prejudicial,
  - iii. the likely consequences of a failure to approve the rescue plan,
- (e) information about any changes in the management or direction of the eligible company that are specified in the rescue plan,
- (f) a statement outlining any material interests of the directors of the eligible company and the effect of the rescue plan to the extent it is different to like interests of other persons,
- (g) information about the procedure for agreeing to, proposing modifications to, or objecting to the rescue plan at the meeting,
- (h) a general and a special form of proxy (with neither the name nor description of the process adviser or any other person printed or inserted in the body of any such instrument of proxy),
- (i) a statement setting out—
  - i. the remuneration payable to, and the costs and expenses incurred by the process adviser under Part 10A of the Act, and
  - ii. the remuneration payable to, and the costs and expenses incurred by, the process adviser appointed in respect of the company by virtue of the passing of a resolution mentioned in section 558E(2) of the Act during the relevant period,
- (j) an estimate of the additional remuneration that would be payable to, and the costs and expenses that would be incurred by, the process adviser under this Part 10A of the Act if the rescue plan were to be approved pursuant to section 558ZB of the Act, and
- (k) an estimate of the additional remuneration that would be payable to, and the costs and expenses that would be incurred by, the process adviser under Part 10A of the Act if the rescue plan were not to be approved pursuant to section 558ZB of the Act.

**Forms of proxy must be lodged by 4pm on the day before the meeting at [insert address].**

**Signed:**

**Date:**

**Process adviser to [Company Name]**

## Appendix 7 - Proxies

### Instrument of Proxy Section 558W(3) of the Companies Act 2014

I/We, [Name(s)] of [Company/Entity (if applicable)] a [creditor/member] hereby appoint [Name] of [of company, if applicable] to be my/our general proxy to vote at the meeting of creditors and members for purpose of considering the proposed rescue plan prepared for [Company Name] to be held at [Place] on [Date] at [Time], or at any adjournment thereof.  
(See note 1)

Signature	
Name (in print)	
Position/Role	
For and on behalf of	
Date	

#### NOTES:

1. If a firm, sign the firm's trading name and add "by A.B. a partner in the said firm." If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf and the fact that the officer is so authorised must be so stated.
2. The proxy form when signed must be lodged by the time and at the address stated for that purpose in the notice convening the meeting at which it is to be used.
3. The Process Adviser may act as general or special proxy.

### Instrument of special proxy Section 558W(3) of the Companies Act 2014

I/We, [Name(s)] of [Company/Entity (if applicable)] a [creditor/member] hereby appoint [Name] of [of company, if applicable] to be my/our proxy to vote [for/against] the rescue plan in respect of [company name] at the meeting of [creditors/members] for purpose of considering the proposed rescue plan to be held at [Place] on [Date] at [Time], or at any adjournment thereof.

(See note 1)

Signature	
Name (in print)	
Position/Role	
For and on behalf of	

#### NOTES:

1. If a firm, sign the firm's trading name and add "by A.B. a partner in the said firm." If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf and the fact that the officer is so authorised must be so stated.
2. The proxy form when signed must be lodged by the time and at the address stated for that purpose in the notice convening the meeting at which it is to be used.
3. The Process adviser may act as general or special proxy.

## Appendix 8 - Notice of approval of rescue plan

### Section 558Z(2) of the Companies Act 2014

#### 1. General

Notice is hereby given that at a meeting of [creditors and/or members] of [Company Name], company number [Company Number] held at [Place] on [Date] at [Time], a rescue plan in respect of [Company Name] was approved in accordance with section 558Y of the Companies Act 2014 ('the Act'). This notice of approval was filed with the Central Office of the [insert relevant court] on [date]. This approval shall become legally binding in the event that no objection to the rescue plan is filed with the [insert relevant court] within 21 days from the date the notice of approval was filed.

#### 2. Objection

You may file an objection to the rescue plan in the following circumstances:

- (a) where you voted against the rescue plan and one of the following grounds of objection applies:
- (i) the rescue plan unfairly prejudices your interests,
  - (ii) the rescue plan is unfair and inequitable in relation to you,
  - (iii) there was some material irregularity at or in relation to a meeting to which section 558Y of the Act applies,
  - (iv) you were materially prejudiced by not receiving notice of the meeting or any other notice required to be sent under the Act,
  - (v) acceptance of the rescue plan by the meeting was obtained by improper means,
  - (vi) the rescue plan was put forward for an improper purpose,
  - (vii) it is not necessary for the survival of the company, and the whole or any part of its undertaking, as a going concern that the contract specified in the objection be repudiated or affirmed,
  - (viii) the amount of loss or damage determined in respect of the repudiation of the contract specified in the objection is inadequate or excessive,
  - (ix) the provisions with respect to leases in section 558R of the Act apply,
  - (x) the sole or primary purpose of the rescue plan is the avoidance of payment of tax due, or
  - (xi) the rescue plan contains an unlawful provision,

or

- (b) where you voted in favour of the rescue plan but consider that one of the following applies:
- (i) the acceptance of the rescue plan was obtained by improper means, or
  - (ii) that after voting to accept the rescue plan, you became aware that the rescue plan was put forward for an improper purpose.

