Stamp Duties Consolidation Act 1999

Part 7: Section 83DB - Repayment of stamp duty in respect of certain residential units

This document should be read in conjunction with section 83DB of the Stamp Duties Consolidation Act 1999

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Revenue
Cáin agus Custaim na hÉireann
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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Introduction

Section 83DB of the Stamp Duties Consolidation Act (SDCA) 1999 was introduced by section 68 of Finance Act 2022 and came into operation on 1 June 2023.[1] It provides for a partial repayment of stamp duty paid at the higher rate of 10% pursuant to **section 31E** SDCA 1999 in respect of residential properties that are:

1. let to a housing authority or approved housing body for **social housing** purposes, or
2. designated as a **cost rental dwelling** under the Affordable Housing Act 2021, or
3. registered as a **designated centre** under the Health Act 2007, which provides care in the community for those with special needs, or
4. registered as **children's residential centre** under the Child Care Act 1991, which provides homes for children in care.

Section 83DB provides for two new partial repayment schemes (3 and 4 above) and amalgamates these with two existing partial repayment schemes (1 and 2 above) that, prior to 1 June 2023, were provided for in **sections 83E** (social housing leases) and **section 83F** (cost rental dwellings) SDCA 1999. Section 68 of Finance Act 2022 repealed sections 83E and 83F with effect from 1 June 2023.

The amount to be repaid under section 83DB is the difference between the amount of stamp duty paid at the higher rate of 10% pursuant to section 31E and the amount of duty that would have been payable had the standard rate applied.

1 Section 31E SDCA 1999

The standard rates of stamp duty applying on the acquisition of residential property are 1% on values up to €1m and 2% on values exceeding €1m. In 2021, a higher rate of 10% on multiple purchases of residential properties was introduced as part of the Government's response to the bulk-purchasing of residential properties by commercial institutional investors. The higher rate is provided for by section 31E. It applies where a person acquires 10 or more residential properties (excluding apartments) in any 12-month period. Detailed guidance on the application of section 31E is contained in Stamp Duty Manual Part 5: section 31E: Stamp duty on certain acquisitions of residential property (10% rate of duty).

Section 31E makes provision for stamp duty to be charged at the higher rate of 10% where a residential property is acquired either directly (e.g. on a conveyance on sale of a residential property) or indirectly (e.g. on a sale of shares in a company owning residential property). It is important to note that section 83DB only provides for stamp duty to be repaid in relation to residential property that is acquired directly.

[1] Section 68 was commenced on 1 June 2023 by S.I. No. 240 of 2023.

2 Qualifying conditions

An accountable person will be entitled to a repayment under section 83DB where:

- **stamp duty was paid** on the acquisition of residential property at the **rate of 10%** pursuant to section 31E (section 83DB does not apply where stamp duty was paid at the standard rates of 1% or 2%), and

- the residential property concerned is a "**qualifying relevant residential unit**".

The residential property concerned will be a **qualifying relevant residential unit** where, in a period commencing on the day after the date the instrument effecting the acquisition of the property is executed, one of four conditions is satisfied. The length of the applicable period will depend on the qualifying condition that is satisfied.

The four conditions are:

- Social housing leases – see section 3 for specific conditions
- Cost rental dwellings – see section 4 for specific conditions
- Designated centres – see section 5 for specific conditions
- Children's residential centres – see section 6 for specific conditions

For the purposes of section 83DB, the date on which the property becomes a qualifying relevant residential unit is referred to as the "**qualifying date".**

Further information on clawbacks and the retention of records is set out in section 10 and section 11 respectively.

3 Social Housing Leases

Section 83DB(3) provides that a residential property will be a qualifying relevant residential unit where, **within 24 months of acquisition**, a person enters into a qualifying lease in respect of the relevant residential unit for a term of at least 10 years to a local authority or approved housing body for the provision of social housing.

