

From: Goodbody Stockbrokers

To: Department of Finance

Subject: Review of the Application of Stamp Duty to Stocks and Marketable Securities of Irish Incorporated Companies.

Introduction and brief history of Stamp Duty

Stamp Duty is a tax levied on documents or instruments which effect a transfer of property. Stamp Duty in Ireland is levied on various items including credit cards, debit cards, ATM cards, cheques, property transfers and certain court documents. To be within the scope of Irish Stamp Duty, an instrument must be listed in Schedule 1 of the Stamp Duties Consolidation Act 1999. It must also be executed in Ireland or, if executed outside Ireland, it must relate to property situated within Ireland or relate to a matter done or to be done in Ireland.

Currently the transfer of shares in Irish companies attract a 1% Stamp Duty charge. This rate is higher than Ireland's EU counterparts, many of which have no Stamp Duty payable on such transfers. The rate of Stamp Duty is the same irrespective of whether a company is a private company limited by shares, a designated activity company or a plc.

Stamp Duty has been in existence as a tax for over 300 years and constitutes one of the oldest forms of taxation to survive into modern times. It was introduced in Ireland in the 1830's after the Act of Union. Historically, a physical stamp (a revenue stamp) had to be attached to or impressed upon the document to denote that Stamp Duty had been paid before the document was legally effective. More modern versions of the tax no longer require an actual stamp. Governments traditionally raised money from Stamp Duty before the introduction of income tax. As such Stamp Duty is difficult to integrate with more modern taxes like Capital Gains Tax (CGT).

In our experience, the bulk of Stamp Duty is borne by investors who trade in Irish companies on the ISE and the LSE on the Crest system and not borne by other investors trading in other entities, on other markets or on other depository systems.

Exemptions/Reliefs

There are a number of specific exemptions and reliefs from Irish Stamp Duty that apply to investors in Irish markets or where instruments are executed in Ireland.

- i. Transfers of shares in Irish companies admitted to the Enterprise Securities Market ("ESM") of the Irish Stock Exchange are exempt from Stamp Duty since 5 June 2017.
- ii. Transfers of American Depositary Receipts over Irish shares on US and Canadian recognised stock exchanges are exempt.
- iii. Stock Lending and REPO transactions.
- iv. Transfers of stocks of a non-Irish company, units in a CCF and a range of collective investment undertakings.

- v. Financial services instruments such as swaps, forwards, options, futures and debt factoring agreements are exempt unless they relate to Irish immovable property or to Irish stocks or marketable securities.
- vi. Relief is available in respect of intra-group transfers of shares between companies which are at least 90% associated.
- vii. Share for share exchanges to an EU acquiring company are relieved.
- viii. Relief is available to recognised intermediaries where the transfer is not effected in connection with an excluded business.
- ix. Relief is available in respect of relevant transfers to or from designated recognised clearing houses.
- x. Stamp Duty is not imposed on contracts for differences over Irish shares.

Equivalent Taxes in other jurisdictions

The largest global capital markets in the US are not subject to Stamp Duty. Generally, transaction costs (such as commissions etc.) are very low in the US and help drive liquidity and low-cost investment products.

UK: Stamp Duty reserve tax at the rate of 0.5% applies. In the UK, Stamp Duty is applied at 1.5% if shares are transferred into certain 'depository receipt schemes' or 'clearance services'. There is an "all or nothing" practice whereby the relief will not apply if an intermediary is carrying on an "excluded business", regardless of whether the specific transaction relates to an excluded business. However in Ireland for the purposes of intermediary relief, each transfer should be considered on its own merits to determine whether it relates to an "excluded business".

Spain: Exempt other than certain transfers of shares in real estate companies.

Germany: No stamp tax

Netherlands: No stamp tax

Luxembourg: No stamp tax

France: .3% (excludes companies with market cap <€1bn)

Italy: 0.2% but halved in the case of shares acquired in some regulated markets.

Poland: 1%

Finland: 1.5%

It should be noted that the rates given can be misleading as the base in different jurisdictions differs.

