

Stamp Duties Consolidation Act 1999

**(as amended by subsequent Acts up to and including
the Finance (No. 2) Act 2013)**

Notes for Guidance

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PART 5 PROVISIONS APPLICABLE TO PARTICULAR INSTRUMENTS

Overview

The instruments which are liable to stamp duty are contained in the various heads of charge which are set out alphabetically in *Schedule 1*. This Part, which explains and/or supplements that Schedule, is arranged in the same order as the heads of charge are arranged in *Schedule 1*.

CHAPTER 1

Bills of Exchange

Section 22 Bills and notes purporting to be drawn outside the State

Section deleted for bills/notes drawn/made on or after 2 April 2007.

Section 23 Restriction on stamping after execution

This section provides that a bill of exchange may not be stamped with an impressed stamp after it has been executed.

Section 24 One bill only of a set need be stamped

Section deleted for bills of exchange drawn on or after 2 April 2007.

Section 25 Denotion of duty by adhesive stamps

Summary

This section provides that the 50 cent duty (30 cent for bills drawn or after 6 December 2007 and before 15 October 2008) on a bill of exchange may be denoted by an adhesive stamp. It further provides that the adhesive stamp must be cancelled by the person who signs the bill or note and that it must be cancelled before the signatory hands it on. The adhesive stamp may only be purchased from the Stamp Duty Office, Dublin Stamping District (see *section 135* for the address and contact numbers of that office).

Details

The duty on a bill of exchange may be denoted by means of an adhesive stamp. (1)
Where an adhesive stamp is used that stamp must be cancelled by the person who signs the bill. The adhesive stamp is generally affixed before execution of the bill. If not affixed before execution it must be affixed and cancelled before the signatory hands on the bill.

Any person who issues, endorses, transfers, negotiates, presents for payment, or pays any bill which is liable to duty but which has not been duly stamped is liable to a penalty of €630. (2)

Any person who takes or receives a bill which is chargeable to duty in payment or as a security, or by purchase or otherwise, which has not been duly stamped will not be entitled to recover on or make the bill available for any purpose. (2)

A person to whom an unstamped bill is presented for payment (say, a bank) may affix (3)

a 50 cent stamp to it. On cancelling the stamp so affixed, the bank may then pay the sum mentioned in the bill and either—

- charge the duty in account against the person who drew the bill, or
- deduct the duty from the sum mentioned in the bill.

A bill to which the 50 cent stamp has been affixed and cancelled by the person to whom it was presented unstamped is deemed to be a valid bill. (3)

The person who drew up the bill is still liable for the appropriate penalties. (4)

Section 26 Certain bills issued by local authorities to be chargeable as promissory notes

Section deleted for bills drawn on or after 2 April 2007.

Section 27 Stamping of certain foreign bills of exchange

This provision was first enacted in 1936 to enable the State to accede to the “Convention on the Stamp Laws in connection with Bills of Exchange and Promissory Notes with Protocol” which was signed at Geneva on 7 June, 1930. It provides that bills or notes which are presented for acceptance outside the State or bills or notes which are accepted or payable outside the State are not invalid in the State if they are not stamped. However, *sections 14(1)* and *127* apply to such bills.

Section 28 Notes promising the payment of sum of money out of a particular fund, etc.

Section deleted for notes made on or after 2 April 2007.

CHAPTER 2

Conveyances on Sale

Section 29 Conveyance on sale combined with building agreement for dwellinghouse or apartment

Summary

The stamp duty position relating to the purchase of what is in effect a new house or apartment depends on the nature of the contracts entered into. The conveyance may be giving effect to a contract to purchase —

- (a) a site with a connected building agreement,
- (b) a partially completed house, or
- (c) a completed house.

This section deals with (a). To assist readers the position regarding (b) and (c) is also set out below.

Purchase of site with a connected building agreement

This section charges stamp duty where a site is being sold and, in connection with that sale, a house or apartment has been, is being or is to be built, on that site. The stamp duty charge arises only where the sale of the site and the building of the house or apartment are part of an arrangement or are connected in some way. Stamp duty in such cases is chargeable on the aggregate of—

- the consideration paid for the site, and
- the consideration paid for the construction works.

At the time the conveyance giving effect to the purchase of the site is made the construction works may not have commenced *or* they may have commenced but have not been completed *or* they may have been completed. In any event because the conveyance is giving effect to a contract to purchase a site the conveyance must recite only the consideration provided for in the contract to purchase the site.

Example

A contracted to buy a site from B, a vendor/developer, for €50,000. A building agreement was also entered into with B, whereby B undertook to build a house on the site for A for €150,000. B would not have sold the site to A if A had not also entered into the building agreement. After the construction works were completed a conveyance giving effect to the purchase of the site was executed. Though the conveyance recited a consideration of €50,000, the stampable consideration is €200,000. As the property is residential property the duty applicable is €2,000 (€200,000 x 1%).

Even if the building works had not been commenced (or though commenced if they had not been completed) at the date of the conveyance the stamp duty position would be the same i.e. the stampable consideration would be €200,000.

This section does not apply to the following:

- purchases of sites where it can be shown that no connection or arrangement exists between the sale of the site and the building of a house or apartment on that site e.g. where a person buys a site and employs a builder unconnected with the sale of the site, and
- transfers of sites on which the transferee will build a house by his or her own labour.

However, if the Revenue Commissioners are not satisfied about the genuineness of a particular transaction it is open to them to invoke the anti-avoidance provisions contained in **subsection (3)**.

Purchase of a partially completed house

Where a person enters into a contract for the purchase of a partially completed house, and, where it is shown to the satisfaction of the Revenue Commissioners that there is no connection between the sale of the partially completed house and the employment of the builder chosen to complete the construction work, stamp duty will be based on the amount paid for the partially completed house. The conveyance giving effect to this contract must recite the consideration provided for in the contract.

Example

A decided to build a house for his daughter on his own land using direct labour. After the building works had been commenced A ran out of money. All building work ceased. Some time later A agreed to sell the partially completed house to C for €330,000. C will employ his own builder to complete the house. The conveyance, giving effect to the contract will recite a consideration of €330,000. As there is no connection between the sale of the partially completed house and the builder chosen to complete the house this section does not apply. The stampable consideration is €330,000 and, as the property being transferred is residential property, the duty is €3,300 (i.e. €330,000 x 1%).

Purchase of a completed new house

This section does not apply where the contract is a contract to purchase a new house which has already been completed. In these circumstances there can be no connection or arrangement between the sale of a site and a building agreement.

Example

A builds a house on his land in 2011. As soon as the house is built he sells it for €295,000. The conveyance giving effect to the sale is within the charge to duty under the “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” head of charge in *Schedule 1*.

Where the conveyance is giving effect to a contract to purchase a completed new house the conveyance must recite the consideration provided for in the contract). In the above example the conveyance will recite a consideration of €295,000 and, as the property being transferred is residential property, the duty applicable is €2,950 (i.e. €295,000 x 1%).

Details

Definitions

“building” and “land” are self-explanatory.

(1)(a)

Charge to stamp duty

Stamp duty is chargeable where land is being sold and, in connection with that sale, a house or apartment has been, is being or is to be built, on that land. The stamp duty charge arises only where the sale of the land and the building of the house or apartment are part of an arrangement or are connected in some way. (2)

The question of the existence of a connection or arrangement, in so far as the transfer of the site and the building of a house or apartment on that land are concerned, will be determined by the facts of each case. In particular, the Revenue Commissioners will have regard to the following:

- whether building has commenced prior to the execution of any instrument of sale, and
- whether any relationship or association exists between the builder and the vendor of the land.

In determining the facts of a case, the Revenue Commissioners may require statements and/or statutory declarations from persons concerned with the sale of the land, or with building on that land, or from the persons acting on behalf of such persons. The Revenue Commissioners will also have regard to other information supplied to them

or obtained by them in response to queries.

Where an arrangement or connection exists, stamp duty is chargeable on the aggregate of—

- the consideration paid for the land, and
- the consideration paid for the construction of the house or apartment on that land.

