

L.N. 310 of 2010

DUTY ON DOCUMENTS AND TRANSFERS ACT
(CAP. 364)

Duty on Documents and Transfers (Amendment) Rules, 2010

IN exercise of the powers conferred by articles 22 and 42(4) of the Duty on Documents and Transfers Act, the Minister of Finance, the Economy and Investment has made the following rules:-

1. (1) The title of these rules is the Duty on Documents and Transfers (Amendment) Rules, 2010, and they shall be read and construed as one with the Duty on Documents and Transfers Rules, hereinafter referred to as "the principal rules".

Title and commencement.

S.L. 364.06.

(2) These rules shall be deemed to have come into force on the 16th April, 2010.

2. Immediately after rule 10 of the principal rules, there shall be added the following new rules:

Adds new rules 11 and 12 to the principal rules.

" Transfer of company shares.

S.L. 123.27.

11. (1) Subject to the provisions of article 42(2)(c) of the Act, the provisions of rules 5(6) and (7) of the Capital Gains Rules, 1993 shall apply *mutatis mutandis* for the purpose of determining the real value of a company and the real value of shares in a company referred to in article 42(3) of the Act and references in the said sub-rules to "market value" shall be construed as references to "real value".

(2) Notwithstanding the provisions of sub-rule (1), the real value of marketable securities consisting of shares which do not participate in any way in the profits of a company other than by way of a fixed rate of return, shall be the book value of such shares as resulting from the company's financial statements or such other value as the commissioner may determine in accordance with article 10 of the Act.

(3) The transferee in any transfer of shares, other than a transfer of shares referred to in sub-rule (2), shall submit to the Commissioner a statement prepared by a certified public accountant holding a practicing certificate in auditing made on the form prescribed in the Sixth Schedule including a computation of the real value of the shares as required by sub-rule (1), and shall be accompanied, where applicable, by an architect's valuation of the real value of the immovable property taken into account in determining the value of the shares.

(4) The statement referred to in sub-rule (3) shall be delivered in triplicate to the Commissioner together with the payment of duty due on the transfer and the Commissioner shall stamp one of the copies in acknowledgement of the receipt of same and return it to the person who submitted it. The Commissioner shall not consider that delivery or the notice of the transfer required in accordance with the Act as valid unless payment is made as aforesaid.

Transfer of
value.

12. (1) (i) Where as a result of a change in the issued share capital of a company or a change in voting rights attached to such shares, (herein after referred to as the "change"), a transfer of value as provided for in article 42B of the Act is deemed to have taken place, the value transferred to the transferee, shall be determined in accordance with the following formula:

$$Y = ((A - B) + C - D) \times -1$$

Where –

(a) "Y" represents the amount to be determined;

(b) "A" is the real value of the shares held by the transferee in the company immediately before the change;

(c) "B" is the real value of the shares held by the transferee in the company immediately after the change;

(d) "C" is the consideration paid by the transferee for the acquisition of shares or additional shares issued by the company, where the change consists of an issue of share capital for consideration.

(e) "D" is the amount paid by the company in respect of a cancellation of shares held by the transferee, where the change consists of a reduction of share capital:

Provided that where the result of the formula is a negative amount the value of "Y" shall be taken to be zero:

Provided further that where the transferee does not hold any shares in the company immediately before or after the change, the value of "A" or "B" in the said formula, as the case may be, shall be taken as zero:

Provided also that, where the change in the issued share capital consists of a conversion of securities, for the purpose of paragraphs (b) and (c) the real value of shares, which do not participate in any way in the profits of a company other than by way of a fixed rate of return, shall be taken as zero.

(ii) The amount determined in accordance with the said formula shall be deemed for the purpose of article 42B of the Act, to be the value transferred by the transferor to the transferee and such value shall be deemed to have passed into shares in or rights over the company held by the transferee on which duty is chargeable in accordance with the provisions of article 42 of the Act.

