Stamp Duties Consolidation Act 1999

Part 7: Section 80 - Reconstructions or amalgamations of companies

This document should be read in conjunction with section 80 SDCA 1999.

Document last updated March 2024

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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Table of Contents

Introduction 3
1 Terminology 3
1.1 Undertakings 4
1.2 Reconstruction 4
1.3 Amalgamation 6
2 Scheme of reconstruction or amalgamation 7
2.1 Qualifying conditions 7
2.2 Place of incorporation of acquiring company and target company 10
2.3 Common types of reconstruction and amalgamation 10
2.3.1 Share for undertaking two-party exchange 10
2.3.2 Share for undertaking three-party exchange 10
2.3.3 Share for share exchange (two or three party) 11
2.3.4 Illustrative examples of structures eligible for the exemption 11
3 Mergers 13
3.1 Common types of merger 15
4 Application of exemption 15
5 Anti-avoidance provisions 17
6 Claiming the exemption 17
7 Repayments where time allowed to meet issued share capital threshold 19
8 Withdrawal of exemption 19
8.1 Illustrative examples 20
9 Interaction with other provisions 21
10 Relief from stamp duty on merger of companies under section 87B 21
11 Revenue Compliance interventions 21
Appendix 1 – Relevant case law 23

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Introduction

Section 80 of the Stamp Duties Consolidation Act (SDCA) 1999 makes provision for a stamp duty exemption to apply on the transfer of certain property in connection with:

- a scheme for the bona fide **reconstruction** of a company or **amalgamation** of companies **(subsection (2))**;
- a **merger** of companies undertaken in accordance with Chapter 3 of Part 9 or Chapter 16 of Part 17 of the Companies Act 2014 **(subsection (4)).**

Such transactions may involve transfers of property such as shares, real property and/or debt.

General guidance on the operation of section 80 is set out in this document. All references to legislative sections in the document refer to the SDCA 1999, unless otherwise stated. A list of relevant case law, which is referenced throughout this document, is provided in Appendix 1.

1 Terminology

Section 80(1)(a) sets out the meaning that is to be given to certain terms used in the section, as follows:

Subject to **section 80(1)(b)** (see below)**,** a reference to **acquiring company** (a term used in relation to schemes of reconstruction or amalgamation) means a company with limited liability.

The term **merger** refers to a merger undertaken in accordance with Chapter 3, Part 9 or Chapter 16, Part 17 of the Companies Act 2014. This is considered further in section 3. Chapter 3, Part 9 covers three types of merger (absorption, acquisition, and formation of a new company), but excludes public limited companies. Chapter 16, Part 17 relates to public limited companies.

The term **shares** includes stock.

The terms **successor company** and **transferor company** (terms used in relation to mergers) have the meanings given to them by section 461 of the Companies Act 2014, which are as follows:

- **successor company**, in relation to a merger, means the company to which assets and liabilities are to be, or have been, transferred from the transferor company or companies, by way of that merger;

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- **transferor company**, in relation to a merger, means a company, the assets and liabilities of which are to be, or have been, transferred to the successor company by way of that merger.

The term **undertaking** includes part of an undertaking.

Section 80(1)(b) provides that references in section 80 to a **company** include a society registered under the Industrial and Provident Societies Act 1893.

The terms **undertaking, reconstruction** and **amalgamation** are not specifically defined in the SDCA 1999. Accordingly, the generally accepted meanings of these terms for the purposes of section 80 have been established by reference to case law.

1.1 Undertakings

It is generally accepted that the term **undertaking** refers to the business or enterprise undertaken by a company including all of the assets, goodwill and other intangible rights that constitute that undertaking.

In **Baytrust Holdings Limited v IRC** [1971] 1WLR 1333, Plowman J. stated that, in his view, the term "undertaking" denotes the business or enterprise undertaken by a company".

The term involves a level of activity as opposed to the mere ownership of assets. Therefore, a disposal of assets is not necessarily a disposal of an undertaking unless those assets are capable of constituting a business in their own right.

Section 80(1)(a) provides that an undertaking can include part of an undertaking. Accordingly, the transfer of part of an undertaking is possible where it is similarly capable of constituting a business in its own right.

Revenue accepts that the transfer of a 100% shareholding of a company carrying on a business in its own right constitutes the transfer of an undertaking.

The mere purchase of an undertaking (or part of an undertaking) does not qualify for relief as it must be carried out as part of a scheme for reconstruction or amalgamation.