Where building of a house or apartment has commenced prior to the execution of the instrument effecting the sale (i.e. the deed of conveyance), such house or apartment will be deemed to be within the category of houses or apartments which are built, being built or to be built for the purposes of **subsection (2)**. (3)

Calculation of liability where aggregate consideration not known

Where it is not possible to determine the aggregate consideration at the time the instrument is presented for stamping (e.g. where information regarding the cost of the building is not available) a multiple of 10 times the market value of the land is to be used as a basis for calculating the stamp duty liability. (4)(a)

If, subsequently, it is shown that the duty paid exceeded the amount which would have been initially payable had the combined value of the land and building been known and available at the date of stamping the Revenue Commissioners will refund the excess. Interest will be paid on repayments made on or after 1 November 2003 if the repayment is not made by the Revenue Commissioners within 93 days of receiving a valid claim for repayment as provided for in **section 159B** and then only at 0.011% for each day or part of a day from the expiration of the 93 day period. The application for refund must be made within 3 years after the date of stamping of the instrument and be accompanied by the original stamped instrument. Repayments of stamp duty may be made to the person who paid it or to any person who can satisfy the Revenue Commissioners that s/he is entitled to recover moneys from the person who actually paid the stamp duty. (4)(b) (1)(b)

Evidence required

The Revenue Commissioners may require statutory declarations or statements regarding the facts of a case to be delivered to them. These may be sought from any persons involved in the sale of the land or the building work or from solicitors acting on such persons' behalf. (5)

Refunds

Those who do not in fact proceed with building (despite having been charged stamp duty on the basis that a house or apartment was to be built in connection with the sale of the land) will not be unjustly penalised. If the building of the house or apartment has not been commenced within 2 years after the date of stamping of the instrument, the Revenue Commissioners will refund the duty "overpaid" as a result of this section. (7)

Interest may be paid on the refund in accordance with the rules outlined in **subsection (4)(b)** above. The application for a refund must be made within 3 years after the date of stamping of the instrument and be accompanied by the original stamped instrument.

Repayments of stamp duty may be made to the person who paid it or to any person who can satisfy the Revenue Commissioners that s/he is entitled to recover moneys from the person who actually paid the stamp duty. (1)(b)

Section 30 Voluntary dispositions inter vivos chargeable as conveyances or

transfers on sale

Summary

This section imposes a charge to stamp duty on a voluntary disposition inter vivos in any case where there is no consideration for the property conveyed or transferred or where the consideration is inadequate. Where there is no consideration or the consideration is inadequate stamp duty is chargeable on the market value of the property transferred. In all cases, therefore, where the conveyance or transfer is by way of a voluntary disposition inter vivos a valuation of the property must be submitted to the Revenue Commissioners (see **Part 3**).

Section 46(6) deems conveyances or transfers to which **section 46(4)** applies to be voluntary dispositions inter vivos.

Section 8(5) imposes an obligation to tell the Revenue Commissioners when an instrument operates as a voluntary disposition inter vivos.

Details

A conveyance or transfer operating as a voluntary disposition inter vivos is chargeable with stamp duty as if it were a conveyance on sale and the market value of the property being conveyed or transferred determines the rate of duty payable. (1)

However, **subsection (1)** does not apply where the conveyance meets all of the following conditions: (2)

- the conveyance is to a body of persons incorporated under a special Act,
- the special Act precludes the body so incorporated from dividing any profit among its members, and
- the property is to be held for the purposes of (a) an open space or (b) its preservation for the benefit of the nation.

Any conveyance or transfer which is not entered into in good faith and for valuable consideration is deemed to be a voluntary disposition inter vivos. Consideration is not regarded as valuable in the case of marriage or where, as a result of its inadequacy, a substantial benefit is conferred on the transferee. This means that a voluntary disposition inter vivos occurs where— (4)

- marriage is the consideration,
- there is no consideration,
- there is some consideration but in the opinion of the Revenue Commissioners the conveyance or transfer confers a substantial benefit on the transferee, either because the consideration is inadequate or for other reasons.

Example

A transfers to his son B his farm (value €100,000) in consideration of the son paying his sister €30,000 within 3 years. The chargeable consideration is €100,000. As the property is non-residential and because consanguinity relief (see **Schedule 1**) will apply the rate of duty is 1%.

Where the voluntary disposition inter vivos is subject to a mortgage the Revenue Commissioners will, as a matter of practice, deduct the mortgage liability in arriving at

the value of the benefit passing. Stamp duty is chargeable on the net benefit taken i.e. on the equity of redemption.

Example

A gives B her farm worth €150,000. The farm is subject to a mortgage of €40,000. Stamp duty is chargeable on the equity of redemption i.e. €110,000. As the property is non-residential the rate of duty is 2%.

However, if the amount of the mortgage is greater than the value of the equity of redemption - say in the above example the mortgage was €80,000 and the equity of redemption was €70,000 - the Revenue Commissioners will apply *section 41* and assess duty on the amount of the mortgage i.e. on €80,000.

Various conveyances or transfers are excluded from the provisions of this section i.e. (5)

- conveyances or transfers made for a nominal consideration for the purpose of securing the repayment of an advance or a loan,
- conveyances or transfers made for effectuating the appointment of a new trustee,
- conveyances or transfers made for effectuating the retirement of a trustee,
- conveyances or transfers where no beneficial interest passes,
- conveyances or transfers by a trustee to a beneficiary,
- a disentailing assurance vesting the fee simple in the person disentailing.

The conveyances or transfers listed in *subsection (5)* are not chargeable to stamp duty.

Section 31 Certain contracts to be chargeable as conveyances on sale

Summary

This section provides that certain contracts are not chargeable to stamp duty.

Details

- (a) Contracts for the sale of an equitable estate or interest in property (e.g. a contract to sell a life interest in property, an option to purchase a legal interest in property, an agreement in writing to execute a declaration of trust of property in favour of a purchaser), and (1)
- (b) contracts for the sale of property other than—
- land, tenements, hereditaments, or heritages,
 - property locally situated outside the State,
 - goods, wares or merchandise (electricity is deemed to be “goods, wares or merchandise” under section 95 of the Electricity (Supply) Act, 1927 - see **Appendix 2**),
 - stock or marketable securities,
 - a ship, vessel or aircraft or any part interest, etc., in a ship, vessel or aircraft,

are chargeable as if they were conveyances on sale. The purchaser is liable to pay the duty.

The types of contracts which are liable under (b) are contracts for the sale of what can in general terms be described as “intangible” property e.g.

- benefit of contracts,
- goodwill,
- book debts,
- cash on deposit, and
- fixtures attaching to leasehold property i.e. tenant’s fixtures.

In addition, contracts for the sale of bearer shares¹ are chargeable under this section.

Section 101 provides for an exemption from stamp duty for intellectual property which is defined in the section and includes patents, trademarks, copyright and related rights, registered designs, inventions and domain names.

Where a contract for the sale of property (e.g. the sale of a sole trader’s business) comprises both chargeable and non-chargeable property the consideration must be apportioned as only the chargeable property is liable to duty under this section.

Example

A agrees to sell his newsagency business to B. The assets and liabilities of the business are as follows:

<u>Assets</u>	€	<u>Liabilities</u>	€
Leasehold premises	40,000	Trade creditors	7,000
Goodwill	5,000	Mortgage	<u>20,000</u>
Stock	5,000		
Plant and Machinery	10,000		
Tenant’s Fixtures	4,000		
Book Debts	3,000		
Bank Current a/c	4,000		
Bank Deposit a/c	<u>6,000</u>		
	77,000	Total	27,000

⇒ Net Value = €50,000.

B agrees to pay A €77,000 consisting of a cash consideration of €50,000 and the assumption of A’s business liabilities. A written agreement is entered into. That agreement is chargeable as a conveyance on sale of the goodwill, tenant’s fixtures, book debts and deposit a/c. In practice, the current a/c is not regarded as being within the scope of **section 31**. The chargeable consideration is €18,000. As the

¹ This section (i.e. **section 31**) refers to share warrants issued in accordance with section 88 of the Companies Act, 1963. Section 88 provides that a “company limited by shares if so authorised by its articles, may, in relation to any fully paid up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares included in the warrant”. Share warrants entitle the bearer of the warrant to the shares specified in the warrant. Shares may be transferred by delivery of the warrant. It is the view of the Revenue Commissioners that share warrants may not be issued by private companies because they would be subject to restrictions relating to when they may be delivered. By definition a share warrant should not be subject to any restrictions on delivery.

property is non-residential (see head of charge in *Schedule 1*) the rate of duty applicable is 2%.

A also assigns the leasehold premises to B. The chargeable consideration for the assignment is €40,000. Again the rate of duty applicable is 2% (see head of charge in *Schedule 1*).

All the other property - stock and the plant and machinery - passes by delivery.

It is often the case that an existing business is sold to a company in return for the issue of shares in that company. Section 58(2) of the Companies Act, 1963, provides that where shares are allotted by a limited company incorporated in the State for a consideration other than cash a duly stamped contract relating to the property contracted to be transferred to the acquiring company, or, if such a contract has not been reduced to writing, particulars of such contract duly stamped as if it were such a contract, must be filed with the Registrar of Companies.

