



The two main Stamp Duty reliefs for companies are Associated Companies Relief and Company Reconstruction and Amalgamation Relief.

Associated Companies Relief

S.79 Stamp Duty Consolidation Act 1999 (SDCA 99) provides relief on transfers between associated companies where certain conditions are met. The companies must be associated at the date of execution of the transfer.

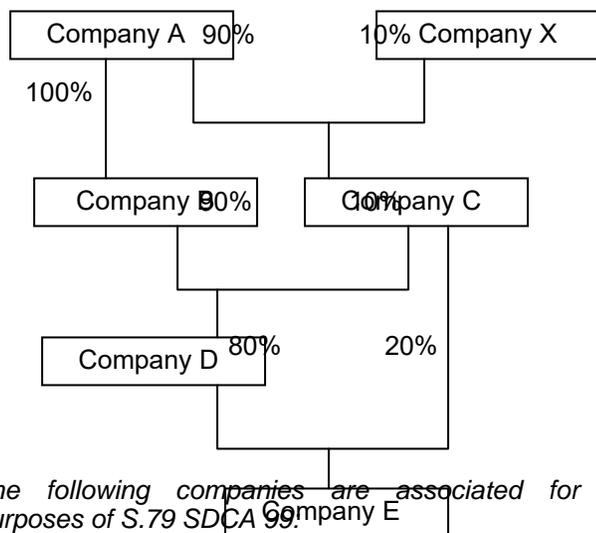
Two companies will be “associated” for the purposes of this relief if one company holds a beneficial interest in the other company which gives it 90% of the issued ordinary share capital, 90% of the profits available for distribution, and the 90% of the assets available on a winding up.

The relationship can be established directly, or indirectly through other body corporate (see example below).

Two companies will also be associated if a third company holds at least a 90% beneficial interest in the company transferring the asset, and the one receiving it.

Again the parent company must be entitled to 90% of the issued ordinary share capital, profits available for distribution, and assets available on a winding up, in relation to both companies.

Example



- A & B (100% held directly)
- A & C (90% held directly)
- A & D (90% held through B)
- A & E (with 72% held through D & 18% held through C)
- B & D (90% held directly)

The consideration for the transfer must not be provided by a company which is not associated.

The deed had to be adjudicated to claim relief up to 06 July 2012 but adjudication has been abolished for instruments executed on or after 07 July 2012.

The relief can be clawed back where the relief is subsequently found not to have been due because one of the conditions of the relief was not met at the date of transfer, or where the companies cease to be associated within two years of the transfer.

Where it is subsequently found that the relief was not due, interest is payable from the date of the transfer. However, where the relief is clawed back because the companies cease to be associated within 2 years, then interest will only accrue from the date on which the companies cease to be associated.

Reconstruction or Amalgamation of Companies Relief

S. 80 SDCA 99 provides an exemption from stamp duty where there is a scheme of reconstruction or amalgamation. This will normally involve the transfer of shares or an undertaking from one company to another, in return for the issue of shares.

In a two party swap the shares are issued to the target company in return for the transfer of shares or an undertaking held by the target, resulting in the new company being held as a subsidiary of the target company.

In a three party swap the shares are issued by the new company to the shareholders in the target, in return for the transfer of shares or an undertaking by the target. This results in the new company and the target company being held as “sister companies” owned by the same shareholders.

In order to qualify for this relief, 90% of the consideration must consist of the issue of shares to the target company or its shareholders and the balance of 10% may be paid in any form.

The scheme of reconstruction / amalgamation must be for bona fide commercial reasons and must not be part of an arrangement the main purpose of which is tax avoidance.

Again, adjudication applied to this relief up to 06 July 2012; however adjudication has been abolished for instruments executed on or after 07 July 2012.

There must be a bona fide reconstruction or amalgamation. The legislation does not define “reconstruction” but it essentially involves the re-

organisation of a business or businesses between two or more companies.

An “amalgamation” involves the bringing together of two businesses or companies, to form a single business entity, or company. It was described in *Crane Freuhauf Limited v IRC* [1975] 1 All ER 429 as the joining of two or more companies so that they are in substance owned by the same person.

Case law imports a “substantial identity of ownership” test into reconstruction and amalgamation reliefs, so that relief will only be available if the company or undertaking remain in the hands of the existing shareholders or if they pass to a new company with substantially the same shareholders (“substantial identity of shareholding”).

An explanation in *Re South African Supply and Cold Storage Company Limited* (1904) 2 Ch 268 of what is involved in a “reconstruction” is often quoted. In that case Buckley J. advised that:

“...An undertaking of some definite kind is being carried on, and the conclusion is arrived at that it is not desirable to kill that undertaking, but ... to preserve it in some form, ...to continue the undertaking in such a manner as the persons now carrying it on will substantially continue to carry it on. the same business shall be carried on and substantially the same person shall carry it on. Substantially, the business and the persons interested must be the same.”

Revenue indicate in Tax Briefing 48 (click here) that:-

“It is only required that substantial identity of shareholding exists immediately after the transfer. It is not necessarily significant that as the next step the shares in the new company are sold. However, it is essential that the reconstruction must not be in any way contingent on the subsequent sale or transfer of shares. Furthermore, the contract for the sale of shares must not be in existence prior to the issue of shares by the new company.”

There are a number of provisions in the legislation which dealt with the clawback of the relief and the clawback will be triggered if one of the following occurs:

- the relief is later found not to have been due, or
- a target company ceases to beneficially own the new shares within 2 years, other than in the event of a reconstruction/amalgamation or liquidation, or

- the acquiring company ceases to be the beneficial owner of the shares acquired in the target company within 2 years other than in the course of a reconstruction, amalgamation or liquidation.

If it emerges that relief was not due on the transfer interest accrues from the date of transfer. If relief is clawed back because the target company ceases to be the beneficial owner of the shares issued to it, then interest arises from the date the company ceases to own the shares.

Conclusion

Associated Companies Relief and Reconstruction/ Amalgamation Relief are valuable exemptions. However there are many conditions attached to each of the reliefs so care needs to be taken before and after the transfer to ensure that each of the relevant conditions is met.

If tax advice is required on any point raised in this article an email can be sent to info@ohanlontax.ie.

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Caveat: *These notes are intended as a general guide to Stamp Duty. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*