1.2 Reconstruction

A **reconstruction** normally involves the transfer of the undertaking, or part of an undertaking, of an existing company (referred to in **section 80(2)(a)(ii)** as the **target company**) to a new company (the **acquiring company**). The acquiring company must be substantially owned by the same shareholders who owned the target company before and after the reconstruction, and substantially the same business must be carried on before and after the reconstruction.

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Considering the word “reconstruction” in in **Re South African Supply & Cold Storage Co Ltd, Wilde v Sale**, Buckley J. stated:

> “it involves, I think, that substantially the same business may be carried on and substantially the same person shall carry it on”.[1]

In **Fallon and Another (executors of Morgan, deceased) v. Fellows (Inspector of Taxes),** Park J. stated:

> “The basic concept is that one starts with a group of shareholders who own a business through one corporate vehicle, and one ends with the same group of shareholders or substantially the same group of shareholders, who own the same business or substantially the same business, still through a corporate vehicle, but now through a different corporate vehicle.”[2]

It is only required that the substantial identity of shareholding exists immediately after the transfer. It is not necessarily significant that as a next step the new shares in the acquiring company are sold. However, it is necessary that the reconstruction is not in any way contingent on the subsequent sale or transfer of shares and that the contract for the sale of shares is not in existence before the issue of shares by the acquiring company.

It has been established that a **partition** of a company's underlying business or businesses between groups of shareholders cannot be a reconstruction.

In **Fallon and Another (executors of Morgan, deceased) v. Fellows (Inspector of Taxes)**, Park J. stated the following in relation to distinguishing a reconstruction from a partition:

> “The concept of a reconstruction has been considered in several stamp duty cases, but the only one which I need to examine in any depth is Brooklands Selangor Holdings Ltd v IRC [1970] 1 WLR 429. This case has generally been taken to establish that a partition of a company's underlying business or businesses between two groups of shareholders cannot be a reconstruction.”

In the Irish High Court case **Patrick W. Keane And Company Limited v The Revenue Commissioners** [2008] ITR57, Edwards J. considered whether certain arrangements put in place could qualify as a reconstruction for the purposes of obtaining relief under section 80.

[1] Re South African Supply & Cold Storage Co Ltd, Wilde v Sale [1904] 2 Ch 268.

[2] Fallon and Another (executors of Morgan, deceased) v. Fellows (Inspector of Taxes) [2001] S.T.C. 1409.

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Edwards J. observed that in order to avail of the section 80 exemption the quality of ownership must be "real and meaningful and not technical". In that case, the relief was denied as the creation of a new class of 'E' shares was deemed to be a contrivance the purpose of which was to technically qualify the arrangements so that relief under section 80 could be claimed.

1.3 Amalgamation

An **amalgamation** involves the transfer of a business (or part of a business) by an existing company (the target company) to a new company (the acquiring company) where the shareholder ownership of the amalgamated businesses is substantially the same before and after the amalgamation.

The term "amalgamation" was considered by Romer L.J. in **Re Walker's Settlement** [1935] Ch 567, where he held that amalgamation:

> "contemplates a state of things under which two companies are so joined as to form a third entity, or one company is absorbed and blended with another company."[3]

Romer L.J. indicated that an amalgamation can be effected in the following ways:

- the undertaking of the target company is acquired by the acquiring company in consideration of the issue of shares in the acquiring company to the target company (a two-party, share-for-undertaking swap);
- the undertaking of the target company is acquired by the acquiring company in exchange for the issue of shares in the acquiring company to the shareholders of the target company (a three-party, share-for-undertaking swap);
- the shares of the target company are acquired by the acquiring company in return for the issue of shares in the acquiring company to the shareholders of the target company (a share-for-share swap).

There is no requirement (unlike a reconstruction) that substantially the same business is carried on before and after the transfer. With a blending of two businesses a difference in businesses would be expected before and after the amalgamation.

[3] Re Walker's Settlement [1935] Ch 567 at 583.

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In **Swithland Investments Ltd. v IRC** [1990] STC 448, Ferris J. found that there was no amalgamation, stating:

> "In my judgment the ordinary meaning of the word 'amalgamation' is important to be kept in mind. For there to be an amalgamation you must, in the words of Buckley J in the South African Supply case, have 'the rolling, somehow or other, of two concerns into one. You must weld two things together and arrive at an amalgam—a blending of two undertakings'.
>
> Applying this concept to the wider transaction which was carried out in this case, whether it be that propounded by counsel for the taxpayer companies or that propounded by counsel for the commissioners, I cannot discern anything that may properly be described as 'an amalgamation'. Even assuming, as I do for the purposes of this judgment, that a winding up of one company is not essential for there to be an amalgamation of two or more companies, I do not find any coming together of two entities. If one turns away from the idea of an amalgamation of companies to the idea of an amalgamation of undertakings or concerns, I do not find anything welding or blending two undertakings or concerns into one."[4]

2 Scheme of reconstruction or amalgamation

Section 80(2) sets out the conditions that are to be met in order for a stamp duty exemption to be available in relation to a scheme for the *bona fide* reconstruction of a company or amalgamation of companies.