Where the purchaser has paid ad valorem duty on the contract but, before s/he has taken a conveyance, s/he enters into a contract (second contract) to sell on his or her interest then the second contract will be chargeable to ad valorem duty only on the excess consideration. (2)

Where duty has been paid on the contract referred to in *subsection (1)* or *(2)* and a conveyance is subsequently taken that conveyance is not chargeable with duty. The Revenue Commissioners may be requested to— (3)

- denote the duty paid in respect of the contract on the conveyance (see *section 11*), or
- transfer the duty to the conveyance.

The Revenue Commissioners will refund any duty paid on the contract if the contract is later rescinded, annulled or not substantially performed or carried into effect so as to operate as or be followed by a conveyance or transfer. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by section 159A from the date the contract is stamped, in respect of a valid claim for refund. Interest may arise on the refund – see *section 159B*.

Section 31A Resting in contract

Summary

This section provides that a charge to stamp duty will arise on a contract or agreement for the sale of an estate or interest in land in the State, where 25 per cent or more of the consideration for the sale has been paid to the holder of the estate or interest. The charge will arise where a stamp duty return has not been filed and stamp duty paid in respect of a conveyance or transfer of the lands concerned within 30 days after that amount of consideration has been paid.

The charge under *section 31A* applies to instruments executed on or after 13 February 2013. However, the charge will not apply where an instrument is executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

Details

A contract or agreement for the sale of an estate or interest in land in the State is chargeable to stamp duty as if it were a conveyance or transfer of the estate or interest where a payment which amounts to, or payments which together amount to, 25 per (1)

cent or more of the consideration for the sale has been paid.

The charge under *subsection (1)* does not apply where, within 30 days of the date of the payment of 25% or more of the consideration, (2)

- a stamp duty return is filed in relation to a conveyance or transfer made in conformity with the contract or agreement for sale, and (2)(a)
- the stamp duty chargeable on the conveyance or transfer has been paid to the Revenue Commissioners. (2)(b)

Where stamp duty has been paid on a contract or agreement in accordance with *subsection (1)*, a conveyance or transfer made in conformity with such contract or agreement will not be liable to stamp duty and, where a stamp duty return has been filed in relation to the conveyance or transfer, the Revenue Commissioners will either denote the payment of the duty on the conveyance or transfer or will transfer the duty to the conveyance or transfer on production to them of the stamped contract or agreement. (3)

The Revenue Commissioners will refund any duty paid on the contract if the contract is later rescinded or annulled. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by section 159A from the date the contract is stamped, in respect of a valid claim for refund. Interest may arise on the refund – see *section 159B*. (4)

Section 31B Licence agreements

Summary

This section provides that a charge to stamp duty will arise on certain licence agreements relating to land in the State under which the licensee is allowed to carry out development on that land and 25 per cent or more of the market value of the land is paid to the licensor, other than as consideration for the sale of all or part of the land.

The charge under *section 31B* applies to instruments executed on or after 13 February 2013. However, the charge will not apply where an instrument is executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

Details

The term “development” is defined in *subsection (1)*. (1)

A contract or agreement relating to land in the State, under which a person is entitled to enter onto the land to carry out development on the land, is chargeable to stamp duty as if it were a conveyance or transfer of the estate or interest in the land where the holder of the estate or interest in the land receives a payment, other than as consideration for the sale of the estate or interest in the land, which amounts to, or payments which together amount to, 25 per cent or more of the market value of the land. (2)

The Revenue Commissioners will refund any duty paid on the contract if the contract is later rescinded or annulled. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by section 159A from the date the contract is stamped, in respect of a valid claim for refund. Interest may arise on the refund – see *section 159B*. (3)

Section 32 As to sale of an annuity or right not before in existence

If the sale of an annuity or other right which did not previously exist is effected by actual grant or conveyance then that grant or conveyance is a conveyance on sale for the purposes of the Stamp Duties Consolidation Act, 1999. However, if the annuity or other right which did not previously exist is merely secured by a bond or other instrument then that bond or other instrument is deemed to be a conveyance on sale.

An annuity is a payment which is made yearly or for a fraction of a year e.g. monthly, quarterly. The “right” must be one which is capable of being completed by grant or conveyance i.e. it must be a property right. The terms of the annuity or the right must be secured i.e. set out in an instrument.

Example 1

A agrees to pay B an annuity of €10,000 during B’s lifetime in consideration of a lump sum payment by B to him of €80,000. The instrument creating the annuity is chargeable as a “conveyance on sale” and the stampable consideration is €80,000. The rate of duty is 2%.

Example 2

A enters into a written covenant with B not to open his shop before 9 a.m. any day for the next 2 years in consideration of which B pays A €10,000. As the “right” cannot be completed by grant or conveyance the covenant does not fall within this section.

Section 33 Conveyance or transfer in contemplation of sale

Summary

This section charges transfers of property made in contemplation of a sale as if they were conveyances on sale.

Details

Any instrument whereby property is conveyed or transferred “in contemplation of a sale of that property” is charged to duty as a conveyance or transfer on sale for a consideration equal to the value of that property. (1)

However, the section provides that the Revenue Commissioners will refund any excess duty paid if after the making or execution of the instrument, it is shown to their satisfaction either— (2)

- that the sale has not taken place and the property has been reconveyed or retransferred, or
- the sale has been completed for a consideration lower than the value on which the duty had been paid in the first place.

The claim for a refund must be made not later than 4 years after the date the instrument was stamped. See also *section 159A* in relation to the time limits for claiming a repayment of stamp duty. Interest may arise on the refund – see *section 159B*.

In a case where the sale was completed for a consideration lower than the value on which the duty had been paid in the first place the duty will not be repayable if the (3)

circumstances are such that duty would be payable on the transaction as a voluntary disposition inter vivos for inadequate consideration.

The section is to apply whether or not the instrument conveys other property in addition to the property transferred in contemplation of the sale. The provisions of the section are not to affect the duty chargeable on the instrument in respect of that other property. (5)

Section 34 Agreements in connection with, or in contemplation of, sale

This section provides that where a vendor enters into an agreement for the grant of a lease for a term exceeding 35 years or enters into an agreement to give other rights in relation to the property, the subsequent conveyance or transfer (including a conveyance or transfer effecting an exchange executed on or after 20 November 2008) with the benefit of the agreement, will be charged to stamp duty on the basis of the value of the property and in ascertaining the value of the property the value of the agreement for the grant of the lease or for the grant of other rights, as the case may be, is disregarded.

Section 35 Deeds of enlargement

This section deals with a situation where it was possible to manipulate section 65 of the Conveyancing Act, 1881, to avoid stamp duty. Section 65 enables a leasehold interest to be enlarged, by deed, into a freehold interest in a case where— (1)

- the term granted by the lease exceeds 300 years,
- there is more than 200 years of the term of the lease left to run, and
- the rent under the lease has ceased to be payable or has been released.

The avoidance involved the grant of a lease for a term in excess of 300 years. A situation would then be brought about whereby the rent would cease to be payable under that lease. This meant that the leasehold interest could then be enlarged, by deed, into a freehold interest under section 65. Ad valorem stamp duty would not have been payable on the deed of enlargement.

The avoidance is countered by making a deed of enlargement chargeable to stamp duty where the leasehold interest is created by an instrument which was executed within 6 years of the date of the deed of enlargement. The chargeable consideration is the value of the land. For the purpose of ascertaining the value of the land the term of years for which the lease is granted is disregarded.

In addition, the stamp duty exemption afforded by *section 82* in respect of a conveyance to a charity is not available where a deed of enlargement is involved. (2)

Section 36 Certain contracts for sale of leasehold interests to be chargeable as conveyances on sale

This section has been repealed by section 78(1)(b) of the Finance Act 2013 in conjunction with the introduction of *section 31A*.

Section 37 Exchanges

This section provides that where an exchange of immovable property (i.e. land and buildings) is effected duty will be charged on the value of that property. This applies in cases where immovable property is exchanged for other immovable property or any property. It also applies where some consideration was paid e.g. where the properties

were of unequal value. Where immovable property situated in the State is exchanged for foreign property, immovable or otherwise, duty is payable on the value of the Irish immovable property only.

The following examples illustrate the operation of the section.

Example 1

In 2011 A exchanges his house worth €190,000 for B's farm worth €150,000, both situated in the State. B pays A €40,000 equality money. One deed of exchange is executed. Duty on that deed is €4,900 calculated as follows:

<u>Property</u>	<u>Chargeable Consideration</u>	<u>Rate</u>	<u>Duty Payable</u>
A's House	€190,000	1%	€ 1,900
B's Farm	€150,000*	2%	<u>€ 3,000</u>
			€ 4,900

*the equality money is ignored.

If the exchange had been completed by means of separate deeds of transfer (one in consideration of the other), each deed would be liable to duty based on the value of the property therein conveyed i.e.

