

## 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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## Introduction

The purpose of this document is to explain the background to, and application of, the provisions of **Part 6** of the Stamp Duties Consolidation Act 1999 (SDCA 1999), which are currently **sections 75, 75A and 78A to 78J**.

Generally speaking, stamp duty is a tax on the documents that effect certain transactions, rather than on the transactions themselves. In this regard, 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. The word “instrument” is defined in section 1 SDCA 1999 to include “every written document”.

Schedule 1 includes the heading “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities”. The execution of such an instrument (e.g. a stock transfer form) is chargeable to stamp duty at the rate of 1% of the consideration.

Where a sale of Irish securities<sup>1</sup> is effected by electronic means (such that no instrument of transfer is created), the provisions of Part 6 provide for stamp duty to be charged on the transaction. In the absence of the Part 6 provisions, no stamp duty would be chargeable as no instrument of transfer is created.

### 1. Background

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 trading and settlement in the securities.

To ensure that transfers of Irish securities effected via the system operated by CREST were charged 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 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 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 certain exchanges and markets could be transferred electronically.

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<sup>1</sup> Securities refers to any stocks or marketable securities.

The transfer 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.<sup>2</sup>

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. As with the provision of Chapter 1, the provisions of Chapter 2 operate by deeming such transfers 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, a trustee will hold interests in shares on behalf of Euroclear UK and International and trading in these interests (referred to as CREST Depository Interests or CDIs) takes place in the CREST system in the UK.

The provisions of Chapter 2 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 deleted by Finance Act 2022.

## 2. 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’);
- **“depository receipt”**, while linked to an underlying security, is effectively a security in its own right that can be independently traded;
- **“CSD Regulation”** means Regulation 909/2014 of the European Parliament and of the Council of 23 July 2014<sup>3</sup> 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;
- **“interest in securities”** means:

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<sup>2</sup> Additional information on the migration is set out in the [TSG 21 - 12 Brexit Readiness – Taxation and Customs Issues](#).

<sup>3</sup> OJ No. L257, 28.08.2014, p.1.

- (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**.

### 3. Charge to stamp duty on sale of Irish securities

Where a sale of Irish securities takes place anywhere in the world, a charge to stamp duty will arise at the rate of 1% of the consideration<sup>4</sup>.

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.

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<sup>4</sup> 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 1997 and the exemption

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 which, when executed, effects the transfer of both the legal title to and beneficial interest in stocks/marketable securities. Accordingly, where, for example, a sale of Irish shares is effected by means of a stock transfer form (a document which effects the transfer of both the legal title to and beneficial interest in shares), the instrument will be chargeable to stamp duty under section 2.

Where a sale of securities is secured and settled electronically by means of book entry (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 securities from seller to purchaser<sup>5</sup> 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 an instrument of transfer is not created.

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 member 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.

**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 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.

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applying to the transfer of American Depository Receipts (ADRs) under section 90 SDCA 1999.

<sup>5</sup> A transfer order is an instruction to transfer an interest in securities.

**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 securities are transferred by means of an instrument of transfer, a double charge to stamp duty will not arise under the SDCA 1999.

#### 4. Payment of duty

**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. However, this provision is subject to section 78E(2). Section 78E(2) allows Revenue to enter into agreements with CSDs for the collection of stamp duty on transfer orders executed through their settlement systems.

Where such an agreement is in place, any duty that is paid in accordance with the agreement will be deemed to have been paid to Revenue on the date when it became and payable under the agreement. In such cases, the transfer order will not be required to be stamped by Revenue.

Currently, Revenue has two agreements in place, one with Euroclear Bank in Belgium and the other with Euroclear UK and International in the UK.

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.

#### 5. Relief for intermediaries

**Section 75 SDCA 1999** provides for a relief from stamp duty for intermediaries on the transfer of securities. An “intermediary” means a person who carries on a *bona fide* business of dealing in 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, and
- the person is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the exchange or market, and
- the transfer of securities is effected **either**:
  - on the exchange or market in respect of which the intermediary is a recognised intermediary, **or**
  - on any exchange or market operated by the Irish Stock Exchange Limited (e.g. the ISE Main Market and 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, as a rule, it is necessary that the transfer to it must be in connection with the intermediary's business of dealing in securities and not in connection with various business activities termed "excluded business" carried on by the intermediary. 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](#).

## 6. Central counterparty relief

**Section 75A SDCA 1999** provides for an exemption from stamp duty for transfers of securities to and from a 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**" takes its meaning from the Companies Act 1990 (Uncertificated Securities) (Amendment) Regulations 2005 [S.I. 693 of 2005].
- "**recognised clearing house**" identifies the current CCPs for the ISE and the LSE and gives scope for the Revenue Commissioners to designate further CCPs as recognised clearing houses by regulations.<sup>6</sup>

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

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<sup>6</sup> A full list the clearing houses designated by the Revenue Commissioners for the purposes of clearing house relief is listed on the [Revenue website here](#).



**Section 78C** provides that central counterparty 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](#).

## 7. 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 (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.

Details of how to apply for intermediary relief (section 75) and clearing house relief (section 75A) and the relevant applications forms are available in the [Euroclear Manual](#) and in the [Crest Manual](#).

## 8. Retention of records

**Section 78H SDCA 1999** 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 an accessible 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 transfers 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 penalty for non-compliance) applies solely to the participant who entered the transfer order in the 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.

## 9. 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.

## 10. 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 [TDM Part 10: Enforcement](#).