2.1 Qualifying conditions

Section 80(2)(a) sets out the **three** main conditions that are to be met in the case of a bona fide scheme of reconstruction or amalgamation. These are all steps that must be taken by the **acquiring company.**

Firstly, **subsection (2)(a)(i)** states that, as a first step:

- a company with limited liability is to be registered (i.e. incorporated),
- a company has been established by Act of the Oireachtas (e.g. the Companies Act 2014), or
- the nominal share capital of an existing company has been increased.

[4] Swithland Investments Ltd. v IRC [1990] STC 448 at 464.

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Secondly, **subsection (2)(a)(ii)** states that the company is to be registered or has been established or has increased its capital for the purpose of **acquiring**:

- the **undertaking** (or part of the undertaking) of a particular existing company, referred to as the **target company (subsection (2)(a)(ii)(I))**; or
- not less than 90% of the issued share capital of a target company **(subsection (2)(a)(ii)(II)).**

Finally, **subsection (2)(a)(iii)** provides that not less than 90% of the **consideration for the acquisition** (except any part of that consideration that consists of the transfer to, or discharge by, the acquiring company of liabilities of the target company) **must** consist of:

- where an **undertaking** is to be acquired, in the issue of shares in the acquiring company to the target company **or** to holders of shares in the target company **(subsection (2)(a)(iii)(I))**, or
- where **shares** are to be acquired, in the issue of shares in the acquiring company to the holders of shares in the target company in exchange for the shares held by them in the target company **(subsection (2)(a)(iii)(II)).**

Subsection (2)(b) provides that a company with limited liability that is to be registered does **not** include a private company limited by shares to which Part 2 of the Companies Act 2014 applies.[5]

The issue of any authorised unissued share capital of the acquiring company is treated as an increase in its nominal share capital **(subsection (2)(c))**. To be treated as issued, the shares must be registered in the name of the shareholder.

In **Central and District Properties Ltd v IRC** [1966] 2 All ER 433**,** the House of Lords held that the phrase "consideration for the acquisition" is to be given its natural meaning and the consideration should be provided by the acquiring company.

Where shares are issued by the acquiring company to the shareholders of the target company in return for their shares, the shares must be issued on a proportionate basis.

The consideration can include cash, but this must not exceed 10% of the consideration, as at least 90% of the consideration must consist of shares in the acquiring company (see **subsection (2)(a)(iii)** above).

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[5] Guidance on such companies is available on the CRO website.

Additional inducements for the target company's shareholders to sell their shares may, if found to be part of the scheme for reconstruction or amalgamation, be considered to be part of the consideration for the acquiring company's offer to the target shareholders and may render the 90% consideration requirement incapable of being satisfied **(Central and District Properties Limited v IRC** [1966] 2 All ER 433).

In **IRC v Kent Process Control Ltd** [1989] BTC 8003, two wholly owned subsidiaries (1 and 2) transferred their undertakings to a third wholly owned subsidiary (3) in exchange for newly issued shares. Less than 12 months later, companies 1 and 2 transferred all of the newly acquired shares in company 3 up to their holding company in exchange for cash. The Commissioners of Inland Revenue argued that all of the steps were part of the one scheme, and the cash paid by the holding company to companies 1 and 2 formed part of the consideration received for their undertakings. It was held that the final step did not form part of the scheme, because there was no restriction placed upon the newly issued shares when they were provided for consideration. If a restriction had been placed upon the shares, namely that they could not be transferred onwards to the ultimate holding company, then they would have formed part of the consideration.

Where the acquiring company already owns more than 10% of the issued share capital of the target company, the acquiring company cannot acquire 90% of the issued share capital of the target company, and therefore relief will not be available under section 80.

Section 80(3) provides that **one** of the following two conditions must also be met for the exemption to be available in the case of a scheme of reconstruction or amalgamation:

- The **first condition** is that:
  - the memorandum of association of the acquiring company, or
  - the Act establishing the acquiring company,

  provides that one of the objects for which the company is formed is the acquisition of the undertaking of, or shares in, the target company.