<u>Property</u>	<u>Chargeable Consideration</u>	<u>Rate</u>	<u>Duty Payable</u>
Deed (A to B)	€190,000	1%	€ 1,900
Deed (B to A)	€150,000*	2%	<u>€ 3,000</u>
			€ 4,900

*the equality money is ignored.

Example 2

In 2011 A transfers her house worth €190,000 to B in exchange for B's yacht worth €100,000 and €90,000 equality money. A deed of transfer of the house is executed. Ownership of the yacht passes by delivery. The duty on the deed of transfer is €1,900 (€190,000 x 1%) as the property is residential.

Section 38 Partitions or divisions

A partition or division of property occurs where property which was owned jointly is conveyed by the joint owners in separate parcels into their separate names.

This section provides that where equality money exceeding €130 is paid or given, or is agreed to be paid or given, the principal (see *section 47*) or only instrument effecting the partition or division is to be charged as a conveyance on sale: the amount of the consideration being the amount of the equality money. (1)

Example

A and B are co-owners of agricultural land held in fee simple. The value of the lands is €180,000. They wish to partition the lands - A taking a part worth €110,000 and B taking the remaining part worth €70,000. A agrees to pay €20,000 equality money to B. The stampable consideration is €20,000 and as the property is non-residential the rate of duty is 2%.

In a case where there is more than one instrument for completing the title of either party the principal instrument is to be ascertained and the other instruments are not (2)

chargeable to duty as they are not regarded as conveyances or transfers on sale where the ad valorem duty has been paid on the principal instrument.

Section 39 Decree or order for foreclosure, etc., and stamp duty

Section repealed by Schedule 2 Part 5 of the Land and Conveyancing Law Reform Act 2009 (to be commenced by Ministerial Commencement Order). (1)

Section 40 Calculation of ad valorem duty on stock and securities

Summary

This section sets out how stamp duty is to be calculated where the consideration for a conveyance on sale consists of stock or securities.

Details

Where the consideration, or part of the consideration, for a conveyance on sale consists of stock or marketable securities, the conveyance is to be charged with duty in respect of the value of those stocks or securities on the date of execution of the conveyance. “Value” means market value and not nominal value. (1)

Example

A sells 10 acres to B for €30,000 plus 10,000 shares in XYZ Ltd. The shares are valued at €50,000 on the date of the conveyance. The stampable consideration for the conveyance of the 10 acres is €80,000. As the property is non-residential the rate of duty is 2%.

Where the consideration, or part of the consideration, for a conveyance on sale of any property consists of a security which is not a marketable security, the conveyance is to be charged with duty in respect of the value of the property conveyed on the date of execution of the conveyance. (2)

Example

A sells land to B valued at €600,000. The consideration for the sale is a security which B holds which is not a marketable security. Stamp duty is chargeable on the value of the land on the date of execution of the conveyance i.e. €600,000.

Section 41 How conveyance in consideration of debt, etc., to be charged

This section provides that where property is conveyed to any person— (1)

- in satisfaction of any debt due to the transferee, or
- subject either certainly or contingently to the payment or transfer of money or stock, whether that money or stock is a charge or incumbrance on the property or not,

then the debt, money or stock is deemed to constitute the whole or part, as the case may be, of the consideration in respect of which the conveyance is chargeable with ad valorem duty.

The section also provides that where a transferee acquires a beneficial interest in a company in circumstances where the transferee discharges or procures the discharge (whether directly or indirectly through a connected company) of any indebtedness of (2)

the company, the amount of that indebtedness (as well as any other consideration paid, if any) shall be included as consideration for the acquisition of the property (shares) on which stamp duty is payable.

The following examples demonstrate how duty is to be charged in cases involving the satisfaction or assumption of debts. In cases where an instrument is liable to 2 or more duties the Revenue Commissioners have the right to seek the highest duty.

Example 1

A sells B 4 acres in satisfaction of a debt of €32,000 which A owes to B. The chargeable consideration for the conveyance of the 4 acres is €32,000. As the property is non-residential the rate of duty is 2%.

Had B paid A €4,000 in addition to writing off the debt the chargeable consideration would have been €36,000.

If the value of the land had exceeded the value of the debt - say the value of the land was €40,000 - *section 30* would have applied and, in consequence, the chargeable consideration would have been the value of the land i.e. €40,000. The rate of duty would still have been 2%.

Example 2

A sells non-residential property (value €80,000) to B for €65,000. B also agrees to pay off a debt of €15,000 which A owes to C. The chargeable consideration is €80,000 (€65,000 + €15,000). As the property is non-residential the rate of duty is 2%.

Where the debt assumed is a mortgage then duty is charged on the higher of —

- the value of the mortgage debt assumed plus any consideration paid, or
- the equity of redemption.

Example 1

A sells his house (value €235,000) to B for €220,000 in 2011. The house is subject to a mortgage of €15,000 which B also agrees to take over. The chargeable consideration is €235,000 (€220,000 + €15,000) and, as the property is residential, the duty is €2,350 (i.e. €235,000 x 1%).

However, if the mortgage had been greater than the value of the house (i.e. a negative equity situation) the Revenue Commissioners would, in practice, limit the charge to the value only provided a good case was made for the duty to be so limited.

Example 2

A gives B non-residential property (value €50,000). A debt of €15,000 is charged on the property. B agrees to assume that debt. As the equity of redemption (i.e. €35,000) exceeds the value of the debt assumed the chargeable consideration is the equity of redemption i.e. *section 30* applies. The rate of duty is 2%.

Had the debt assumed been greater than the equity of redemption - say the debt assumed was €35,000 - the chargeable consideration would have been the value of the debt assumed as this section would have applied.

Section 42 Charging of consideration consisting of periodical payments

Summary

This section sets out how stamp duty is to be calculated where the consideration for a conveyance on sale is to be paid periodically.

Details

This section provides that where— (1)

- periodical payments are payable for a definite period not exceeding 20 years, and
- the total payable can be ascertained,

duty is chargeable on the total payable.

Example 1

A sells non-residential property to B in consideration of B paying A €5,000 p.a. for 20 years. The chargeable consideration is €100,000 (€5,000 x 20). The rate of duty is 2%.

Example 2

A sells non-residential property to B in consideration of B paying A €5,000 p.a. for 15 years plus an up-front payment of €6,000. The chargeable consideration is €81,000 ((€5,000 x 15) + €6,000). The rate of duty is 2%.

Where periodical payments are payable for a definite period exceeding 20 years duty (2) is chargeable on the total payable during the first 20 years after the date of the instrument.

Example

A sells non-residential property to B in consideration of B paying A €4,000 p.a. for 30 years. The chargeable consideration is €80,000 (€4,000 x 20). The rate of duty is 2%.

However, any provision in the instrument effecting the conveyance which secures the (3) payments is not liable to duty.

A separate instrument made for securing the payments is not liable to duty. (3)

Section 43 Further consideration in respect of substantial improvements not chargeable

This section limits the amount of stamp duty payable on certain conveyances on sale. The conveyances in question are those made for a consideration which is chargeable to ad valorem duty but also made for a further consideration relating to the improvement of the property being purchased. If that further consideration consists of —

- a covenant by the purchaser to substantially improve or add to the property,
- a covenant by the purchaser in respect of his or her having previously made substantial improvements or additions to the property, or

- a covenant relating to the subject matter of the conveyance,

then that further consideration is not chargeable to stamp duty.

Prior to the enactment of section 112 of the Finance Act, 1990 - now *sections 29* and *53* - this section was used to limit the amount of duty chargeable on the purchase of a newly constructed house which was not exempt from stamp duty under section 49 of the Finance Act, 1969 - now *section 91A*. In order to limit the duty payable a contract to purchase the site would be entered into. This contract would be drawn up in such a way that the purchaser would be entitled to have the site conveyed to him or her in consideration only of the purchase price of the site. This would be coupled with a covenant by the purchaser to erect a house on that site - i.e. to improve the site - and provided that the improvements remaining to be carried out at the time the contract to purchase the site was entered into were substantial then duty would be limited to the value of the site only. In practice provided the contract to purchase the site was entered into before the house was roofed the subsequent conveyance only attracted duty on the value of the site. However, following the enactment of section 112 this section (i.e. *section 43*) is now mainly relevant to commercial and industrial developments. The stamp duty position of such developments is as follows:

- where the building on the site is not substantially completed at the date of signing of contracts and where the contract for the sale of the site and the building agreement are not interlocked, stamp duty will be assessed on the market value of the site together with the cost of any works done at the date of signing of the contracts. A certificate from the site architect should be produced, detailing the works performed and the cost of such works at the date of the sale;
- where the building on the site is substantially completed at the date of signing of contracts,

and/or

- the contract for the sale of the site and the building agreement are interlocked,

stamp duty will be assessed on the entire consideration passing for the site and the building.