Objections may be filed with the Central Office of the [relevant court] at the following address [insert address of relevant court office]

You may only make submissions to the **[relevant court]** in respect of objections validly filed, unless that objection is upheld. You may make submissions more generally only where **[insert relevant court]** upholds an objection and seeks to amend the rescue plan.

### **3. Documents**

Enclosed with this notice are the following documents for your information: =

- (a) A copy of the rescue plan as approved under section 558Y of the Act
- (b) A statement explaining:
  - (i) The effect of the rescue plan,
  - (ii) The reasons why the rescue plan is fair and equitable and not unfairly prejudicial, and
- (c) A statement outlining any material interests of the directors of **[Company Name]** and the effect of the rescue plan to the extent it is different to like interests of other persons.
- (d) A copy of the prescribed form “Notice of objection to rescue plan” you must use if filing an objection to the rescue plan.

**Signed:**

**Date:**

## Appendix 9 - Notice of objection to a Rescue Plan

### Notice of objection to rescue plan Section 558ZC(2) of the Companies Act 2014

In accordance with section 558ZC of the Companies Act 2014 notice is hereby given that I [insert name] object to the approval of a rescue plan in respect of [**Company Name**], [**Company Number**], on [**Date**].

My objection is made on the following ground(s) [**tick those which apply**]:

- (a) the rescue plan unfairly prejudices my interests,
- (b) the rescue plan is unfair and inequitable in relation to me,
- (c) there was some material irregularity at or in relation to a meeting to which section 558Y of the Act applies,
- (d) materially prejudiced by not receiving notice of the meeting or any other notice required to be sent under the Act,
- (e) acceptance of the rescue plan by the meeting was obtained by improper means,
- (f) the rescue plan was put forward for an improper purpose,
- (g) it is not necessary for the survival of the eligible company, and the whole or any part of its undertaking, as a going concern that the contract specified in the objection be repudiated or affirmed,
- (h) the amount of loss or damage determined in respect of the repudiation of the contract specified in the objection is inadequate or excessive,
- (i) the provisions with respect to leases in section 558R of the Act apply,
- (j) the sole or primary purpose of the rescue plan is the avoidance of payment of tax due,
- (k) that the rescue plan contains an unlawful provision,

I confirm that this objection is made within 21 days of the approval of the rescue plan and was submitted to the Process Adviser [**submit name of Process Adviser**] and office of the relevant court.

I confirm that [tick the statement which applies]:

- I did not vote to accept the rescue plan
- I voted to accept the rescue plan but section 558ZC 4(a) or (b) of the Act applies

Where an objection is made on the grounds specified in g) or h) I confirm that the relevant Court did not approve the repudiation under section 558P of the Act.

Signed:

Date:

