

Reconstructions or amalgamations of companies. FA1965 s31(1) to (3) and (5) to (8); FA1995 s144(2) 80.—(1)

(a) In this section, unless the context otherwise requires, “shares” includes stock and references to the undertaking of a target company include references to a part of the undertaking of a target company;

(b) In this section references to “acquiring company” are references only to a company with limited liability.

(2) Where it is shown to the satisfaction of the Commissioners that there exists a scheme for the bona fide reconstruction of any company or companies or the amalgamation of any companies and that, in connection with the scheme, there exist the following conditions, that is—

(a) a company with limited liability is to be registered, or a company has been established by Act of the Oireachtas, or the nominal share capital of a company has been increased;

(b) the company (in this section referred to as the “acquiring company”) is to be registered or has been established or has increased its capital with a view to the acquisition of either—

(i) the undertaking of a particular existing company (in this section referred to as the “target company”), or

(ii) not less than 90 per cent of the issued share capital of a target company;

(c) the consideration for the acquisition (except such part of that consideration as consists in the transfer to or discharge by the acquiring company of liabilities of the target company) consists as to not less than 90 per cent of that consideration—

(i) 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, or

(ii) 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,

then, subject to this section, stamp duty under the following headings in Schedule 1—

(I) “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities”,

(II) “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”, or

(III) “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”,

shall not be chargeable on any instrument made for the purposes of or in connection with the transfer of

the undertaking or shares, or on any instrument made for the purposes of or in connection with the assignment to the acquiring company of any debts, secured or unsecured, of the target company.

(3) (a) This section shall not apply to an instrument unless it has, in accordance with section 20, been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped.

(b) In the case of an instrument made for the purposes of or in connection with a transfer to a company within the meaning of the Companies Act, 1963, subsection (2) shall not apply unless the instrument is either—

(i) executed within a period of 12 months from the date of the registration of the acquiring company or the date of the resolution for the increase of the nominal share capital of the acquiring company, as the case may be, or

(ii) made for the purpose of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which have been filed, with the registrar of companies within that period of 12 months.

(4) This section shall not apply unless the scheme of reconstruction or amalgamation is effected for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to stamp duty, income tax, corporation tax, capital gains tax or capital acquisitions tax.

(5) For the purposes of a claim for exemption under subsection (2), a company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital shall be treated as if it had increased its nominal share capital.

(6) A company shall not be deemed to be a target company within the meaning of this section unless it is provided by the memorandum of association of, or Act establishing, the acquiring company that one of the objects for which the company is formed is the acquisition of the undertaking of, or shares in, the target company, or unless it appears from the resolution, Act or other authority for the increase of the capital of the acquiring company that the increase is authorised for the purpose of acquiring the undertaking of, or shares in, the target company.

(7) (a) Where a claim is made for exemption under this section, the Commissioners may require the delivery to them of a statutory declaration in such form as they may direct, made by a solicitor of the Courts of Justice, and of such further evidence (if any) as they may require.

(b) The powers conferred on the Commissioners by paragraph (a) shall be in addition to and not in substitution for the powers conferred on them by section 20.

(8) If—

(a) in respect of any claim for exemption from duty under this section which has been allowed, it is

subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in subsection (2) are not fulfilled in the reconstruction or amalgamation as actually carried out,

(b) in respect of shares in the acquiring company which have been issued to the target company in consideration of the acquisition, the target company within a period of 2 years from the date, as the case may be, of the registration or establishment, or of the authority for the increase of the capital, of the acquiring company ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so issued to it, or

(c) in respect of any such exemption which has been allowed in connection with the acquisition by the acquiring company of shares in the target company, the acquiring company within a period of 2 years from the date of its registration or establishment or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired,

then the exemption shall cease to be applicable and stamp duty shall be chargeable in respect of the conveyance or transfer as if subsection (2) had not been enacted together with interest on the duty, by means of penalty, at the rate of 1 per cent per month or part of a month to the day on which the duty is paid, in a case to which paragraph (a) applies, from the date of the conveyance or transfer or, in a case to which paragraph (b) applies, from the date the target company ceased to be the beneficial owner of the shares so issued to it or, in a case to which paragraph (c) applies, from the date the acquiring company ceased to be the beneficial owner of the shares so acquired.

(9) If in the case of any scheme of reconstruction or amalgamation the Commissioners are satisfied that at the proper time for making a claim for exemption from duty under subsection (2) there were in existence all the necessary conditions for such exemption other than the condition that not less than 90 per cent of the issued share capital of the target company would be acquired by the acquiring company, the Commissioners may—

(a) if it is proved to their satisfaction that not less than 90 per cent of the issued capital of the target company has under the scheme been acquired within a period of 6 months from—

(i) the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition, or

(ii) the date on which an invitation was issued to the shareholders of the target company to accept shares in the acquiring company,

whichever first occurs,

and

(b) on production of the instruments on which the duty paid has been impressed,

repay such an amount of duty as would have been remitted if that condition had been originally fulfilled.

(10) This section shall apply notwithstanding—

(a) that the acquiring company referred to in this section is incorporated in another Member State of the European Union, or

(b) that the target company referred to in this section is incorporated outside the State,

but only where such acquiring company or target company incorporated outside the State corresponds, under the law of the place where it is incorporated, to an acquiring company or target company, as the case may be, within the meaning of this section and subject to any necessary modifications for the purpose of so corresponding, all the other provisions of this section are met.