As a general guideline, properties will be regarded by the Revenue Commissioners as “substantially completed” where the cost of the building work completed exceeds 75% of the total cost of the building work agreed.

Example

A agrees to purchase a new unit in an industrial estate which is to be developed by the vendor. The agreed purchase price is €100,000. €25,000 of the purchase price is attributed to the cost of the site. Separate contracts are entered into between the vendor and the purchaser for—

- the sale of the site, and
- the construction of the unit on that site.

Each contract is independent of the other. At the time the contract to purchase the site is entered into building work has already commenced - approximately €20,000 has been spent on building works - but substantial works remain to be carried out. Stamp duty is chargeable on the cost of the site plus the value of the works completed at the date of the contract i.e. on €45,000. If the building works

had been substantially complete at the date of the contract stamp duty would have been chargeable on the total consideration payable i.e. on €100,000. If the contract for the sale of the site and the contract for the building works had been interlocked (i.e. where the contracts are dependent or conditional on each other to the extent that the purchaser is not entitled to an assurance of the site without the building) stamp duty would have been chargeable on the aggregate of the consideration paid for the site and the building even if the building works had not been substantially completed.

Section 44 Procedure to apply where consideration, etc., cannot be ascertained

Stamp duty is chargeable on sales of property by reference to the amount of the consideration paid.

This section provides that where the consideration for a sale of property cannot be ascertained, and the transfer would otherwise attract duty by reference to the amount of the consideration, duty is to be charged by reference to the value of the property. In other words, the Revenue Commissioners can rely on the value of the property where the consideration cannot be ascertained. (1)

Example

A owns and manages a successful company. B offers to buy A out on terms that the consideration for A's share is to be linked to the performance of the company in the following 5 years, during which A is to continue as manager. The consideration is expressed in terms of a formula related to after-tax profits. Had this section not been enacted the Revenue Commissioners would not have been able to charge ad valorem duty on the share transfer because the consideration was unascertainable. As a result of this section the Revenue Commissioners can charge duty on the value of the shares being transferred.

This section does not apply to cases covered by *section 29(4)(a)*. *Section 29(4)(a)* provides for a method of calculating duty on certain new houses or apartments where the price of the building work cannot be ascertained (the section provides for a multiple of 10 to be applied to the site value in such cases). (2)

This section over-turns the contingency principle in so far as it related to conveyances on sale.

Section 45 Directions as to apportionment of consideration

Summary

This section sets out how the consideration for a sale is to be apportioned in certain circumstances.

Details

Where property purchased by a single purchaser for one consideration is conveyed to that purchaser in separate lots by different instruments that consideration must be apportioned so that each instrument recites its own distinct consideration for the property conveyed by it. Where the property is non-residential the parties may decide on whatever apportionment they think fit. However, if there is a residential element the apportionment must be on a just and reasonable basis (see *subsection (2)*). (1)

Example

A bought 2 units in a new commercial development for a total consideration of €280,000. Each unit is conveyed by a separate deed to A. The total consideration must be apportioned between the 2 deeds i.e. between the 2 deeds the total of the apportioned considerations must equal €280,000. In this case as each unit was worth the same the parties decided that each deed would recite a consideration of €140,000. The stampable consideration is €140,000 in respect of each conveyance. As the property is non-residential, the rate of duty applicable to each conveyance is 2%.

The consideration must be apportioned on a just and reasonable basis— (2)

- where a mixed property (e.g. a dentist using part of his or her dwelling as a surgery, farmhouse with the farm), is sold for one consideration, or
- where the sale of a wholly residential property or a mixed property forms part of a larger transaction or series of transactions - see head of charge in *Schedule 1*. The aggregate consideration appropriate to the larger transaction or series of transactions must be apportioned as between the residential element and the non-residential element comprised in the larger transaction or series of transactions.

Example 1

A owns 2 houses side by side. He contracts to sell them to B for a total consideration of €360,000. To give effect to the contract a separate deed of conveyance is drawn up in 2008 for each house, each reciting a consideration of €180,000. The apportionment is considered to be just and reasonable because the houses are similar to each other in all material respects (e.g. location, size, fabric of the building).

The stampable consideration in respect of each conveyance is €180,000. Because it is part of a larger transaction the duty applicable to each conveyance is the duty applicable to a consideration of €360,000 which is divided in two and applied to each conveyance. Duty on aggregate consideration of €360,000 = €3,600 (€360,000 @ 1%) x 50% = €1,800 for each conveyance.

Example 2

A owns a pub with living quarters overhead. He also owns the adjoining house. He contracts to sell both premises to B for a total consideration of €600,000. To give effect to the contract separate deeds of conveyance are drawn up in November 2008 - one for the pub and the other for the house. Following a valuation of the pub and the house by an independent valuer the conveyance of the pub recites a consideration of €400,000 (of which €320,000 is for the pub and €80,000 for the living quarters overhead) and the conveyance of the house recites a consideration of €200,000. The stampable consideration and the rate of duty applicable in respect of each conveyance is:

	<u>Stampable Consideration</u>	<u>Rate of Duty</u>
conveyance of pub		
• non-residential element	€320,000	2%
• residential element	€ 80,000	1%
conveyance of house	€200,000	1%

A number of persons may contract to purchase property for one consideration. It is agreed how the property is to be divided between each purchaser and what each purchaser's distinct share of the consideration is to be. The vendor then enters into a separate conveyance with each purchaser whereby only the part purchased by a particular purchaser is conveyed to that purchaser. Each conveyance recites the share of the consideration agreed to be paid by the purchaser in question. In such cases each conveyance is chargeable on the consideration recited in each of the conveyances. (3)

Example

A sells her farm of 100 acres to B and C for €200,000. It is agreed between B and C that B will take 30 acres and C will take 70 acres and that each will take a conveyance of his own portion of the lands. Subsequently, 2 conveyances are executed as follows:

- B takes a conveyance of 30 acres for €65,000, and
- C takes a conveyance of 70 acres for €135,000.

The stampable consideration in respect of the conveyance to B is €65,000 and in respect of the conveyance to C is €135,000 and stamp duty is chargeable on both conveyances at the rate of 2% as the property is non-residential.

Where several instruments are required to complete the purchaser's title, only one of these (i.e. the principal instrument of conveyance - see **section 47**) is liable to the full ad valorem duty. The other instruments are not chargeable to duty as they are not regarded as conveyances or transfers on sale where the ad valorem duty on the entire consideration for the sale has been paid on the principal instrument. (4)

Example

A owns land which is land-locked. To reach the land A has a right of way over B's land. A sells his land to C. The land is conveyed to C via Instrument D and the right of way is assigned to C via Instrument E. Instrument D is liable to the full ad valorem duty and Instrument E is not chargeable to any duty.

Section 45A Aggregation of transactions

Summary

The purpose of this section is to counter attempts at avoidance where a house or an apartment is purchased by more than one purchaser and each purchaser takes a separate conveyance or transfer of an interest in the house or apartment in order to avail of lower stamp duty rates. While the splitting of transactions for the purpose of avoiding a higher rate of stamp duty is already countered in this Act, on the basis that the transaction forms part of a larger transaction or a series of transactions (see **Schedule 1**), the purpose of this section is to put beyond doubt that the stamp duty on such conveyances or transfers will be determined on the basis of the value of the whole house for instruments executed on or after 5 November 2007 (the aggregate value of the whole house and any contents therein for instruments executed before 5 November 2007). The section also extends to gifts made in a similar manner regardless of the circumstances under which the gifts take place or the parties involved in such gifts. This section applies to instruments executed on or after 3 February 2005.

Details

“dwellinghouse” includes an apartment. (1)

Where an existing interest in a house (e.g. house owned by one person) or existing interests in a house (e.g. house owned by two or more persons as tenants in common) is conveyed or transferred by more than one instrument, executed within a period of 12 months, **subsection (3)** will apply to each of those instruments whether the instrument gives effect to a sale or a gift of an interest in the house. (2)

An instrument described in **subsection (2)** is deemed, for the purposes of the Heading “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” in **Schedule 1**, to form part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value of the consideration which is attributable to residential property is equal to the value of the house for instruments executed on or after 5 November 2007 (to the value of the house and its contents for instruments executed before 5 November 2007). (3)

Where a conveyance or transfer of an interest in a house is effected by one instrument and— (4)

- (a) before 1 March 2005, the duty chargeable (if any) on the instrument and accounted for to the Revenue Commissioners, has not been determined on the basis of the aggregate amount equal to the value of the whole house and its contents,
- (b) on or after 1 March 2005 and before 5 November 2007, the duty chargeable (if any) on the instrument and accounted for to the Revenue Commissioners, has or has not been determined on the basis of the aggregate amount equal to the value of the whole house and its contents,
- (c) on or after 5 November 2007, the duty chargeable (if any) on the instrument and accounted for to the Revenue Commissioners, has or has not been determined on the basis of the value of the whole house,

and this is followed by one or more conveyances or transfers of other interests in the same house, within the subsequent 12 month period, the transferee or each transferee, if there is more than one, who is a party to the first transfer, will, jointly and severally, be liable to a clawback, payable to the Revenue Commissioners, equal to the amount of the difference between—

- (a) the amount of duty chargeable if the first transfer was one to which **subsection (3)** applied, and
- (b) any duty paid on the first transfer plus any clawback previously paid in respect of that first transfer,

together with interest charged on that amount, at a rate of 0.0219 per cent per day (see **section 159D**) from the date of execution of the instrument to the date the clawback is paid.

