

NOTES FOR GUIDANCE

STAMP DUTIES CONSOLIDATION ACT 1999

(as amended by subsequent Acts up to and including
the Finance Act 2022)

Part 6 – Special Provisions Relating to Uncertificated Securities



These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Stamp Duties Consolidation Act 1999 (No. 31 of 1999) as amended by subsequent Acts up to and including the Finance Act 2022.

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PART 6 SPECIAL PROVISIONS RELATING TO UNCERTIFICATED SECURITIES

Chapter 1 (sections 75 & 75A) and **Chapter 2 (sections 78A-78J)** of **Part 6** make provision for stamp duty to be charged on the electronic transfer of securities. In the absence of these provisions, no stamp duty would be chargeable as there is no written instrument of transfer.

CHAPTER 1

Overview

With the exception of sections 75 and 75A, **PART 6 Chapter 1** was repealed by section 66 of Finance Act 2022. Sections 75 and 75A provide relief from certain stamp duty transactions for Revenue approved persons and are referenced in section 78C in Chapter 2.

Section 75 Relief for intermediaries

Summary

This section provides for a relief for intermediaries for instruments of transfer executed on or after 1 October 2007.

Details

The core provision of the *section 75* is in *subsection (3)*. This subsection grants an exemption from stamp duty on the transfer of securities to a person or a person's nominee, where—

- A. the person is a member firm of an exchange/market,
- B. 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,
- C. 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 IEX) or the London Stock Exchange plc (e.g. LSE Main Market and AIM), or
 - on any other exchange or market designated by the Revenue Commissioners for this purpose in regulations, and
- D. the transfer is not effected in connection with an excluded business.

The concepts used, in each of these requirements, are defined/interpreted in *subsections (1) & (2)* of the new *section 75*. *Subsection (1)* also includes some consequential definitions. The requirements at **A**, **B**, **C** and **D** above, are explained as follows:

A. *the person is a member firm of an exchange/market*

“Member firm” means — (5)

- a member of the Irish Stock Exchange Limited,

- a member of the London Stock Exchange plc, or
- a member of such other exchange/market¹ that is designated for this purpose by the Revenue Commissioners in regulations, that they are empowered (under *subsection (5)*), to make.

B. *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*

An “intermediary” means a person who carries on a bona fide business of dealing in securities. The entering into derivative agreements referenced directly or indirectly to securities is treated, for the purposes of the definition of “intermediary” as the carrying on of a business of dealing in securities. The purchase of securities to hedge these derivative agreements would be considered as part of the carrying on of that business.

C. *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 IEX) or the London Stock Exchange plc (e.g. LSE Main Market and AIM), or
- on any other exchange or market designated by the Revenue Commissioners for this purpose in regulations

A transfer of securities is effected on an exchange/market if—

- it is subject to the rules of the exchange/market, and
- it is reported to the exchange/market, in accordance with the rules of that exchange/market.

Thus, *for example*, where a member firm of the ISE 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 ISE, that member firm can, where appropriate, claim an exemption from stamp duty on a transfer of Irish securities to it even if that transfer is effected on the LSE or on another exchange or market designated by the Revenue Commissioners for this purpose.

Transfers of shares executed on or after 1 November 2007 which are required by a competent authority (e.g. IFSRA), in accordance with the EU Markets in Financial Instruments Directive (MiFID) to be reported directly or indirectly to the competent authority are deemed to satisfy the “effected on exchange/market” condition of the exemption above, subject to all other conditions being satisfied.

D. *the transfer is not effected in connection with an excluded business carried on by the intermediary*

For an exemption from stamp duty to be available to an intermediary on any particular transfer of securities, it is necessary that the securities are not being acquired in connection with various business activities termed “excluded business”. That does not mean that the intermediary cannot engage in such business. However, any transfer in connection with such business is not exempt from stamp duty.

An excluded business means any business which—

¹ A full list the exchanges/markets designated by the Revenue Commissioners for the purposes of intermediary relief is listed at <https://www.revenue.ie/en/property/stamp-duty/other-stamp-duty/crest/designated-exchanges-markets-intermediary-relief.aspx>.