Where a residential property is acquired with an existing lease in place, the existing lease will not be regarded as a qualifying lease for the purpose of a repayment under section 83DB.

3.1 Clawback in relation to Social Housing Leases

The legislation provides for a repayment to be clawed back by Revenue where a qualifying lease is terminated within the period of 10 years following its execution.

3.2 Specific records to be retained – Social Housing Leases

No specific records need to be retained in respect of social housing leases. However, the accountable person is obliged to retain records in support of the repayment claim for 6 years from the qualifying date (subsection (20)).

4 Cost Rental Dwellings

Section 83DB(4) provides that a residential property will be a qualifying relevant residential unit where, **within 6 months of acquisition**, the Minister for Housing, Local Government and Heritage designates the property as a "cost rental dwelling".

The Affordable Housing Act 2021[2] provides the statutory basis for the delivery of cost rental housing. Cost rental housing is a form of rental tenure where the rents charged only cover the cost of developing, financing, managing and maintaining the homes, calculated over a minimum period of 40 years. The repayment available under section 83DB is designed to facilitate access for all commercial and private providers of cost rental housing to the sector.

4.1 Clawback in relation to Cost Rental Dwellings

No specific clawback is provided for in respect of cost rental dwellings due to the nature of cost rental designations. Under the Affordable Housing Act 2021, a cost rental designation is registrable with the Registry of Deeds as an act of the owner affecting the dwelling and will be a burden on the folio. This registration will be for a minimum of 40 years. This burden can only be removed with the consent of the Minister for Housing, Local Government and Heritage.

4.2 Specific records to be retained – Cost Rental Dwellings

The accountable person is obliged to retain records in support of the repayment claim for 6 years from the qualifying date (subsection (20)). Where the repayment relates to a cost rental dwelling, a copy of the cost rental designation issued by the Minister for Housing, Local Government and Heritage must be retained.

[2] https://www.irishstatutebook.ie/eli/2021/act/25/enacted/en/html.

5 Designated Centres

Section 83DB(5) provides that a residential property will be a qualifying relevant residential unit where, **within 18 months of acquisition**, the property is registered as a designated centre under Part 8 of the Health Act 2007[3].

Designated centres provide care in the community (independent living) to children and adults with special needs. The Chief Inspector of Social Services in the Health Information and Quality Authority (HIQA) is responsible for the registration and inspection of these centres under the Health Act 2007.

5.1 Clawback in relation to Designated Centres

The legislation provides for a repayment to be clawed back by Revenue where a residential property is not registered as a designated centre for a continuous period of at least 10 years after the qualifying date.

5.2 Specific records to be retained – Designated Centres

The accountable person is obliged to retain records in support of the repayment claim for 6 years from the qualifying date (subsection (20)). Where the repayment relates to a designated centre, a copy of the certificate(s) of registration as a designated centre must be retained.

6 Children's Residential Centres

Section 83DB(6) provides that a residential property will be a qualifying relevant residential unit where, **within 18 months of acquisition**, it is registered as a children's residential centre under under Part VIII of the Child Care Act 1991[4].

Children's residential centres provide homes for children in care. Children's residential centres are registered and inspected by the Child and Family Agency (TÚSLA) under the Child Care Act 1991.

6.1 Clawback in relation to Children's Residential Centres

The legislation provides for a repayment to be clawed back by Revenue where a residential property is not registered as a children's residential centre for a continuous period of at least 10 years after the qualifying date.

[3] https://www.irishstatutebook.ie/eli/2007/act/23/enacted/en/html.
[4] https://www.irishstatutebook.ie/eli/1991/act/17/enacted/en/html

6.2 Specific records to be retained – Children's Residential Centres

The accountable person is obliged to retain records in support of the repayment claim for 6 years from the qualifying date (subsection (20)). Where the repayment relates to a children's residential centre, a copy of the certificate(s) of registration as a children's residential centre must be retained.