Section 46 Directions as to sub-sales

Where a person contracts to purchase property and then sells it to a sub-purchaser before s/he has taken a conveyance of it, then, where the transfer is from the original seller to the sub-purchaser, duty is payable on the consideration paid by the sub-purchaser. Although not expressly stated in this section, the provisions of the section extend to a chain of sub-sales. (1)

Example 1

A agrees to sell her house to B for €400,000. B, before taking a conveyance, contracts to sell the house to C for €435,000. At B's direction the house is conveyed directly from A to C. The stampable consideration is €435,000 i.e. the consideration moving from C. As the property is residential the duty chargeable is €4,350 (€435,000 x 1%).

Example 2

A agrees to sell 10 acres to B for €80,000. An agreement is signed but before the conveyance is executed B enters into a contract with C for the sale of the land to C for €60,000 (say the market has dropped and B decides to get out). On closing, the conveyance is executed from A to C. The stampable consideration is €60,000 i.e. the consideration moving from C. As the property is non-residential the rate of duty applicable is 2%.

Example 3

A agrees to sell a site to B for €65,000. An agreement is signed but before the conveyance is executed B enters into a contract with C for the sale of the property to C for €45,000 (i.e. at undervalue). On closing, the conveyance is executed from A to C. As the conveyance is by way of gift (see *section 30*) the stampable consideration is the market value of the property i.e. €65,000. As the property is non-residential the rate of duty applicable is 2%.

Provision is also made for a case where the property has been sold in parts or parcels to one sub-purchaser or to a number of sub-purchasers. Each part or parcel is only charged on the consideration paid by the sub-purchaser for such part or parcel. (2)

Example

A agrees to sell her farm of 90 acres to B for €160,000. Before taking a conveyance B sells 50 acres to C for €100,000 and 40 acres to D for €70,000. At B's direction A conveys 50 acres directly to C and 40 acres directly to D. The stampable consideration in respect of the conveyance to C is €100,000 (at the rate of duty applicable to non-residential property i.e. 2%) and in respect of the conveyance to D is €70,000 (at the rate of duty applicable to non-residential property i.e. 2%).

Where a sub-purchaser takes a conveyance from the person who sold to him or her, and pays ad valorem duty on this conveyance, any further conveyance of the same property to the sub-purchaser by the original seller will be chargeable only with such other duty as it may be liable to, which duty shall not exceed the ad valorem duty. (3)

Example

A agrees to sell her house to B for €130,000. B, before taking a conveyance, contracts to sell his beneficial interest in the house to C for €135,000. B conveys his beneficial interest in the house to C and C pays ad valorem duty of €1,350 (€135,000 @ 1%). Subsequently, A also executes a conveyance transferring her legal interest in the house to C. The conveyance from A is not chargeable to duty as it would not be regarded as a conveyance or transfer on sale.

The consideration moving from the sub-purchaser, in a case to which *subsection (1)*, (2) or (3) applies, is to be ascertained without regard to— (4)

- the value of any—

- covenant,
- power,
- condition, or
- arrangement,

relating to the subject matter of the conveyance which was not in the contract entered into by the original seller, and

- any consideration the duty on which or on any part of which would be charged in accordance with *section 42(2)*.

The result of ascertaining the consideration moving from the sub-purchaser in this way is that the sub-sale will not be for full consideration. *Subsection (6)* will then come into play with the result that the subsequent conveyance will be liable as a voluntary disposition inter vivos at the market value of the property conveyed.

Example

A contracts to sell property to B for €70,000. B contracts to sell the same property to C for €20,000 plus an annuity of €2,000 p.a. for B's life.

As the annuity portion of the consideration is ignored the lump sum consideration of €20,000 is not adequate and the conveyance from A to C is stamped on the market value of the property i.e. €70,000.

Consanguinity relief (see *Schedule 1*) does not apply to instruments effecting sub-sales. Neither does the relief for transfers between spouses apply (see *section 96*). (5)

Any conveyance to which *subsection (4)* applies is deemed to be a voluntary disposition inter vivos, and, therefore, chargeable on the market value of the property conveyed. (6)

Section 47 Principal instrument, how to be ascertained

Where there are several instruments the parties to them may determine which one is the principal one for the purpose of stamping it with ad valorem duty.

Example

A sells land to B. Some of the land is registered and some is not. The transfer is effected using several instruments. One instrument is chosen to be the principal instrument - normally the instrument which if it stood on its own would attract the most duty - and that instrument is stamped with the total amount of duty due in respect of the sale. All the other instruments are not chargeable to stamp duty.

Section 48 Stamp duty and value-added tax

This section provides that conveyances or transfers on sale of any property except stocks or marketable securities or policies of insurance or policies of life insurance are chargeable to stamp duty on the VAT-exclusive consideration. Unless told otherwise the Revenue Commissioners assume that the consideration recited in a conveyance is a VAT-exclusive consideration.

CHAPTER 3

Conveyances on any occasion except sale or mortgage

Section 49 Certain transfers, etc., not sales or mortgages, deemed to be conveyances

Section deleted as on and from 24 December 2008.

CHAPTER 4

Leases

Section 50 Agreements for not more than 35 years charged as leases

This section provides that an agreement for a lease for a term not exceeding 35 years or for any indefinite term is to be treated as if it were an actual lease.

The Revenue Commissioners are prepared to give consideration to making a refund of stamp duty, paid on an Agreement for Lease, in circumstances where the Lease agreed to be granted is not actually granted. Applications for a refund will be considered by the Revenue Commissioners, on a case by case basis, having regard to the particular facts of the individual case. The following confirmations will be required where a refund application is made to the Revenue Commissioners:

- the Agreement for Lease has been cancelled by the parties prior to it being substantially performed (i.e. no rent or other consideration has been paid, or any benefit derived, directly or indirectly, on foot of the Agreement for Lease at any time),
- a Lease, giving effect to the Agreement for Lease, has not been executed,
- the tenant has not entered into possession of the property the subject of the Agreement for Lease,
- the Agreement for Lease has not been made use of for any purpose by the parties,
- the cancellation of the Agreement for Lease has been effected for bona fide commercial reasons, and
- the execution and cancellation of the Agreement for Lease does not form part of a scheme or an arrangement, the purpose of which is the avoidance of any tax or duty.

Section 50A Agreements for more than 35 years charged as leases

Summary

This section provides that an agreement for a lease for any term exceeding 35 years is to be treated as if it were an actual lease, where the lease is not stamped within 30 days of the date on which 25 per cent or more of the consideration mentioned in the agreement has been paid.

A lease made subsequently to, and in conformity with, an agreement for lease stamped under this section, is chargeable to a fixed duty of €12.50 under paragraph (4) of the heading "Lease" in *Schedule 1*.

The charge under *section 50A* applies to instruments executed on or after 13 February 2013. However, the charge will not apply where an instrument is executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

Details

An agreement for lease of lands, tenements, or heritable subjects for any term exceeding 35 years, is chargeable with the same stamp duty as if it were an actual lease made for the term and consideration mentioned in the lease where 25 per cent or more of the consideration has been paid. (1)

The Revenue Commissioners will refund any duty paid on the agreement for lease if the agreement for lease is later rescinded or annulled. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by section 159A from the date the agreement for lease is stamped, in respect of a valid claim for refund. Interest may arise on the refund – see *section 159B*. (2)

Section 51 Leases how to be charged in respect of produce, etc.

Summary

This section sets out how a lease is to be stamped if the consideration, or part of the consideration, consists of produce or other goods.

Details

Where the consideration, or part of the consideration, for a lease or agreement to lease consists of any produce or other goods the value of that produce or those goods will constitute all, or part, of the consideration. (1)

Where—

- the value of the produce or goods is stated to amount at least to, or is not to exceed, a given sum, or (2)
- the lessee is to pay or has the option of paying at a permanent rate of conversion,

then the value of the produce or goods is to be assessed at the given sum or according to the permanent rate.