(2) For the purpose of sub-rule (1):

(i) the real value of shares held in a company is a percentage of the real value of the said company corresponding to the percentage of the issued share capital represented by the nominal value of those shares;

(ii) where the issued share capital of the company is made up of different classes of shares (whether before or after the change in the issued share capital) or where the change consists of an alteration of voting rights, the real value of shares held in the company shall, notwithstanding paragraph (i), be the percentage of the real value of the said company corresponding to the percentage of the total voting rights in the company represented by the total voting rights attached to those shares;

(iii) notwithstanding paragraph (ii), where the value of "Y" as determined by the application of sub-paragraph (i) is higher than the value of "Y" as determined by the application of sub-paragraph (ii), the value of "Y" is to be determined by the application of sub-paragraph (i).

(3) The real value of a company shall, for the purpose of sub-rule (2), be determined in accordance with rules 5(6) and (7) of the Capital Gains Rules, and references in the said sub-rules to "market value" shall be construed as references to "real value":

Provided that in determining the real value of the company, the total net asset value referred to in rule 5(6) of the said rules shall be that resulting from an accounting statement prepared by a certified public accountant holding a practicing certificate in auditing, to be drawn up as at the date of the deemed transfer of value. The accounting statement shall consist of two balance sheets showing the position of the company immediately before and after the change and shall be drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the change takes place.

(4) On a subsequent transfer of the shares held by the transferee immediately after the change, made before the end of the financial year in which the change took place, the real value taken into account in determining the amount chargeable to duty shall, notwithstanding the provisions of rule 11(1), not be lower than the value of "B" referred to in sub-rule (1)(i)(c) of this rule, being the value taken into account in determining the value transferred.

(5) The transferee in any transfer of value referred to in this rule shall submit to the Commissioner a computation of the real value of the shares, made on the form prescribed in the Fifth Schedule, accompanied by the accounting statement referred to in sub-rule (3) and by an architect's valuation of the real value of the immovable property taken into account in determining the value of the company.

(6) The form referred to in sub-rule (5) shall be delivered in triplicate to the Commissioner and the transferee shall, together with the delivery, pay to the Commissioner the amount of duty due on the transfer in accordance with article 49(2) of the Act.

(7) The Commissioner shall stamp one of the copies of the form submitted in accordance with sub-rule (5) in acknowledgement of the receipt of same and return it to the person who submitted it.

(8) Where a transfer of value is exempt from duty by virtue of the proviso to article 42B of the Act, other than sub-paragraph (iv) of the said proviso, the transferee shall submit to the Commissioner a statement made on the form prescribed in the Seventh Schedule.

(9) For the purposes of this rule, the term "shares" or "share capital" shall exclude shares, which do not participate in any way in the profits of a company other than by way of a fixed rate of return."

3. Immediately after the Fourth Schedule to the principal rules there shall be added the following new Schedules:

Adds new schedules to the principal rules.

"FIFTH SCHEDULE

(Rule 12(5))

Notice in terms of Rule 12(5) of the Duty on Documents and Transfers Rules, 1993

Computation of the value transferred referred to in article 42B of the Act

Part 1 - Details of change in the issued share capital or voting rights

(insert "Yes" or "No")

Nature of change	Alteration of voting rights	Insert date of meeting
	Allotment of shares	
	conversion of shares	
	Reduction in share capital	
Date of change		

Give details:

Give details:

In case of an allotment of shares state the amount paid to the company per share:

In case of a reduction of share capital state the amount paid by the company per share:

Part 2 - Details of issued share capital of company

Immediately before change:

Type	Class	Votes per share	Nominal value per share (€)	Number of Shares	Total voting rights	Total nominal value (€)

Immediately after change:

Type	Class	Votes per share	Nominal value per share (€)	Number of Shares	Total voting rights	Total nominal value (€)

Note: Include only shares as referred to in rule 12(8).

