

Repayment of stamp duty where certain residential units leased (social housing)

Part 7: section 83E

This document should be read in conjunction with sections 83E and 31E of the Stamp Duties Consolidation Act 1999

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Table of Contents

1	Introduction	3
2	Section 31E SDCA 1999	3
2.1	Relevant residential units	3
3	Qualifying conditions for a refund	4
3.1	Existing lease when relevant residential unit acquired	4
4	Claiming a refund	5
4.1	Examples of operation of refund.....	5
4.2	Making a claim.....	7
4.3	Clawback of a refund	7
4.4	Example of clawback	8
5	Exchange of information	8

1 Introduction

Section 83E SDCA 1999 was introduced by the Finance (Covid-19 and Miscellaneous Provisions) Act 2021 (section 15) in tandem with section 31E SDCA 1999, which charges stamp duty at the rate of 10% on the acquisition of multiple residential units in certain circumstances. The purpose of the 10% rate of duty is to discourage the purchase of multiple residential units by any one individual or entity in the context of the current housing crisis and the ongoing shortage of housing for owner-occupier purchasers. There are some limited exceptions to the 10% rate of duty for certain types of ‘social housing’.

Section 83E provides for a refund scheme in relation to the stamp duty paid at the rate of 10% where a residential unit is subsequently leased, for a term of at least 10 years, to a local authority or an approved housing body for the provision of social housing. The refundable amount is the difference between the stamp duty paid at the 10% rate of duty and the standard rate of duty that applies to residential property; i.e. 1% on values up to €1m and 2% on values exceeding €1m. In the case of the indirect acquisition of residential units, by, for example, the acquisition of a company that holds residential units, the standard rate is the 1% rate that applies to stocks and marketable securities.

2 Section 31E SDCA 1999

Section 31E charges a higher 10% rate of stamp duty on the acquisition of certain residential property. Further information is available in the Tax and Duty Manual (TDM) [section 31E - Stamp duty on certain acquisitions of residential property](#). The section came into effect in respect of instruments executed on or after 20 May 2021 (subject to transitional arrangements). It applies to the acquisition of residential units (excluding apartments), where a person acquires at least 10 such units during any 12-month period.

Section 31E contains anti-avoidance provisions that apply the 10% rate of duty in certain circumstances to the indirect acquisition of residential units held by entities such as companies, displacing the usual rate of 1% that applies to the acquisition of shares in a property-holding company.

2.1 Relevant residential units

Section 31E charges the 10% rate of duty on the acquisition of a “relevant residential unit”. For the purposes of section 31E, a “residential unit” is defined as a residential property situated in the State comprising an individual dwelling. As defined in section 1 SDCA 1999, a “residential property” is a building, or part of a building, that was in use as, or was suitable for use as, a dwelling, or was in the course of being constructed or adapted for use as a dwelling, when it was conveyed or leased. The 10% rate of duty can therefore apply to the acquisition of residential units that have not yet been completed.

A residential unit includes curtilage up to an acre in area. Curtilage typically includes adjoining land and buildings used for the amenity of the occupants of the dwelling such as yards, gardens, car parking spaces, sheds and garages.

In accordance with section 31E(5), a residential unit is a “relevant residential unit” where:

- the residential unit was acquired on or after 20 May 2021, and
- at least 10 residential units have been acquired, either on the same day or by aggregating any units acquired during the 12-month period immediately preceding that day.

While residential units acquired in any 12-month period are aggregated with any units acquired in the same 12-month period to establish if the threshold of 10 units is reached, units that were acquired before 20 May 2021 (while aggregated) do not come within the meaning of relevant residential units and are therefore not chargeable to the 10% rate of duty.

3 Qualifying conditions for a refund

To qualify for a refund there must be a “relevant instrument”, a “qualifying relevant residential unit” and a “qualifying lease” executed by a “qualifying date” (definitions contained in section 83E(1)).

A **relevant residential unit** takes its meaning from section 31E (see [section 2.1](#) above). A residential unit comes within the meaning of a relevant residential unit when the number of units acquired by a person in any 12-month period reaches the threshold of 10 units.

The **instrument** (that effected the acquisition of a relevant residential unit) in respect of which stamp duty at the rate of 10% was paid must have been executed on or after 20 May 2021. The 10% rate of duty can have been paid in respect of the whole, or only part of, the consideration under the instrument.

A **lease** of a relevant residential unit, following its acquisition, must be entered into with a local authority or an approved housing body, for a term of at least 10 years, for the purpose of providing social housing.

The **date** by which a qualifying lease must be executed is by the end of the period of 24 months following the date on which the relevant instrument was executed.

3.1 Existing lease when relevant residential unit acquired

The 10% rate of duty will apply where a relevant residential unit is acquired with an existing lease in place with a local authority or an approved housing body. In this situation the existing lease is not regarded as a qualifying lease for the purpose of section 83E. The person acquiring the relevant residential unit does not enter into a

qualifying lease after the date of execution of the instrument that effected the acquisition of the relevant residential unit.

4 Claiming a refund

A refund may be claimed when a qualifying lease is executed with a local authority or an approved housing body. However, there is a time limit of 4 years on making a claim, starting on the date on which a qualifying lease is executed.

The amount of the refund that can be claimed is calculated using the formula **A – B**.

‘A’ in the formula is the stamp duty paid (at the rate of 10%) on the relevant instrument that was attributable to the qualifying relevant residential unit and ‘B’ is the stamp duty that would have been paid at the standard rate(s) if the 10% rate of duty had not applied.