- The **second condition** is that the document authorising the increase in the acquiring company's share capital (i.e. the resolution, Act or other authority passed by the acquiring company) shows that the increase is authorised for the purpose of the acquisition of the undertaking of, or shares in, the target company.

The target company must be identified with reasonable certainty in the memorandum of association or the document authorising the increase in the acquiring company's share capital.

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2.2 Place of incorporation of acquiring company and target company

Section 80(10) provides that the exemption will be available notwithstanding that:

- the acquiring company is incorporated in another EU Member State, another European Economic Area[6] (EEA) State or the United Kingdom, or
- the target company is incorporated outside of Ireland.

This is on the proviso that the acquiring company or the target company, as the case may be, corresponds to an acquiring company or target company within the meaning of section 80, subject to any necessary modifications required for the purpose of so corresponding.

2.3 Common types of reconstruction and amalgamation

In practice, there are three common types of reconstruction or amalgamation that may be considered eligible for relief under section 80:

- share for undertaking two-party exchange (bipartite reorganisation);
- share for undertaking three-party exchange; and (tripartite reorganisation);
- share for share exchange.

The purpose of the below examples is to illustrate how these transactions can be structured in practice.

2.3.1 Share for undertaking two-party exchange

In a share for undertaking two-party exchange, the acquiring company issues shares in itself to the target company in exchange for the undertaking (or part of the undertaking) of the transferor. The two parties are the target company and the acquiring company.

2.3.2 Share for undertaking three-party exchange

In a share for undertaking three-party exchange, the acquiring company issues shares to the shareholders of the target company in exchange for the undertaking (or part of the undertaking) of the target company. The three parties are the target company, the acquiring company and the shareholders of the target company.

[6] The EEA includes all Member States of the EU plus Iceland, Liechtenstein, and Norway6. The Isle of Man, Channel Islands and Gibraltar are not Member States of the EU or the EEA.

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2.3.3 Share for share exchange (two or three party)

In a share for share exchange, the acquiring company issues shares in itself in exchange to either the target company or the shareholders of the target company. The parties can be the acquiring company, the target company and/or the shareholders of the target company.

2.3.4 Illustrative examples of structures eligible for the exemption

In the examples below it is assumed that the qualifying conditions for the relief, as outlined in the earlier sections of the manual, are satisfied.

Example 1: Share for undertaking two-party exchange

Company X (target company) has two equal shareholders April and Una. It carries on a manufacturing business and a retail business. It carries on the manufacturing business in a premises it owns.

Company X decides to transfer its manufacturing business to a new company as it wants to separate it from its retail business. It incorporates a new company as a 100% subsidiary, Company Y (**acquiring company**), for the purpose of acquiring the manufacturing business. A business transfer agreement is executed wherein Company X agrees to transfer the manufacturing business to Company Y in return for Company Y issuing shares to it. A deed of transfer is also executed wherein Company X agrees to transfer the premises to Company Y. As a result, Company Y acquires the manufacturing business and premises and in return Company X acquires shares in Company Y.

Both the underlying beneficial ownership and the company undertakings remain (substantially) the same with April and Una both retaining ownership of the retail and manufacturing businesses, the latter through their indirect ownership of the shares in Company Y.

Alternatively, if the manufacturing business was hived out into a new limited company and Una was the sole shareholder of the new company, with April remaining the sole shareholder of the original company, this would be a partition, not a bona fide reconstruction, and relief under **section 80** would not be available.

Example 2: Share for undertaking three-party exchange

Company A decides to transfer its car business to a new company, Company B, that it incorporates for this purpose. The constitution includes a clause stating that the company has been established to acquire the car business of company A. A business transfer agreement is executed wherein Company A agrees to transfer the car business to Company B in return for Company B issuing shares to Tom and John, the two shareholders of Company A.

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In this example, the beneficial ownership and undertaking remain (substantially) the same as Tom and John continue their direct ownership of the car business, albeit through their ownership of shares in Company B.

Example 3: Share for share exchange

Company B (acquiring company), owned by John and Tom, wants to acquire Company A (target company). To do this, it agrees to issue shares to Mary and Paul, the shareholders of Company A. In return, Mary and Paul agree to transfer their shares in Company A to Company B.

Two stock transfer forms are executed to transfer the shares: one for the transfer of Mary's shareholding in Company A to Company B and the other for the transfer of Paul's shareholding. As a result, Company A becomes a wholly owned subsidiary of Company B and in return the shareholders of Company A obtain shares in Company B. Therefore, after the companies have been amalgamated, the identities of the shareholders have remained substantially the same, and the entirety of Company A's undertaking has been transferred to Company B.

