

## **Stamp Duties Consolidation Act 1999**

### **Part 5: Section 31D - Cancellation schemes of arrangement**

This document should be read in conjunction with section 31D SDCA 1999

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## 1 Introduction

Section 31D SDCA 1999, introduced by Finance Act 2019 (section 61) contains an anti-avoidance measure. It provides for a stamp duty charge where there is an agreement to acquire a company (target company) using a court-approved scheme of arrangement in accordance with the Companies Act 2014 involving the cancellation of the target company's shares and the issue of new shares to the person acquiring the company.

This type of arrangement was not previously subject to stamp duty as it did not involve an actual transfer of shares to the person acquiring the company, even though the net effect was to transfer ownership of the company. Under such an arrangement, there was no transfer or conveyance on sale on which to impose a charge. This provision recognises the substance of these types of arrangement and imposes the stamp duty charge that, in the normal course, applies to transfers of shares. Stamp duty is charged on the consideration paid to shareholders for the cancellation of their shares.

The charge applies where a scheme order is made by a Court on or after 9 October 2019.

## 2 Schemes of arrangement

Part 9 of the Companies Act 2014 provides for schemes of arrangement. These are procedures which traditionally have been used by financially troubled companies to reach agreement with their creditors about payment of all, or part of, their debts over an agreed period. They involve meetings of company members and creditors to consider and vote on proposals. Following acceptance of proposals by the required number of members/creditors, the High Court is asked to approve the proposed arrangement. A scheme order made by the Court then takes effect when it is delivered to the Companies Registration Office (CRO) within 21 days of its being made.

However, schemes of arrangement have also been used to effect company takeovers. A scheme of arrangement typically results in 100% ownership of the target company transferring to the acquiring company. In a takeover situation, the target company seeks the approval of its shareholders for the cancellation of their existing shares and the issue of new shares to the acquiring company. In return, the shareholders receive consideration from the acquiring company.

## 3 Stampable document and amount of duty

The contract or agreement for the change in ownership of the target company is treated as an actual conveyance or transfer and stamp duty is chargeable on this document under the Head of Charge 'CONVEYANCE or TRANSFER on sale of any stocks or marketable securities' in Schedule 1. The contract or agreement is deemed to be executed on the date a copy of the scheme order is delivered to the CRO.

Stamp duty is payable at the rate of 1% of the consideration paid to the target company's shareholders. The person paying the consideration is the accountable person and is liable for the stamp duty.

## 4 Tax Appeals Commission Determination

The Tax Appeals Commission (TAC) made a determination on 8 December 2020 ([08TACD2021](#)) in relation to whether section 31D is in breach of the prohibition against the imposition of "any form of indirect tax" on the restructuring operations of capital companies, which is contained in Council Directive 2008/7/EC of 12 February 2008 (commonly known as the "Capital Duties Directive"). The Capital Duties Directive prohibits the imposition of any form of indirect tax on new share issues and certain transactions deemed to be restructuring operations of capital companies. The objective of the Directive is to prevent against discrimination, double taxation and disparities which interfere with the free movement of capital. The TAC found that the transaction comes within the definition of a restructuring operation under Article 4 of the Directive, and that stamp duty should not have been imposed on that particular transaction.

It should be noted that Revenue has not changed its interpretation of section 31D in light of the TAC determination. Revenue is of the view that section 31D, which is an important anti-avoidance provision, is not in contravention of the Capital Duties Directive. In this regard, it is noted that a determination of the TAC is specific to the assessment or decision that is the subject of the appeal; it does not create a precedent in relation to the operation of tax law.

## 5 Interaction with section 31C (shares deriving value from immovable property in the State)

It is possible that an arrangement involving the indirect acquisition of non-residential property might meet the criteria for the stamp duty charge under both sections 31C and 31D SDCA 1999. Where this arises, section 31C(7A)<sup>1</sup> provides that stamp duty is to be chargeable pursuant to section 31C only. The section 31C Tax and Duty Manual can be found [here](#).

## 6 Interaction with section 31E (stamp duty on certain acquisitions of residential property)

The standard rates of stamp duty that apply to acquisitions of residential property are 1% on the values up to €1 million and 2% on values exceeding €1 million. In 2021, section 31E SDCA 1999 was introduced as part of the Government's response to the bulk purchasing of residential properties by commercial institutional investors. Section 31E provides for a higher 10% rate of stamp duty to be charged where a

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<sup>1</sup> Inserted by Finance Act 2020 (section 48) wef 19 December 2020.

person acquires 10 or more residential properties (excluding apartments) in any 12-month period.

Both sections 31D and 31E can apply to a single transaction, for example, both sections would apply if a person acquired control of a trading company by way of a cancellation scheme of arrangement and that company also owned more than 10 houses that were incidental to its trading activity.

In such cases where the transaction comprises of a mixture of residential and non-residential property, the acquisition must be apportioned in accordance with section 7(c) SDCA 1999.

The acquiring person would be liable to stamp duty at the rate of 10% in relation to the value of the residential property and would be liable to stamp duty at the rate of 1% in relation to the value of the remainder of the company's assets.

Detailed guidance on the application of section 31E can be found [here](#).

## 7 Return and payment

The stamp duty return must be filed through the e-stamping system under the heading 'section 31D' within 44 days of the scheme order made by the Court being delivered to the CRO.