7 Amount of repayment

The amount of stamp duty to be repaid by Revenue is calculated using the formula:

A - B where

A: is the stamp duty paid at the higher rate of 10% that was attributable to the qualifying relevant residential unit

B: is the stamp duty that would have been payable had the 10% rate of duty not applied. (The standard rates of stamp duty applying on the acquisition of residential property are 1% on values up to €1m and 2% on values exceeding €1m.)

An instrument may have been executed in respect of a number of residential properties, but not all of these may subsequently qualify for a refund, and thereby become a qualifying relevant residential unit. Where this occurs, the stamp duty to be repaid must be apportioned between the properties that qualify for a repayment and those that do not.

7.1 Examples of calculation of repayment

7.1.1 All units are qualifying relevant residential units

Company A purchases 15 houses in September 2021 for €5.25m and pays stamp duty of €525,000. In December 2021 it leases all 15 houses under a 20-year lease to Fingal County Council for use as social housing. As all of the houses have become "qualifying relevant residential units" by virtue of satisfying the condition under section 83DB(3), the company can claim the maximum repayment of stamp duty possible.

If Company A had not been liable to the 10% rate of duty, it would have paid stamp duty of €95,000 (€1m @ 1% and €4.25m @ 2%).

The repayable amount, using the formula A - B, is therefore €525,000 - €95,000 = €430,000.

7.1.2 Only some units are qualifying relevant residential units

Company B purchases 12 houses in January 2023. The 12 houses cost €1.25 million in total and the 10% rate is applied: €1.25m x 10% = €125,000 Total Stamp Duty Paid.

In May 2023, 3 of the houses are designated as children's residential centres and thus become qualifying relevant residential units, so Company B is entitled to a partial repayment of stamp duty in respect of these 3 houses. The combined value of the 3 houses (when purchased in January) was €312,000.

Step 1 – calculate stamp duty @ 10% rate attributable to the qualifying units

The stamp duty paid that was attributable to 3 qualifying units is calculated as follows:

$$\frac{\text{Stamp Duty paid x Value of qualifying units}}{\text{Total Value of Units}}$$

$$\frac{€125{,}000 \text{ x } €312{,}000}{€1{,}250{,}000} = \mathbf{€31{,}200}$$

Step 2 – calculate notional stamp duty @ standard rates attributable to the qualifying units

Had the 10% rate not applied to the acquisition of the 12 houses, the stamp duty that would have been payable on the transaction would have been:

((€1m x 1%) + (€250,000 x 2%)) = €15,000

Had the standard rates applied, the stamp duty that would have been attributable to the 3 qualifying units would have been:

$$\frac{\text{Notional Stamp Duty Payable x Value of qualifying units}}{\text{Total Value of Units}}$$

$$\frac{€15{,}000 \text{ x } €312{,}000}{€1{,}250{,}000} = \mathbf{€3{,}744}$$

Step 3 - calculate the refund

A (Stamp Duty Paid) – **B** (Notional Stamp Duty Payable)

A – B (€31,200 – €3,744) = **€27,456 Refund Due**

7.1.3 Time limits for repayment

Seán purchases 20 houses in December 2022 and pays stamp duty at the rate of 10%. In April 2023, he obtains a cost rental designation from the Minister for Housing, Local Government and Heritage in respect of 4 of the houses and receives a partial repayment of stamp duty in respect of those 4 houses.

In June 2023, Seán obtains another cost rental designation in respect of 5 of the houses he purchased in December. Since it is over 6 months since he acquired the properties, he will not be entitled to a repayment of the stamp duty he paid in respect of those houses.

8 Making a repayment claim

A repayment may be claimed once the qualifying conditions are satisfied. This is subject to an overall time limit of 4 years, starting on the qualifying date.

Revenue is currently developing its stamp duty eRepayment system to facilitate the repayment of stamp duty under section 83DB. When the development is complete, this document will be updated with full instructions on how to submit a claim using the system.