Where the value of the produce or goods is stated in the lease or agreement to lease and the instrument is stamped in accordance with that stated value then the instrument is deemed to be duly stamped unless or until it is shown that the statement is incorrect and that the lease or agreement to lease is insufficiently stamped. (3)

Section 52 Charging of duty on leases, etc.

Summary

This section limits the amount of duty chargeable on certain leases or agreements to lease.

Details

A lease or agreement to lease or a letting is not to be charged with duty in respect of— (1)

- any penal rent (a penal rent is any additional rent reserved in case the lessee

commits a breach of the covenants in the lease).

Example

A grants a lease of his premises for 5 years to B in consideration of B paying him €500 per month on the fifth day of every month. The terms of the lease provide that if B is more than 3 days late in paying the monthly rent an additional €50 per month will become due and payable immediately. The chargeable consideration does not include the penal rent of €50 per month.

- any consideration which is expressed to be the surrender or abandonment of any existing lease or agreement to lease of the same property.

Example

A, a tenant under an unexpired lease, agrees to surrender his lease in consideration of the grant to him of a new lease of the same property but for a longer period. The new lease will only attract duty on any rent or premium payable under it but not in respect of the value of the lease surrendered by A.

Where a lease is made for a consideration which is chargeable with ad valorem duty (2) and for a further consideration which consists of a covenant by a tenant to substantially improve or make additions to the property demised, such further consideration is not to attract stamp duty.

Example

A grants a lease to B of a shop premises for a term of 3 years at an annual rental of €4,000 p.a. As part of the agreement B undertakes to carry out certain specified building works to the premises. Stamp duty is chargeable on the rent but not in respect of the cost of the building works to be undertaken by B.

Where a lease is made for a consideration which is chargeable with ad valorem duty and for a further consideration which consists of a covenant relating to the subject matter of the lease, such further consideration is not to attract stamp duty. (See also *section 43*.)

Subsection (2) does not apply in respect of any further consideration in the lease (3) consisting of a covenant which if it were contained in a separate deed would be chargeable with ad valorem duty. The lease is chargeable with duty in respect of the covenant under *section 7*.

Where an instrument (Instrument A) has been stamped as a lease and has rent (4) reserved by it any other instrument (Instrument B) which makes additional rent payable under Instrument A is also to be chargeable as a lease but only in respect of the additional rent payable. This provision, which is a relieving one, is effectively redundant since the abolition in 1992² of the “BOND, COVENANT, or INSTRUMENT of any kind whatsoever” head of charge.

The subsection, when it did apply, only applied to increases in rent which were not provided for in the lease (Instrument A).

Example

² Section 205(6) of the Finance Act, 1992.

A leases her shop to B for 35 years from 1 February, 1990, at a rent of £5,000 p.a. payable for the first 5 years but then subject to review at the end of the fifth year and every fifth year thereafter. At the end of the fifth year the rent is reviewed upwards to £6,000 p.a. No additional stamp duty is payable as a consequence of the upward review because the increase was provided for in the terms of the lease.

In year 9 A agrees to carry out some improvements to the shop in consideration of which B agrees to pay an annual rent of £7,000 p.a. and the lease is endorsed to that effect. The endorsement on the lease constitutes a separate instrument which was prima facie chargeable under the “BOND, COVENANT, or INSTRUMENT of any kind whatsoever” head of charge. This subsection then came into play with the effect that the endorsement became chargeable under the “LEASE” head of charge but only on the additional rent payable i.e. on £1,000 p.a. With the abolition of the “BOND, COVENANT, or INSTRUMENT of any kind whatsoever” head of charge and the stipulation in section 205(10) of the Finance Act, 1992, that an instrument which was chargeable under that head of charge will not be chargeable under any other head of charge this subsection was made redundant.

The consideration is to be apportioned on a just and reasonable basis— (5)

- where a mixed property (e.g. a dentist using part of his or her dwelling as a surgery, farmhouse with the farm), is leased for one consideration, or
- where the lease of a wholly residential property or a mixed property forms part of a large transaction (or series of transactions). The aggregate consideration appropriate to the larger transaction (or series of transactions) will be apportioned as between the residential element and the non-residential element comprised in the larger transaction (or series of transactions).

See examples in *section 45(2)*.

Section 53 Lease combined with building agreement for dwellinghouse or apartment

Summary

This section is similar to *section 29* except that it refers to leases rather than to conveyances. Readers are advised to look at the summary to *section 29*.

This section charges stamp duty where land is being leased and, in connection with that lease, a house or apartment has been, is being or is to be built, on that land. The stamp duty charge arises only where the lease of the land and the building of the house or apartment are part of an arrangement or are connected in some way. Stamp duty in such cases is chargeable on the aggregate of—

- the consideration (other than rent³) paid for the land, and
- the consideration paid for the construction works.

Where a person enters into a contract for the lease of land on which construction work has already commenced, and where there is no connection between the lease of the land and the employment of the builder chosen to complete the construction work, then stamp duty will be based on the amount paid for the land and the partially completed structure.

³ Any rent payable will attract duty under the ‘LEASE’ head of charge in *Schedule 1*.

Details

Definitions

“building” and “land” are self-explanatory. (1)(a)

Charge to stamp duty

Stamp duty is chargeable where land is being leased and, in connection with that lease, a house or apartment has been, is being or is to be built, on that land. The stamp duty charge arises only where the lease of the land and the building of the house or apartment are part of an arrangement or are connected in some way. (2)

The question of the existence of a connection or arrangement, in so far as the lease of the land and the building of a house or apartment on that land are concerned, will be determined by the facts of each case. In particular, the Revenue Commissioners will have regard to the following:

- whether building has commenced prior to the execution of any instrument of lease, and
- whether any relationship or association exists between the builder and the lessor of the land.

In determining the facts of a case, the Revenue Commissioners may require statements and/or statutory declarations from persons concerned with the lease of the land, or with building on that land, or from the persons acting on behalf of such persons. The Revenue Commissioners will also have regard to other information supplied to them or obtained by them in response to queries.

Where an arrangement or connection exists, stamp duty is chargeable on the aggregate of—

- the consideration (other than rent) paid in respect of the lease of that land, and
- the consideration paid for the construction of the house or apartment on that land.

Where building of a house or apartment has commenced prior to the execution of the instrument of lease, such house or apartment will be deemed to be within the category of houses or apartments which are built, being built or to be built for the purposes of *subsection (2)*. (3)

Calculation of liability where aggregate consideration not known

Where it is not possible to determine the aggregate consideration at the time the instrument is presented for stamping (e.g. where information regarding the cost of the building is not available) a multiple of 10 times the market value of the land is to be used as a basis for calculating the stamp duty liability. (4)(a)

If, subsequently, it is shown that the duty paid exceeded the amount which would have been initially payable had the combined value of the land and building been known and available at the date of stamping the Revenue Commissioners will refund the excess. Interest will be paid on repayments made on or after 1 November 2003 if the repayment is not made by the Revenue Commissioners within 93 days of receiving a valid claim for refund as provided for in section 159B and then only at (4)(b)

0.011% for each day or part of a day from the expiration of the 93 day period. The application for refund must be made within 3 years after the date of stamping of the instrument and be accompanied by the original stamped lease.

Repayments of stamp duty may be made to the person who paid it or to any person who can satisfy the Revenue Commissioners that s/he is entitled to recover moneys from the person who actually paid the stamp duty. (1)(b)

Evidence required

The Revenue Commissioners may require statutory declarations or statements regarding the facts of a case to be delivered to them. These may be sought from any persons involved in the lease of the land or the building work or from solicitors acting on their behalf. (5)

Refunds

Those who do not in fact proceed with building (despite having been charged stamp duty on the basis that a house or apartment was to be built in connection with the lease of the land) will not be unjustly penalised. If the building of the house or apartment has not commenced within 2 years after the date of stamping of the instrument, the Revenue Commissioners will refund the duty “overpaid” as a result of this section. Interest may be paid on the refund in accordance with the rules outlined in *subsection (4)(b)* above. The application for a refund must be made within 3 years after the date of stamping of the instrument and be accompanied by the original stamped lease. (7)

Repayments of stamp duty may be made to the person who paid it or to any person who can satisfy the Revenue Commissioners that s/he is entitled to recover moneys from the person who actually paid the stamp duty. (1)(b)

Section 54 Leases deemed to operate as voluntary dispositions inter vivos

Summary

This section is designed to permit stamp duty to be assessed on the value of any benefit passing to the lessee where the lease confers a substantial benefit on the lessee. *Section 8(5)* imposes an obligation to tell the Revenue Commissioners when a lease is operating as a voluntary disposition inter vivos. Surcharges apply if the property being leased is undervalued (see *section 15*).