Before the share for share exchange:

Figure 1: Before the share for share exchange

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After the share for share exchange:

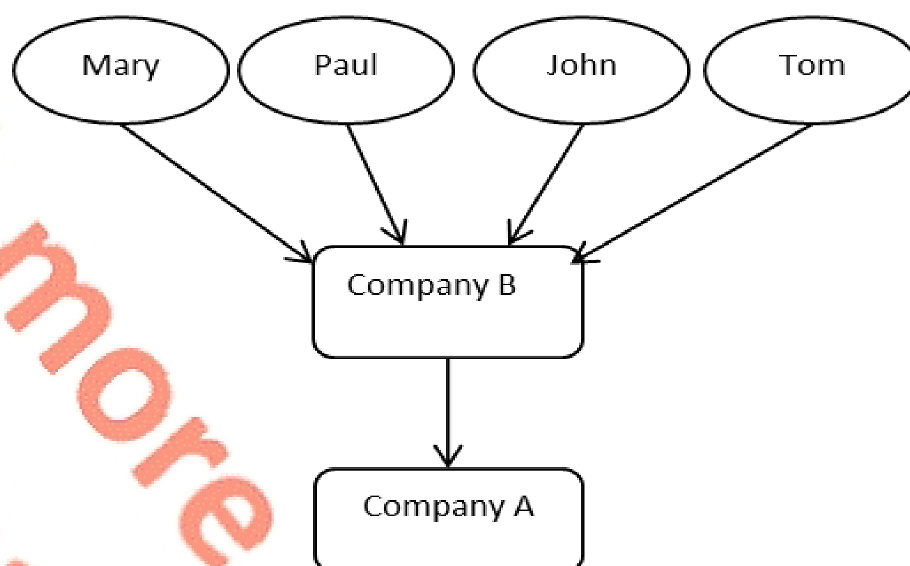

Figure 2: After the share for share exchange

Note: In the above example, consider the situation in which a fifth shareholder had agreed to assist Company B with its acquisition, by providing a loan of cash, which was to be provided to Mary and Paul in addition to shares. If the cash provided as partial consideration amounted to 15% of the total value of consideration provided to Mary and Paul, then relief would **not** be available under **section 80** because the conditions stipulated in **subsection (2)** would not be met.

3 Mergers

For the purposes of section 80, the term **merger** refers to a merger undertaken in accordance with:

- Chapter 3, Part 9 of the Companies Act 2014, or
- Chapter 16, Part 17 of the Companies Act 2014.

Chapter 3 Part 9 of the Companies Act 2014, specifically sections 461 and 463, provides for three specific types of merger:

- **merger by acquisition**, which occurs where a company acquires all the assets and liabilities of one or more other companies, that is or are dissolved without going into liquidation, in exchange for the issue of shares, with or without an additional cash payment;

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- **merger by absorption**, which occurs where a company, upon being dissolved without going into liquidation, transfers all its assets and liabilities to its parent company which owns all of its share capital;
- **merger by the formation of a new company**, which occurs where one or more companies, upon being dissolved without going into liquidation, transfer all their assets and liabilities to a new company that it or they form for the purpose of the merger in exchange for the issue of shares in the capital of the new company to the shareholders of the transferor(s), with or without an additional cash payment.

Part 17 of the Companies Act 2014 specifically relates to public limited companies (PLCs). **Chapter 16 of Part 17 of the Companies Act 2014**, specifically sections 1127 and 1129, provides for three specific types of merger:

- **merger by acquisition**, which occurs where a company acquires all the assets and liabilities of one or more other companies, that is or are dissolved without going into liquidation, in exchange for the issue of shares, with or without an additional cash payment;
- **merger by absorption**, which occurs where a company, upon being dissolved without going into liquidation, transfers all its assets and liabilities to its parent company which owns all of its share capital. Subsection (3) includes an allowance for the shares to be held by the parent company indirectly (for example, in the names of other persons, but on behalf of the parent company);
- **merger by the formation of a new company**, which occurs where one or more companies, upon being dissolved without going into liquidation, transfer all their assets and liabilities to a new company that it or they form for the purpose of the merger in exchange for the issue of shares in the capital of the new company to the shareholders of the transferor(s), with or without an additional cash payment.

Section 1129(5) differs from the merger definition in section 463 of the Companies Act 2014 in that it refers specifically to a company being wound up. Subsection (5)(a) specifies that a company being wound up may become a party to one of the three types of merger (acquisition, absorption or by formation of a new company) but **only** if the distribution of its assets to shareholders has not begun at the date of the common draft terms of merger as required by section 1131(6) of the Companies Act 2014.

In addition to the foregoing, it is a requirement that the **successor company** is:

- a private company limited by shares,
- a designated activity company (DAC), or
- a public limited company that is not an investment company.[7]

[7] Within the meaning of section 2, 963 or 1001 Companies Act 2014, respectively.

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3.1 Common types of merger

The purpose of the below examples are to illustrate how these transactions can be structured in practice.

Example 1: Merger by acquisition

Company B, a private company limited by shares, wants to acquire the assets and liabilities of an existing Company A. It does this by way of summary approval procedure per chapter 7 of Part 4 of the Companies Act 2014. It issues shares to the shareholders of Company A who will, following the merger, be shareholders of Company B. Company A will be dissolved without going into liquidation. The instrument is the resolution passed as part of the summary approval procedure; no stamp duty will be charged as the conditions outlined in **subsection (4)** have been met.

Example 2: Merger by formation of new company

Company C, a private company limited by shares, is incorporated for the purpose of acquiring the assets and liabilities of Companies A and B. In return, it issues shares to the shareholders of Companies A and B which are then dissolved without going into liquidation. The shareholders of Companies A and B become shareholders of Company C. If this process was arranged by way of Company C undergoing a summary approval procedure, then the instrument is the resolution passed as part of the summary approval procedure. Stamp duty will not be charged as the conditions outlined in **subsection (4)** have been met.

4 Application of exemption

Where the conditions in either **subsection (2)** (reconstructions or amalgamations) or **subsection (4)** (mergers) are met, **subsection (5)** provides that any instrument made for the purposes of or in connection with:

- the transfer of the undertaking or shares, or
- the assignment of any debts, whether such debts are:
    - debts of the target company assigned to the acquiring company, or
    - debts of the transferor company assigned to the successor company as a result of a merger,

will **not** be chargeable to stamp duty, if it would otherwise be so chargeable under the following Heads of Charge in Schedule 1 SDCA 1999:

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- CONVEYANCE or TRANSFER on sale of any stocks or marketable securities;
- CONVEYANCE or TRANSFER on sale of a policy of insurance or a policy of life insurance where the risk to which the policy relates is located in the State;
- CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.

Subsection (11) was inserted to clarify which documents would be classed as the stampable instruments in relation to a **merger** undertaken in accordance with either Chapter 3 of Part 9 or Chapter 16 of Part 17 of the Companies Act 2014. The following are treated as stampable instruments:

- where a merger is effected under the summary approval procedure (Chapter 3 of Part 9) - the **resolution** referred to in paragraph(1)(a)(ii) of section 2020 of the Companies Act 2014;
- where a merger is effected by a Court order confirming the merger under section 480(2)(d) Companies Act 2014 - the **Court order**;
- where a merger involves at least one public limited company (PLC), (provided for in Chapter 16 of Part 17) - the **order** made under section 1144(2) of the Companies Act 2014.

For the purposes of the exemption for mergers under section 80, the above-mentioned instruments are treated as a **conveyance on sale**.

In accordance with **subsection (6)**, an exemption will not apply unless the instrument of transfer is executed within **12 months** of:

- the **date of incorporation** of the acquiring company, or
- the **date of the resolution** to increase the acquiring company's nominal share capital.

The exemption for mergers was introduced by Finance Act 2017 and applies to mergers that are undertaken on or after 25 December 2017. However, Revenue accepts that the exemption can apply in respect of instruments executed on or after 23 December 2014, provided all other qualifying conditions are satisfied.

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5 Anti-avoidance provisions

Subsection (7) provides that the exemption will not apply in relation to an instrument which is chargeable under the Head of Charge "CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance" unless the target company or the transferor company, as the case may be, **obtained a conveyance** of that property **before** the date of execution of the instrument in respect of which the relief was claimed.

However, where the transferred property comprises a **leasehold interest**, the target company or transferor company, as the case may be, will be treated by Revenue for the purposes of subsection (7) as having obtained a conveyance of the property **if** the leasehold interest has been directly acquired by the target company or transferor company by virtue of the grant of a lease from the lessor and such lease has been stamped by Revenue.

Subsection (12) provides that an exemption will not apply under section 80 unless the scheme of reconstruction or amalgamation or the merger:

- is effected for *bona fide* commercial reasons, and
- does not form part of a scheme or arrangement for the avoidance of tax or duty.

