Stamp Duty and Share Transfers: five key considerations

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Upon the transfer of shares in an Irish company, stamp duty must be paid on the consideration for a sale of shares or the market value in the event of a gift pursuant to the Stamp Duties Consolidation Act 1999 (the **1999 Act**). The obligation to pay stamp duty is on the purchaser of the shares and the standard rate is 1% (see paragraph 3 below). Set out below are five key considerations when dealing with stamp duty in the context of a share transfer.

When does the obligation to pay stamp duty apply?

The purchaser must pay stamp duty when:

1. entering into instruments that transfer shares, stocks or marketable securities i.e. a stock transfer form;
2. entering into a written option to buy shares;
3. entering into a written transfer of existing share options;
4. a gift of shares; and
5. entering into a written agreement to buy a beneficial interest in shares.

Exemptions

It is possible to obtain an exemption from stamp duty in specific circumstances. A transfer of shares is exempt from stamp duty if the consideration for the shares is less than €1,000 and the instrument is not part of a larger transaction or series of transactions. An exemption of stamp duty also applies on the transfer of shares in the reconstruction or amalgamation of companies or in the case of a merger. Section 79 of the 1999 Act provides a stamp duty exemption for associated companies where shares are transferred between two bodies corporate whose association is so close that the transfer is effectively little more than a change in the nominal ownership of the shares.

In addition, stamp duty is not chargeable in the following circumstances:

1. a transfer vesting the property in trustees on the appointment of a new trustee of a pre-existing trust, or on the retirement of a trustee;
2. a transfer, where no beneficial interest in the property passes;
3. a transfer by way of security for a loan; or a re-transfer to the original transferor on repayment of a loan;
4. a transfer to a residuary legatee, a beneficiary under a will of a specific legacy of shares;
5. a transfer of shares, etc., being the property of a person dying intestate, to the persons or person entitled thereto;
6. a transfer to a beneficiary under a settlement on distribution of the trust funds, of shares, etc;
7. a transfer by the liquidator of a company of shares, etc;
8. (otherwise than above) a transfer on any occasion, not being a transfer on sale or a transfer chargeable as if it were a transfer on sale.

Rates

Stamp duty is payable on the market value of the shares. Stamp duty is applied at a rate of 1% on:

1. instruments that transfer shares, stocks or marketable securities;
2. written options to buy or sell shares;
3. written transfers of existing shares options; and
4. written agreements to buy a beneficial interest in shares.

Under certain conditions, stamp duty is payable at a rate of 7.5%. This rate is applied on written agreements or contracts to buy shares where the shares get their value (or the greater part of their value) from immovable property, excluding residential property. The purchase must result in a change in control over the immovable property owned by the target company. The target company must also deal in land or develop land for non-residential purposes.

Minority Shareholder

If the transaction involves a minority shareholder disposing their interest on the open market, a discounted rate of stamp duty may be applied. The below table sets out some of these discounted rates:

% of Shareholding	**Discounted Rate**[1]
75% or greater	No discount, but on occasion a 5% discount may be applied if the shareholding is less than 80%
50% plus one share or higher	10-15%
50%	20%-30%
25% plus one share or more	Between 30% - 40%
Less than 25%	Between 50% and 70%
1% Shareholding	Up to 90%

It is important to be aware that this discount only applies for capital gains tax purposes. In addition, there is an anti-avoidance measure contained in section 550 of the Tax Consolidation Act, 1997. Under this section, in the event shares are being disposed of in tranches, stamp duty is applied is the greater value apportioned rateably over the separate disposals.

Stamp Duty Returns

Stamp duty is payable to the Revenue Commissioners of Ireland via the online system ROS within 30 days after the instrument transferring the shares is executed, with an additional 14 day grace period. If stamp duty is not paid within the 44 days, a late filing surcharge will be incurred.

Where the stamp duty is paid after 44 days but within 92 days of the date of the execution of the instrument, a surcharge at a rate of 5% of the unpaid stamp duty is applied. This surcharge is capped at €12,695. After the 92 day period, a surcharge at a rate of 10% of the amount of the unpaid stamp duty is applied. This surcharge is capped at €69,485. In addition, interest is also applied at a rate of 0.0219% per day or part of a day where the unpaid duty exceeds €30.

A Personal Public Service Number is required for an individual transferor/transferee and a tax reference number is required where a party is a body corporate.

Finally, in cases where there are multiple transferors, at least one of the transferors is a non-Irish resident and does not have a Personal Public Service Number or a tax reference number and there is one single transferee, not all transferors require tax reference numbers.

If you have any queries in relation to the above, or are looking for more information in relation to stamp duty generally, please contact our corporate team.

[1] Please note that this table is based on a similar table published by Chartered Accountants Ireland in 'The Valuation of Businesses and Shares: A Practitioner's Perspective' by Des Peelo and Law Society of Ireland Guidance at https://www.lawsociety.ie/gazette/in-depth/to-market-to-market.

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