Details

Any lease not being executed in good faith and for valuable consideration is deemed to be a lease operating as a voluntary disposition inter vivos. The consideration for any lease is not for this purpose deemed to be valuable consideration where the Revenue Commissioners are of the opinion that, by reason of inadequacy of consideration or other circumstances, the lease confers a substantial benefit on the lessee. (1)

Where a lease operates as a voluntary disposition inter vivos, a capital payment, of an amount equal to the amount of the benefit passing, will be imputed to the lease and that capital payment will be subject to stamp duty in the same way as if it were a premium payable under the terms of the lease. (2)

Example

A leases a premises to B for 3 years at an annual rent of €15,000. No premium is payable. If let on the open market on such terms (i.e. 3 years, no premium) a rent of €30,000 p.a. would be obtainable. If the rent were to remain unchanged a premium of €40,000 (i.e. €15,000 p.a. for 3 years, discounted) should have been reserved in the lease in order to ensure that A was letting the premises at full market value. The chargeable consideration for stamp duty is:

Rent: €15,000 *and* Premium: €40,000.

Section 55 Procedure to apply where consideration, etc., cannot be ascertained

Summary

This section is similar to *section 44* except that it refers to leases rather than conveyances.

Details

Where *both* the rent and premium in a lease cannot be ascertained, and the lease would otherwise attract ad valorem stamp duty by reference to the amount of the rent or premium, stamp duty is to be charged on the notional premium that could be obtained by the lessor if a nil rent were chargeable under the terms of the lease. (2)

Example

A leases his restaurant to his brother, B, for 5 years in consideration of a premium and a rent, both to be based on formulas linked to future profits and, accordingly, both unascertainable. The market value of the leasehold interest demised, if the rent were nil, would be €50,000. €50,000 is the chargeable consideration.

Where *either* the rent *or* the premium cannot be ascertained stamp duty is chargeable on the market rent or the market premium, as the case may be. (1)

Example 1

If in the example given in the commentary on *subsection (2)*, the amount of the premium was stated in the lease as €10,000, and only the rent could not be ascertained, stamp duty would be charged, in addition to the premium, on the market rent that could be obtained for a lease of the premises for 5 years with a €10,000 premium.

Example 2

If in the example given in the commentary on *subsection (2)*, the amount of the rent was stated to be €2,000 p.a., and only the premium could not be ascertained, stamp duty would be charged, in addition to the rent, on the market premium that could be obtained for a lease of the premises for 5 years with an annual rent of €2,000.

This section does not apply to cases covered by *section 53(4)(a)*. *Section 53(4)(a)* (3) provides for a method of calculating duty on certain new houses and apartments where the price of the building work cannot be ascertained (the section provides for a multiple of 10 to be applied to the site value in such cases).

This section over-turns the contingency principle in so far as it related to leases.

Section 56 Stamp duty and value-added tax

Instruments chargeable to stamp duty under the “LEASE” head of charge in *Schedule 1* are chargeable on the VAT-exclusive consideration. Unless told otherwise the Revenue Commissioners assume that the consideration recited in a lease is a VAT-exclusive consideration.

CHAPTER 5

Mortgages, etc

Chapter 5 (Mortgages) deleted for instruments executed on or after 7 December 2006.

CHAPTER 6

Policies of Insurance

Overview

Statement of Practice SP-SD 1/94 contains information on insurance policies.

Section 59 Penalty for policy of insurance not duly stamped

This section provides that a penalty of €630 will apply in the event that— (1)

- a policy of insurance is not made out and executed within one month following receipt of a premium, or
- payment is made on foot of a policy which is not duly stamped.

However, the penalty of €630 will not apply where the policy, if executed, is one which is exempt from stamp duty. (2)

Section 60 Short-term life insurance policies

This section was repealed by section 203 of the Finance Act, 2001 as a consequence of the abolition of the 0.1% stamp duty charge on life assurance policies from 1 January 2001.

Section 61 Location of insurance risk for stamp duty purposes

This section sets out how the location of an insurance risk is to be determined. The charge to stamp duty under the “POLICY OF INSURANCE other than Life Insurance, etc.” and “CONVEYANCE or TRANSFER on sale of a policy of insurance or a policy of life insurance, etc.” heads of charge in *Schedule 1* and the charge to the life insurance levy (see *section 124B*) and non-life insurance levy (see *section 125*) depend on the location of the risk: to be liable the risk must be located in the State.

- Where the insurance relates to —
 - buildings, or to buildings and their contents where the contents are covered by the same policy, the risk is located in the State if the property is in the State; (2)(a)
 - vehicles of any kind, the risk is located in the State if the vehicles are (2)(b)

registered in the State; and

- travel or holiday risks and the policy is of a duration of 4 months or less, the risk is located in the State if the policyholder took out the policy in the State. (2)(c)
- In any other case the risk is located in the State—
- where the policyholder is an individual and the policyholder has his or her habitual residence in the State. (2)(d)

Example

ABC Ltd sells extended warranty insurance. B, a retailer, acts as intermediary for ABC Ltd by selling the policies to individuals purchasing goods from him. If those individuals (i.e. the policyholders) have their habitual residence in the State then the risk is located in the State.

- where the policyholder is a legal person other than an individual and the policyholder's head office or branch to which the policy relates is situated in the State.

Example 1

DEF is a Dutch company the head office of which is located in Holland. DEF takes out a public liability policy with a UK insurer via an Irish insurance broker. The policy is in respect of possible liability should DEF's customers be injured during a funfair which DEF is organising in Dublin. The risk is not located in the State - DEF, the policyholder, is a legal person the head office of which is outside the State.

Example 2

GHI is a German company with its head office in Berlin. It has a branch in Dublin. The Dublin branch takes out a public liability policy in respect of injury to any members of the public visiting its offices in Dublin. The risk is located in the State as the policyholder to which the policy relates is located in the State.

Subsection (1) contains a definition of "branch" which is self-explanatory. (1)

Section 62 Limitation of stamp duty on certain instruments relating to 2 or more distinct matters

This section limits the amount of duty chargeable on a policy which contains 2 or more distinct matters where each matter would fall under the "POLICY OF INSURANCE other than Life Insurance where the risk to which the policy relates is located in the State" head of charge in *Schedule 1*.

CHAPTER 7

Releases or Renunciations of any property, or of any right or interest in any property

Section 63 Letters of renunciation

Summary

This section charges the renunciation of a letter of allotment to stamp duty on the same basis as if it were an actual share transfer. The section applies, however, only to stocks and shares where the company concerned has none of its shares quoted either on the official list or the unlisted securities market of a recognised stock exchange⁴.

Details

“share” and “unquoted company” are self-explanatory. (1)

An instrument which releases or renounces a right under a letter of allotment to any share in an unquoted company is chargeable to stamp duty under the “RELEASE or RENUNCIATION of any property, or of any right or interest in any property” head of charge in *Schedule 1*. The release or renunciation is treated as if it were a release of property consisting of stocks or marketable securities. (2)

CHAPTER 8

Share Warrants and Stock Certificates to Bearer, etc.

Section 64 Instruments passing by delivery in pursuance of usage

This section provides that instruments used for the purpose of assigning, transferring or in any manner negotiating the right to a share or stock are treated as if they were instruments to bearer if delivery of such shares or stock is by usage treated as sufficient for the purpose of a sale on the market.

Section 65 Penalty for issuing share warrant not duly stamped

This section imposes a penalty of €630 on any company (and also on certain officers of the company) which issues a share warrant or an instrument having a like effect, which is chargeable to stamp duty, without it being duly stamped.

Section 66 Penalty for issuing stock certificate not duly stamped, etc.

This section provides for the cancellation of stock certificates to bearer, or instruments having a like effect, if the holder of the certificate has been entered on the register of the local authority or company or body of persons as the owner of the share of stock described in the certificate. (1)

This section also imposes a penalty of €630 on any person who issues a stock certificate to bearer or an instrument having a like effect, which is chargeable to stamp duty, without it being duly stamped. (2)

CHAPTER 9

Surrenders of any property, or of any right or interest in any property

Section 67 Surrender and merger of leasehold interests

⁴ For stamp duty purposes the Revenue Commissioners interpret the phrase “recognised stock exchange” to mean not only the Irish Stock Exchange but any stock exchange operating in another country which—

- is recognised by the appropriate regulatory authorities in that other country, and
- has substantially the same level of recognition in that country as the Irish Stock Exchange has in this country.

This section charges to stamp duty a document which bears witness to or acknowledges that a leasehold interest in immovable property has either been surrendered or has merged in another superior interest in the property.