6 Claiming the exemption

The exemption is claimed on a self-assessment basis where the qualifying conditions for the relief are satisfied (but see section 7 below in relation to the threshold for issued share capital). The procedure for making a claim is set out below. While supporting documentation in relation to the claim is not required to be included with the claim, such documentation should be retained for a period of six years from the later of the date of the stamp duty return (or the amended stamp duty return) or the date the stamp duty was paid. This documentation may be requested by Revenue in the event of a follow-up compliance check.

A claim for relief under section 80 will generally be made on a stamp duty return filed through Revenue's Online Service (ROS).

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Where a claim for relief under section 80 is in respect of a transfer of shares that is settled electronically in the Euroclear Bank System or CREST System, Revenue will accept that the requirement to make a stamp duty return will be satisfied if:

- in advance of the transaction, details of same (see below) are submitted to the Revenue CREST Unit[8], and
- the transaction is flagged as:
  - in the case of Euroclear Bank System transactions, **"IEQX", Irish exempt, for any other reason**
  - in the case of CREST System transactions, **"Q", Irish exempt, for any other reason**

The details that are to be provided to the Revenue CREST Unit are to include:

- name of transferor
- tax reference number of transferor
- name of company shares transferring
- tax reference number (if any) of company shares transferring
- name of transferee
- tax reference number of transferee
- consideration/value of shares transferring
- an indication that relief is being claimed under section 80 SDCA 1999.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014. […]

[8] CREST Unit Contact Details: Telephone: +353 (0)67 63470 or +353 (0)67 63201 Email: crest@revenue.ie.

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The Euroclear Bank or CREST member (e.g. the broker that enters the details in respect of the transfer of interest in shares into the system) is obliged to retain evidence to support the declaration that the transfer is relieved from duty. This evidence is to be retained for examination by Revenue for **a period of six years**. Penalties will apply if a relief not properly due has been claimed or if the appropriate evidence has not been retained.

7 Repayments where time allowed to meet issued share capital threshold

A scheme of reconstruction or amalgamation may take place over an extended period of time, such that stamp duty must be paid on any stock transfer forms as its execution does not bring the percentage of the issued share capital acquired over the required 90% threshold. In such circumstances, **section 80(9)** provides that Revenue may repay the stamp duty where it can be shown that, subject to having satisfied the other qualifying conditions, at least 90% of the issued share capital of the target company has been acquired within:

- 7 months after the first issue of shares made for the purposes of the acquisition, or

- 6 months after the date on which the invitation was issued to the shareholders of the transferor to accept shares in the transferee,

whichever is earlier.

A 4-year time limit (from the date the instrument of transfer was stamped) applies to claims for a refund of stamp duty (**section 159A SDCA 1999**).

8 Withdrawal of exemption

Section 80(8) provides that the exemption will be withdrawn ab initio in any of the following circumstances:

- it is subsequently found that the exemption was not properly due **(subsection (8)(a))**;
- it is subsequently found that the conditions set out in **subsection (2)** are not fulfilled in relation to the reconstruction or amalgamation as actually carried out **(subsection (8)(a))**;
- within the period of **2 years** following the date of the registration, establishment or authority for the increase of the share capital of the acquiring company, the **target company ceases to be the beneficial owner of the shares issued to it** by the acquiring company in consideration of the acquisition. However, this condition does not apply where the cessation is a result of reconstruction, amalgamation or merger or a liquidation **(subsection (8)(b))**;

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- within the period of **2 years** following the date of the registration, establishment or authority for the increase of the share capital of the acquiring company, the **acquiring company ceases to be the beneficial owner of the shares in the target company**, in respect of which the acquiring company had been allowed an exemption under this section. However, this condition does not apply where the cessation is a result of reconstruction, amalgamation or merger or a liquidation. **(subsection (8)(c))**.

In such circumstances, stamp duty will be chargeable in respect of the conveyance or transfer as if subsection (5) had not been applicable

In a three-party share for undertaking exchange there is no holding period for shares issued to the shareholders in the target company.

Where an exemption is withdrawn in these circumstances, interest is calculated, in accordance with **section 159D**, to the date on which the stamp duty is paid -

- from the date of the conveyance or transfer where the qualifying conditions set out in section 2 are not satisfied;
- from the date the target company ceases to be the beneficial owner of shares issued to it;
- from the date the acquiring company ceases to be the beneficial owner of the shares acquired in the target company.

There are no specific 'post relief' conditions applying to a merger.

8.1 Illustrative examples

Example 1: share for undertaking exchange

Company A Ltd. (target company) transferred an undertaking to Company B (acquiring company) and executed a deed of transfer on 10 January 2019 for this purpose. It claimed stamp duty relief on the instrument of transfer. The consideration it received for the undertaking consisted of shares in Company B. Company A had passed a resolution on 1 November 2018 to increase its share capital for the purpose of acquiring the undertaking.