Capital Duty

In the Dáil Debates on 8 February 2005, the Minister for Finance made the case for halving the rate of Capital Duty from 1% to 0.5% saying: "Section 119 reduces companies' Capital Duty on the issuing of share capital from 1% to 0.5% for transactions after budget day, 2 December 2004. This will help maintain our position as an attractive location for companies."

Capital Duty was subsequently abolished the following December. While it raised a much lower yield than Stamp Duty on share transactions, the logic of the Minister's position on Capital duty is still applicable to Stamp Duty.

Arguments for elimination of Irish Stamp Duty:

There are many adverse circumstances surrounding the current Stamp Duty regime in Ireland. Examples include:

- **Obstacle for growth-** Investors with a mandate to invest in European stocks face lower transaction costs in all of the key markets of the UK, Spain, France, and Germany than in Ireland. Consequently Irish companies are required to deliver a higher return on capital to attract investment. This is probably the most fundamental disadvantage for Irish companies, and has a knock-on impact on the capital markets industry in Ireland which is not competing on a level playing field.
- **Post-Brexit-** Brexit will pose myriad challenges for the Irish economy but will hopefully create some opportunities. Depending on regulatory and industry specifics, UK companies may be required to re-register as European incorporated companies. If these companies are currently listed in the UK it is likely that they will consider listing in their new country of incorporation which would create business opportunities for the capital markets community (and for other service providers also). The high stamp tax pertaining in Ireland is likely to deter UK companies from choosing Ireland as a new home for incorporation.
- **Marketability of shares-** Stamp Duty clogs the marketability of the shares. In turn this not only leads to the shares becoming less liquid but also makes them less attractive and less likely to attract investment over time. It is crucial that Ireland remains proactive in developing and adapting policies to ensure that our economy continues to remain competitive in global markets.
- **Corporate Governance-** the existence of Irish Stamp Duty may result in companies incorporating in other jurisdictions, thereby avoiding the requirement to comply with Irish company law, while being tax resident in Ireland, as there may be no Irish Stamp Duty in that case. This could create corporate governance confusion, complexities if there are corporate difficulties etc.
- **Tax nexus-** Stamp Duty creates a tax nexus with Ireland even if a business is global. Global companies, competing for global investment, operating from Ireland end up suffering the duty, culminating in a more unfavourable operating environment for such companies compared to their global competitors.
- **Distortive-** The Stamp Duty levy is distortive because of the exemptions surrounding its treatment (ADR's for example). Listing on other exchanges can be more attractive than listing in Ireland or the UK, where CREST operates.

- **Administration burden-** Stamp Duty is an administrative burden on the Irish Stock Exchange and the Crest system which is a further deterrent to Irish companies wishing to list.

Incidence of Stamp Duty

It is not clear who really suffers the incidence of stamp; is it the purchaser who pays the tax or the vendor who suffers a lower price? There is a superficial attraction to Stamp Duty if it is suffered by non- Irish residents but tax suffered by non-residents is clearly a clog in global financial markets on investment in Irish companies.

At the same time, if the incidence is on Irish residents (directly as purchasers, or indirectly as pensioners, vendors or promoters of companies) then Irish residents who invest in Irish companies are suffering a tax that they would not suffer if they invested in non-Irish companies.

In any event, it is quite clear that the incidence of Irish Stamp Duty does not fall on the financial sector and so does not increase the contribution of that sector to the national revenue.

Further it is not clear to what extent, Stamp Duty is also having on CGT as it is a tax deductible cost of acquisition for Irish CGT purposes.

Conclusion

While there are superficial attractions to a Stamp Duty on the transfer of listed shares, the current tax is too distortive in a small market in a global economy. The costs are ultimately borne by individuals, it puts Irish companies and the economy at an unfair disadvantage versus its peers and is a clear obstacle for growth for Irish companies and the market as a whole. Higher stamp rates deter investors and as laid out in Section 8 of the Consultation paper in relation to FTT the Governments position was that **"FTT would be best applied on a wide international basis to include the major financial centres and to prevent the danger of activities gravitating to jurisdictions where taxes are not levied on financial transactions."** The higher stamp rates versus other countries already puts Ireland in this unfair and uncompetitive position and its elimination would remove this significant obstacle to growth and promote inward investment.