Part 3 - Details of Shareholders / shareholdings

[illegible]

Note: Include only shares as referred to in rule 12(8).

Sec III : Calculation of the value transferred to person:

[illegible]

Note 1: To be filled in cases where the change in the issued share capital consists of an issue of share capital for consideration or a reduction of capital

Sec IV : Calculation of the amount representing the value of goodwill:

a Where company was in existence for the five financial years immediately preceding the year in which the transfer is made;

Year end:		Year 1	Year 2	Year 3	Year 4	Year 5	Total
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Profit before tax					
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Value of goodwill:

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Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.

b Where the company has acquired its business or part thereof from another person during the company's first three financial years:

State date when business was acquired:

State consideration paid for the acquisition of the goodwill of such business:

Profits of the company excluding profits attributable to business acquired:

Year end:		Year 1	Year 2	Year 3	Total
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Profit before tax				
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Value of goodwill:

Profits attributable to business acquired from another person:

Year end:		Year 1	Year 2	Year 3	Year 4	Year 5	Total
-----------	--	--------	--------	--------	--------	--------	-------

Profit before tax					
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Value of goodwill attributable to business acquired A

Consideration paid for the acquisition of such goodwill B

Value of the goodwill of the business so acquired
(higher of A and B) □Total amount representing the value of goodwill:

Note: Where the assets of the company include shares in another company, and such shares represent at least ten percent of the nominal value of the issued share capital of the other company, the computations in Part 5 must be made for each such shareholding.

Part 6 : Architect's valuation

If the company owns immovable property at the date of the share transfer, attach an architect's valuation of the real value of the immovable property taken into account in determining the value of the said shares.

Part 7 - Accounting statement

Attach accounting statement in accordance with rule 12 (3) prepared by a CPA holding a practicing certificate in auditing.

I do hereby declare that the information submitted through this form is true and complete:

Auditor's signature: _____

Auditor's name: _____

SIXTH SCHEDULE

(Rule 11(3))

Notice in terms of Rule 11(3) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by transferee in a transfer of company shares

Part 1 - Details of Transferor and Transferee

Transferor:	
Name	
Address	
ROC No (companies only)	
Income Tax Registration No:	

Transferee:	
Name	
Address	
ROC No (companies only)	
Income Tax Registration No:	

Part 2 - Details of Company in which shares are being transferred

Company Name	
Income Tax Registration No	
Company year end	
Date of incorporation	
ROC No	
Authorised share capital	
Issued share capital	

State whether: (Yes or No)

- a The Company holds shares directly or indirectly in other companies. ☐
(if Yes attach details)
- b The Company or any companies specified in (a) above own immovable property at the date of the share transfer. ☐
(if Yes attach details)

Part 3 - Details of share transfer

a	Date of share transfer	
b	Number of shares transferred	
c	Consideration for shares transferred	

Give details of the shares transferred:

Type	Class	Votes per share	Nom Value per share	Number

Part 4 - Computation of the real value of the shares transferred

The real value of the shares being transferred is to be determined as follows:

Real value of shares transferred

Sec I : Determination of the % of the real value of the company as represented by such shares

	Type	Class	Nominal Value	Voting rights	Nom Value of shares transferred	Voting rights of shares transferred
Issued share capital						
Total						
			(A)	(B)	(C)	(D)
Percentage of the Real Value of company					(C/A)	(D/B)