Company A then sells the shares it had received from Company B on 5 August 2019. As this sale takes place within two years of 1 November 2018, the stamp duty relief claimed is subject to a clawback. Interest must also be paid from the date that Company A ceased to be the beneficial owner of the shares in Company B, to the date of payment of the clawback amount to Revenue (section 80(8)(b)).

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Example 2: share for share exchange

Tom and Mary are the shareholders in Company A (target company) that was acquired by Company B (acquiring company) in a share for share exchange. This involved the transfer of shares in Company B to Tom and Mary in return for Tom and Mary's shares in Company A. Both stock transfer forms were executed on 9 February 2019 following the passing of a resolution on 1 October 2018 by Company B to acquire Company A. Stamp duty relief was claimed in respect of the stock transfer forms.

A few months after the shares were exchanged, Company B became insolvent and was liquidated resulting in the cessation of its beneficial ownership of the shares in Company A. However, because this cessation of beneficial ownership was caused by the liquidation of Company B, the stamp duty relief is not clawed back.

Note: If Company B had not been liquidated but Tom and Mary had instead sold their shares in Company B, this would not trigger a clawback, as the legislation does not provide for a clawback in such circumstances.

9 Interaction with other provisions

A relief for associated companies is available under section 79 SDCA 1999, details of which are outlined in the Associated Companies Relief Tax and Duty Manual. In certain circumstances, a transfer may be exempt from stamp duty under both provisions. However, only one exemption may be claimed.

Relief for capital gains tax and corporation tax for schemes of reconstruction and amalgamation is available under the Taxes Consolidation Act 1997. It is important to note that as there are certain differences between the various reliefs, it is possible to have a scheme that qualifies for stamp duty relief but does not, for example, qualify for capital gains tax relief.

10 Relief from stamp duty on merger of companies under section 87B

Section 87B SDCA 1999 provides for an exemption from stamp duty on the transfer of assets pursuant to certain types of mergers. Guidance on section 87B is contained in the Stamp Duty Manual for Part 7: Exemptions and Reliefs from Stamp Duty.

11 Revenue Compliance interventions

When undertaking a compliance intervention in respect of returns where a section 80 exemption has been claimed, Revenue will check that all of the qualifying conditions have been met. In such circumstances, Revenue will seek supporting documentation, which may include a group schematic of the various entities involved in a scheme and the transfers of shares and assets between them.

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Appendix 1 – Relevant case law

Term/concept	Case law reference
Reconstruction and Amalgamation	• **Swithland Investments Ltd. v IRC** [1990] STC 448.
	• **Re South Africa Supply and Cold Storage Co. Ltd**. [1904] 2Ch. 268.
	• **IRC v Kent Process Control Ltd.** [1989] STC 245.
	• **Crane Freuhauf Ltd. v IRC** [1975] STC 51.
	• **Brooklands Selangor Holdings** *v* **IRC** [1970] 2 All ER 76.
	• **Baytrust Holdings Ltd. v IRC** [1971] 3 All ER 76.
	• **Thomas Firth & John Brown (Investments) Ltd. v IRC** [1971] 3 All ER 76.
	• **Re Walkers Settlement** [1935] Ch. 567.
	• **IRC v Ufitec Group Ltd.** [1977] 3 All ER 924.
	• **Keane (PW) & Co Ltd. v Revenue Commissioners** [2008] ITR 57
Particular existing company	• **Chelsea Land and Investment Company Ltd. v IRC** [1978] 2 All ER 113.
Undertaking	• **Baytrust Holdings Ltd. v IRC** [1971] 3 All ER 76.

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	• **E. Gomme Ltd. v IRC** [1964] 3 All RE 497.
	• **Salaried Person's Postal Loans v HMRC**
	• **McGregor v Adcock** [1977] STC 206
	• **Mannion v Johnston** [1988] STC 758
Issue of shares	• **Murex v IRC** [1933] 1 KB 173.
	• **Oswald Tillotson v IRC** [1933] 1 KB 134.
	• **Baytrust Holdings Ltd. v IRC** [1971] 3 All ER 76.
	• **Crane Freuhauf Ltd. v IRC** [1975] STC 51.
	• **Brotex Cellulose Fibres v IRC** [1933] 1 KB 158.
Consideration for the acquisition	• **Central and District Properties Ltd. v IRC** [1966] 2 All ER 433.
	• **IRC v Kent Process Control Ltd [1989] BTC 8003**

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