The standard rates of duty applying to residential property are 1% on values up to €1m and 2% on values exceeding €1m. In the case of indirect acquisitions of residential units, the standard rate is the 1% rate that applies to stocks and marketable securities. See section 5 of TDM [section 31E - Stamp duty on certain acquisitions of residential property](#).

An instrument may have been executed in respect of a number of relevant residential units, but not all of these may subsequently be leased to a local authority or an approved housing body and thereby become a “qualifying relevant residential unit”. Where this occurs, the stamp duty to be refunded must be apportioned between the relevant residential units that were leased, and those that were not leased, to a local authority or an approved housing body.

4.1 Examples of operation of refund

4.1.1 All relevant residential units leased

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 the company’s houses have become “qualifying relevant residential units”, it can claim the maximum refund of stamp duty possible.

If the company 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 refundable amount using the formula A - B is therefore €525,000 - €95,000 = €430,000.

4.1.2 Not all relevant residential units leased

Susan pays stamp duty of €138,000 in October 2021 arising from her purchase of a number of residential units. The units comprise 4 houses purchased in January 2021 and 6 houses and 3 apartments purchased in September 2021.

Her stamp duty liability for the 4 houses purchased in January 2021 is €9,000 (€900,000 @ 1%). Although these houses are aggregated with the houses purchased in September 2021, they are not subject to the 10% rate of duty.

Her stamp duty liability is broken down as follows:

€130,000 (6 houses in September 2021 - €1.3m @ 10%)

€8,000 (3 apartments in September 2021 - €800,000 @ 1%)

In January 2022, Susan leases one of the houses purchased in September 2021 under a 25-year lease to Laois County Council for the provision of social housing. This house cost €300,000 which accounted for €30,000 (€300,000 @ 10%) of the stamp duty paid. It represents a proportionate amount (€300,000 ÷ 1.3m) of the total stamp duty of €16,000 (€1m @ 1% + €300,000 @ 2%) that would have been paid for the 6 houses in the absence of the 10% rate. This proportionate amount is €3,692 (€16,000 X (€300,000 ÷ 1.3m)). Applying the formula, A – B, she can therefore claim a refund of €26,308 (€30,000 - €3,692).

4.1.3 Indirect acquisition of relevant residential units

In November 2021, company A pays stamp duty at the rate of 10% on its acquisition of company B as part of the value of company B's shares is derived from its ownership of 10 houses. Stamp duty is paid at the rate of 1% on the value attributable to the rest of company B's assets which are not residential units. If company A enters into a qualifying lease of the houses with a local authority or an approved housing body for a term of at least 10 years, it can claim a refund of some of the stamp duty paid.

If the part of the stamp duty paid at the rate of 10% on the value of the 10 houses is €500,000 (€5m @ 10%), company A can claim a refund of €450,000 (€500,000 - €50,000). If the value attributable to the indirect acquisition of company B's 10 houses was not subject to the 10% rate of duty, the stamp duty payable would be €50,000, based on the standard rate of 1% charged on the acquisition of shares.

4.2 Making a claim

Revenue is currently developing the stamp duty e-Repayment system to facilitate the repayment of stamp duty under section 83E. 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 claim may be obtained by contacting the National Stamp Duty Office (quoting the relevant DOC ID Number) via Revenue's online myEnquiries facility, through ROS or myAccount.

Penalties may apply in the event of a false or incorrect declaration or claim.

Where a refund claim is refused, accountable persons should be advised of the reason for the refusal and the right of appeal to the Tax Appeals Commission.

4.3 Clawback of a refund

A refund may be correctly claimed at the time of claim but may be clawed back at a later stage where a qualifying lease is terminated within the period of 10 years following its execution. The amount of the clawback is time-apportioned depending on the number of years that have passed since the lease was executed. A formula is used to calculate the amount of the clawback.

$A \times (10 - Y) \div 10$, where A is the stamp duty refunded and Y is the number of years (part of a year is treated as a full year) that have passed since the qualifying lease was executed.

A refund that was incorrectly claimed at the time of the claim is also subject to clawback.

Interest is payable (at the daily rate of 0.0219%) on a clawback amount from the date on which the refund 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, they are jointly and severally liable in relation to the deed and any clawback that may arise.

4.4 Example of clawback

When company A entered into a qualifying lease for 5 houses with Wicklow County Council in September 2021, it claimed a stamp duty refund of €210,000. The refund was made on 10 October 2021. However, the company is liquidated in November 2022 and the liquidator terminates the lease with Wicklow County Council, a year and 2 months after the lease was executed. This is treated as 2 years for the purpose of the formula. This gives rise to a clawback of part of the stamp duty refunded. The clawback is calculated using the formula $A \times (10 - Y) \div 10$ as follows:

$$€210,000 \times (10-2) \div 10 = €168,000$$

Interest is due on the clawback amount of €168,000. It is calculated at the daily rate of 0.0219% from 10 October 2021 to the date on which the clawback amount is repaid to Revenue.

5 Exchange of information

Section 83E(18) to (20) provide a statutory basis for Revenue staff to request information from the Department of Housing, Local Government and Heritage and for officials in that Department to provide information to Revenue staff. The information requested and provided must relate to the execution of leases with local authorities and approved housing bodies or the early termination of such leases. This type of information is relevant for Revenue staff in carrying out compliance checks and seeking to establish entitlement to refunds and liability for clawbacks.

Revenue staff may provide officials in the Department of Housing, Local Government and Heritage with whatever information they require to allow them, in turn, to provide the relevant information to Revenue. The general restriction on the disclosure of confidential taxpayer information by Revenue staff to external parties under section 851A of the Taxes Consolidation Act 1997 is disapplied in this instance.