Sec II : Computation of real value of company in accordance with rule 5(6) and (7) of the Capital Gains Rules, 1993;											
a	Total Net Asset Value of the company:										
b	Real Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5 of the Capital Gains Rules, 1993:										
	<table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 5px;"> <thead> <tr> <th style="width: 35%;">Company</th> <th style="width: 25%;">Income Tax no.</th> <th style="width: 40%;">Real Value</th> </tr> </thead> <tbody> <tr> <td style="height: 30px;"></td> <td></td> <td></td> </tr> </tbody> </table>	Company	Income Tax no.	Real Value							
Company	Income Tax no.	Real Value									
	Deduct book value of shares held in the company (as stated in the financial statements)										
c	Total real value of immovable property as stated in the Architect's Valuation (as per Part 6)										
	less Total book value of immovable property										
	Adjustment to the value of immovable property:										
d	Value of goodwill: (as calculated in Sec IV below)										
e	Deduct the book value of shares referred to in rule 5(6)(d) of the Capital Gains Rules, 1993:										
f	Add Liabilities in excess of the value of all assets as determined in accordance with article 42(2)(c) of the Act:										
g	Total adjusted real value of the company:										
Sec III : Real value of shares transferred:											
a	Adjusted real value of the company <i>(Sec IIg)</i>										
b	Percentage of real value as represented by shares transferred <i>(higher of C/A, D/B in Sec I)</i>										
c	Real value of shares transferred <i>(a X b)</i>										
d	Amount or value of the consideration for the shares transferred										
e	Amount chargeable to duty <i>(Higher of c and d)</i>										
f	Rate of duty <i>(€ 5 or € 2 for every one hundred euro or part thereof)</i>										
g	Amount of duty due <i>(e X f)</i>										
Sec IV : Calculation of the amount representing the value of goodwill:											
a	Where company was in existence for the five financial years immediately preceding the year in which the transfer is made:										
	Year ended _____										
		Year 1	Year 2	Year 3	Year 4	Year 5	Total				
	Profit before tax										
	Value of goodwill:										
Note: Where the transfer is made during the company's first or second financial year the value of goodwill above shall be zero.											

- b Where the company has acquired its business or part thereof from another person during the company's first three financial years:

State date when business was acquired:

State consideration paid for the acquisition of the goodwill of such business:

Profits of the company excluding profits attributable to business acquired;

Year ended _____

	Year 1	Year 2	Year 3	Total
Profit before tax				

Value of goodwill:

Profits attributable to business acquired from another person;

Year ended _____

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Profit before tax						

Value of goodwill attributable to business acquired A

Consideration paid for the acquisition of such goodwill B

Value of the goodwill of the business so acquired
(higher of A and B)

Total amount representing the value of goodwill:

Note: Where the assets of the company include shares in another company, and such shares represent at least ten percent of the nominal value of the issued share capital of the other company, the computations in Part 4 must be made for each such shareholding.

Part 5 - Architect's valuation

If the company owns immovable property at the date of the share transfer, attach an architect's valuation of the real value of the immovable property taken into account in determining the value of the said shares.

Part 6 - Declaration

I do hereby declare that the information submitted through this form is true and complete:

Transferee's signature _____ Transferee's name _____

This Schedule shall be accompanied by an auditor's signed report which shall form an integral part of the schedule, giving assurance as to whether the computation of the real value of the shares being transferred has been properly prepared in accordance with the Duty on Documents and Transfers Rules.

SEVENTH SCHEDULE

(Rule 12(8))

Notice in terms of Rule 12(8) of the Duty on Documents and Transfers Rules, 1993

Statement to be submitted by a transferee where the transfer of value is exempt from duty

Part 1 - Details of change in the issued share capital or voting rights

Nature of change	(insert "Yes" or "No")	
	Alteration of voting rights	
	Allotment of shares	
	conversion of shares	
	Reduction in share capital	
Date of change		

Give details:

Part 2 - Details of transferee

Name	
Address	
ROC No. (companies only)	
Income Tax Registration No.	

Part 3 - Details of Company in which change was affected

Company Name	
Income Tax Registration No	
Company year end	
Date of incorporation	
ROC No	

Part 4 - Details of exemption

State under which of the following provisions of the proviso to article 42B the transfer is exempt

Paragraph (i)	
Paragraph (ii)	
Paragraph (iii)	
Paragraph (v)	

Part 5 - Declaration

I do hereby declare that the information submitted through this form is true and complete:

Transferee's signature:

Transferee's name:

