Cancellation schemes of arrangement

Part 5: section 31D

This document should be read in conjunction with
section 31D SDCA 1999

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

1 Introduction

Section 31D SDCA 1999, introduced by Finance Act 2019 (section 61) contains an anti-avoidance measure. It imposes a stamp duty charge where there is an agreement to acquire a company (target company) using a court-approved scheme of arrangement in accordance with the Companies Act 2014 involving the cancellation of the target company's shares and the issue of new shares to the person acquiring the company.

This type of arrangement was not previously subject to stamp duty as it did not involve an actual transfer of shares to the person acquiring the company, even though the net effect was to transfer ownership of the company. Under such an arrangement, there was no transfer or conveyance on sale on which to impose a charge. This new charge recognises the substance of these types of arrangement and imposes the stamp duty charge that, in the normal course, applies to transfers of shares. Stamp duty is charged on the consideration paid to shareholders for the cancellation of their shares.

The charge applies where a scheme order is made by a Court on or after 9 October 2019.

2 Schemes of arrangement

Part 9 of the Companies Act 2014 provides for schemes of arrangement. These are procedures which traditionally have been used by financially troubled companies to reach agreement with their creditors about payment of all, or part of, their debts over an agreed period. They involve meetings of company members and creditors to consider and vote on proposals. Following acceptance of proposals by the required number of members/creditors, the High Court is asked to approve the proposed arrangement. A scheme order made by the Court then takes effect when it is delivered to the Companies Registration Office (CRO) within 21 days of its being made.

However, schemes of arrangement have also been used to effect company takeovers. A scheme of arrangement typically results in 100% ownership of the target company transferring to the acquiring company. In a takeover situation, the target company seeks the approval of its shareholders for the cancellation of their existing shares and the issue of new shares to the acquiring company. In return, the shareholders receive consideration from the acquiring company.

3 Stampable document and amount of duty

The contract or agreement for the change in ownership of the target company is treated as an actual conveyance or transfer and stamp duty is chargeable on this document under the Head of Charge 'CONVEYANCE or TRANSFER on sale of any stocks or marketable securities' in Schedule 1. The contract or agreement is deemed to be executed on the date a copy of the scheme order is delivered to the CRO.

Stamp duty is payable at the rate of 1% of the consideration paid to the target company's shareholders. The person paying the consideration is the accountable person and is liable for the stamp duty.

4 Interaction with section 31C (shares deriving value from immovable property in the State)

It's possible that an arrangement involving the indirect acquisition of non-residential property might meet the criteria for the stamp duty charge under both section 31C and 31D. Where this happens, section 31C(7A)[1] provides that stamp duty is to be chargeable under section 31C only.

5 Return and payment

The stamp duty return must be filed through the e-stamping system under the heading 'section 31D' within 44 days of the scheme order made by the Court being delivered to the CRO.

[1] Inserted by Finance Act 2020 (section 48) wef 19 December 2020.