- consists in the making or managing investments,
- consists in providing services for connected persons,
- consists in insurance business, or assurance business,
- consists in administering, managing or acting as trustee in relation to pension business,
- consists in operating or acting as trustee in relation to collective funds.

Section 75A Relief for clearing houses

This section contains 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 relief applies to instruments of transfer executed on or after 1 October 2007.

The circumstances where the exemption applies were extended under the section 98 of the Finance Act 2012 to include 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.²
- Other definitions of “**clearing participant**”, “**client**”, “**nominee**” and “**non-clearing participant**” are self-explanatory.

CHAPTER 2

PART 6 Chapter 2 comprises sections 78A to 78J. These came into operation on 30 March 2021 and operated independently of the provisions in Chapter 1 until 31 December 2022. Chapter 2 now provides for the stamp duty charge, and the payment of the duty, on electronic transfers of Irish securities, and interests in such securities.

The [Euroclear Tax and Duty Manual](#) contains general information regarding stamp duties and the Euroclear system.

Section 78A Interpretation (Part 6, Chapter 2)

This section contains the definitions used in Chapter 2. These definitions to a large extent (1) are adapted from the 2014 EU Central Securities Depository Regulations.

- “**central securities depository or CSD**” takes its meaning from the EU Central Securities Depository Regulations, which is EU Regulation 909 of 2014.

² A full list the clearing houses designated by the Revenue Commissioners for the purposes of clearing house relief is listed at <https://www.revenue.ie/en/property/stamp-duty/other-stamp-duty/crest/designated-recognised-clearing-houses-for-the-purposes-of-relief-for-clearing-houses.aspx>

- **“depository receipt”**, while linked to an underlying security, is effectively a security in its own right that can be independently traded so a definition is considered necessary. This then links into the definition of “interest in securities”.
- **“immobilisation”** takes its meaning from the EU Central Securities Depository Regulations. It then links into the definition of “interest in securities”.
- **“interest in securities”** is a key definition and needs to be as broad as possible to catch all types of direct and indirect interests in securities that can be transferred. While being very broad, it is specific in relation to the particular type of interest that are held in the Belgian CSD as this is the primary source of chargeable transactions.
- **“operator”** means a person who operates a securities settlement system.
- **“participant”** means a person permitted by an operator to input a transfer order.
- **“relevant system”** means a securities settlement system operated by a CSD which is essentially a computer-based system which enables title to securities to be transferred in a dematerialised form.
- **“securities”** takes the standard meaning of stocks or marketable securities used in the Stamp Duties Consolidation Act 1999.
- **“securities settlement system”** is adapted from EU Directive 98/26/EC but does not refer to CSD participants. It then links into the definition of a “relevant system” which is a “securities settlement system” operated by a “CSD”.
- **“third country CSD”** is any CSD outside the EU that would be treated as a CSD if it operated in the EU. References to “CSD” are stated, in subsection (2), to refer to both types of CSD without distinction.
- **“transfer order”** refers to the instruction given to transfer an interest in a security through a “relevant system”. Transfer orders that are executed outside a “relevant system” are deemed to be executed through a “relevant system” so that the stamp duty charging provisions can be applied to them.

References to “CSD” are stated to refer to both EU CSDs and third country CSDs without distinction. (2)

Chapter 2 applies to all electronic transfers of interest in Irish securities (irrespective of whether they are in paper or dematerialised form). As such, it does not apply to written instruments of transfer such as stock transfer forms. (3)

Section 78B Transfer of interest in securities through relevant system

Summary

This section charges stamp duty on securities title to which is transferred electronically through the relevant system, e.g. Euroclear Bank.

Details

Stamp duty is generally charged on written instruments as provided for by *section 2*. With dematerialised securities and an electronic settlement system, a deemed ‘instrument’ is required on which to charge stamp duty. The ‘deemed’ instrument is a “transfer order” that effects a transfer of an interest in securities through a “relevant system”, which is a (1)

securities settlement system operated by a CSD. The execution of the transfer order, which is the settlement of the trade, is the event that gives rise to the stamp duty charge.