In the interim, instructions on how to submit a section 83DB repayment claim may be obtained by contacting the National Stamp Duty Office (NSDO)[5] (quoting the relevant DOC ID Number) via Revenue's online MyEnquiries facility, through ROS or myAccount. When submitting the claim, the accountable person will be required to include a declaration stating that the qualifying conditions have been met. The NSDO will provide a declaration form for this purpose.

Where a repayment claim is refused, Revenue will notify the claimant in writing, setting out the reasons for the refusal. An accountable person may appeal such a decision to the Tax Appeals Commission within a period of 30 days after the date of the written notification.

9 Incorrect claims

Section 83DB(18) provides for a penalty to be applied where Revenue repays stamp duty under this section and it is subsequently found that the declaration by the accountable person that the qualifying conditions were met –

- was untrue in any material respect that would have resulted in the repayment (or part of the repayment) not being made, or

- was made knowing same to be untrue or in reckless disregard for the truth.

[5] The NSDO can be contacted using the secure 'MyEnquiries' service available in MyAccount or ROS. Alternatively, the NSDO can be contacted by phone at 01 7383646 or by post at 14/15 Upper O'Connell Street, Dublin 1, D01 YT32.

The amount of the penalty payable is 125% of the stamp duty that should not have been repaid together with interest on that amount charged at a daily rate of 0.0219% in accordance with **section 159D** SDCA 1999, calculated from the date on which the repayment was made to the date on which the penalty is paid to Revenue.

10 Clawback of repayment

Section 83DB makes provision for a repayment of stamp duty to be made where a property is put to a specific use subsequent to its acquisition. Section 83DB(13) contains a clawback provision which will be triggered when the property is no longer put to that use.

A formula is used to calculate the amount of the clawback - **A x [10 - Y / 10]**, where –

A: is the stamp duty repaid that was attributable to the qualifying relevant residential unit, and

Y: is the number of years (part of a year is treated as a full year) that have passed since the qualifying date.

The formula operates by time apportioning the stamp duty repaid over the 10-year period, with the amount of stamp duty to be clawed back being the amount that is attributable to the part of the 10-year period remaining after the date on which:

- a **social housing lease** is terminated within the period of 10 years after the date on which it is executed, or
- the property is no longer registered as a **designated centre**, or
- the property is no longer registered as a **children's residential centre**.

Interest is payable (at the daily rate of 0.0219%) on a clawback amount from the date on which the repayment is made to the date on which the clawback amount is repaid to Revenue.

Where an accountable person fails to pay the clawback amount, Revenue may raise an assessment for this amount. Where there is more than one accountable person, each person is jointly and severally liable in relation to the stamp duty liability on the original acquisition and any clawback that may arise in relation to a repayment of stamp duty.

11 Record-keeping requirements

Section 128A SDCA 1999 provides that an accountable person is obliged to retain records relating to a stamp duty liability, relief or exemption for a 6-year period. The 6-year period commences on the date a stamp duty return is filed or the date the duty is paid, whichever date is the later.

Where a person claims a repayment of stamp duty under section 83DB, subsection (20) provides that the date on which the 6-year period commences is the qualifying date.

Example

Linda acquires 12 houses on 1 January 2023 and, on the same day, files a stamp duty return and pays stamp duty at a rate of 10% pursuant to section 31E. The 6-year records retention period in relation to the stamp duty liability commences on 1 January 2023, in accordance with section 128A. On 1 March 2023, 3 of the 12 houses are designated as designated centres under the Health Act 2007, and Linda claims a stamp duty repayment under section 83DB. The commencement of the 6-year record-retention period in relation to the repayment claim is 1 March 2023 (instead of 1 January 2023), by virtue of subsection (20).

12 Information sharing

Subsection (21) permits Revenue to request certain information from the Minister for Housing, Local Government and Heritage, the Minister for Health or the Minister for Children, Equality, Disability, Integration and Youth for the purposes of verifying a repayment claim under section 83DB.