## Appendix 10 - SCARP Timeline

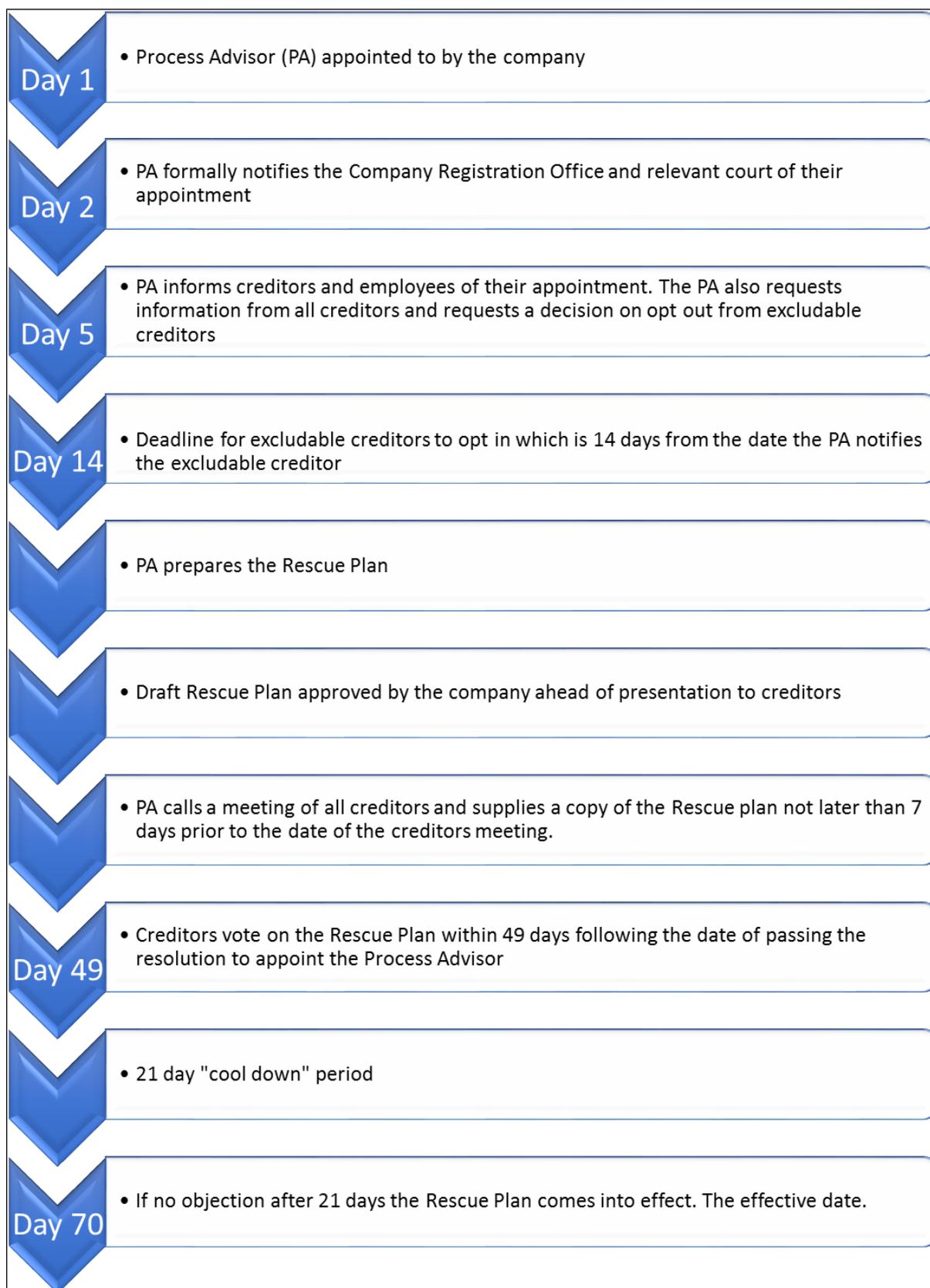


Figure 1 -SCARP Timeline

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

**Subject:**

Dear (PA NAME),

I acknowledge receipt of the SCARP application for the above mentioned company.

**PREM and VAT liabilities not yet on record**

In order to be able to complete Revenue's Proof of Debt could you please provide PAYE / PRSI and VAT figures from (INSERT RELEVANT DATES). Please be advised I will forward Revenue's Proof of Debt in due course thereafter.

I would be grateful if you could come back to me with the PAYE/PRSI & VAT figures as requested above, if possible, by COB (INPUT DATE RESPONSE REQUESTED BY) and the contingent VAT figure also ( if applicable ).

**Financial Statements**

Can you please provide full financial statements for the previous 2 years and any other management accounts which are available.

Also, can you provide your calculation of the contingent VAT liability under Section 62A VATCA 2010 if applicable.

\*ALSO ADD IN DETAILS OF ANY OTHER TAXES THAT ARE OUTSTANDING I.E. CT, RCT ETC. AND REQUEST ALL RETURNS IF ANY OUTSTANDING.\*

**Exceptional Income Gains arising from write off of creditors**

Can you please review any tax adjusted trading losses forward to the end of 2022 and provide a schedule of same analysing it per period in which the loss arose.

I should point out that the rescue plan should include an adjustment to the losses forward which is reflective of any write down of unsecured creditors and PAYE/PRSI that might be forming part of expenses that are part of the losses forward. This will be a contingent issue similar to the S62A VAT liability but which would not be confirmed until the rescue plan is voted on. As that plan goes to the court for approval thereafter the reduction (if any) in trading losses reflective of write downs will need to be in the rescue plan voted on.

**Offset of PRE SCARP refunds on record**

I must explicitly draw your attention to the fact that any refunds relating to any taxes on returns already filed up to the date of your appointment but not yet issued to the company

(excl any RCT credits on record as they are payments on account against Corporation Tax for this period and cannot be used against the dividend that might be agreed during this process) will be offset against Revenue's unsecured debt. Where it is not explicitly indicated on the proof of debt supplied during the process you should not assume that unsecured debt on same is net of any such refunds having been offset.

Should you have any queries please do not hesitate to contact me.

Regards,