This section provides for a stamp duty charge on transfer orders that effect transfers of interests in securities outside a securities settlement system operated by a CSD; for example, transfers recorded only as a book entry on the books of CSD members. Such transfer orders are to be chargeable in the same way as those in *subsection (1)*. (2)

Where there is a transfer of securities through a relevant system in respect of a single netted settlement of 2 or more contracts for the sale of securities, the operator-instruction giving effect to that transfer is deemed to be a separate operator-instruction (generated on the date of the operator-instruction for the single netted settlement) for each of the contracts involved so that each deemed conveyance or transfer is chargeable to stamp duty. The stamp duty charge will therefore be applied to each contract and not to the overall netted contract. (3)

Section 78C Relief for intermediaries and clearing houses

This section applies the existing exemptions in *section 75* which deals with participants in a CSD known as ‘recognised intermediaries’ and in *section 75A* which deals with participants in a CSD known as ‘recognised clearing houses’. These exemptions will continue to be relevant under the arrangements where securities are transferred to these CSD participants.

Section 78D Duty charged

Details

The section charges stamp duty under the Head of Charge “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities” in Schedule 1. Duty is to be charged at the rate of 1% of the consideration for the transfer of securities. (1)

Where securities are transferred for less than their value – that is, as ‘a voluntary disposition *inter vivos*’ – stamp duty is charged on the value of the interest in the security and not on the consideration, if any, given. (2)(a)

In the event that the calculation of duty results in an amount which is not a multiple of a cent the amount is to be rounded to the nearest cent, any half cent being rounded up to the next whole cent. (2)(b)

Section 78E Payment of duty

Details

This subsection deals with the payment of stamp duty which is due and payable when the transfer order, or deemed transfer order, is executed (1)

Notwithstanding subsection (1), this subsection allows for different payment arrangements to be agreed between Revenue and a CSD or other party. Where such an agreement has been entered into, any stamp duty paid in accordance with the agreement is deemed to have been paid on the date on which it became due and payable. Two agreements have been entered by Revenue to date: with Euroclear Bank and with Euroclear UK and Ireland. (2)

This subsection deals with the usual requirement in relation to stamp duty for a written instrument to be stamped. This requirement is disapplied in the case of transfers of interests in dematerialised securities. This subsection disapplies sections 4, 6, 8, 11, 14, 20, 127, 129(1) of the Act in relation to dematerialised securities. (3) (4)

This subsection provides that where duty that is due and payable on the date the transfer order, or deemed transfer order, is executed is paid after that date, interest will be charged on the duty, calculated with regard to section 159D from the date on which the transfer order, or deemed transfer order, is executed to the date of payment of the unpaid duty. (5)

Section 78F Assessments and appeals

Details

Section 78F provides that the Revenue Commissioners may make an assessment (including correcting assessments) of any duty due on an electronic transfer (see also *section 159C* as regards the time limit for making certain assessments from 1 January 2005). The appeal procedures contained in *section 21* apply to such assessments. (1), (2), (3)

Section 78G Overpayment and repayment of duty

This subsection provides for a repayment of stamp duty where Revenue is satisfied that the duty has been overpaid and on the receipt of a valid claim. (1)

A claim for repayment must be made in the form and manner decided by Revenue. This would include, for example, the requirement to make a claim by electronic means and to provide specified information in support of the claim. (2)

This subsection provides that a claim for repayment may be made no later than 4 years after the date of execution of the transfer order (or deemed transfer order) giving rise to the claim. (3)

Section 78H Obligations and penalties

This section deals with the obligations of CSDs and transferees of securities in relation to the retention of records for a period of 6 years after the execution of a transfer order. The retention of records in an accessible form is to facilitate any follow-up Revenue audit or enquiry. (1)

This subsection disappplies the record-keeping obligations set out in subsection (1) on all parties involved in the transfer of an interest in securities bar the participant in the settlement system who inputs the transfer order where: (1A)

- Revenue has an agreement in place with the operator of a settlement system under section 78(2), and
- there is a transfer of interests in securities through that settlement system.

The section provides for a fixed penalty of €1,265 to be applied for non-compliance with the obligation to retain records. (2)