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# Stamp Duties Consolidation Act 1999

## PART 1: INTERPRETATION

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## Part 1: Interpretation

### 1 Introduction

**Part 1** of the Stamp Duties Consolidation Act 1999 (SDCA) defines certain terms used in the SDCA.

1.1 “Accountable Person” is defined by reference to various provisions with the Stamp Duties Consolidation Act 1999 and the Table to Schedule 1.

Section 73 Finance Act 2014 provides specifically that the definition of accountable person for stamp duty purposes includes neither:

- (a) the National Treasury Management Agency;
- (b) the Minister in relation to a function exercised by the Minister which is capable of being delegated to the National Treasury Management Agency under section 5 of the National Treasury Management Agency Act.”,

Prior to Finance Act 2014, Section 108 Stamp Duties Consolidation Act 1999 effectively excluded these from the charge to stamp duties. However, as Section 108 inadvertently also excluded any party to an instrument executed by the Minister or the NTMA from stamp duty, Section 73 Finance Act 2014 repealed Section 108.

### 2 Residential property

Residential property is defined in section 1 of the SDCA as a building or part of a building which, at the date the conveyance or lease is executed, was used or was suitable for use as a dwelling. It includes:

- partially constructed/adapted dwellings, and
- dwellings which have not been adapted for non-residential use since construction. This would include, for example, a derelict house.

Residential property also includes curtilage (i.e. the normal domestic out-houses, yard, garden, etc.) up to an area of one acre exclusive of the site of the residential property. The treatment of car park spaces and marina berths is outlined below.

## **2.1 House with gardens larger than 1 acre**

If a house and gardens which comprise an area of more than one acre are sold, the consideration must be apportioned between the house and the curtilage (the one acre which is most suitable for occupation and enjoyment with the dwelling) and the remaining land. The consideration apportioned to the house and curtilage is liable to residential rates of duty and the consideration apportioned to the lands over the one acre is liable at non-residential rates.

## **2.2 Car park spaces**

There is no specific reference to the term “car park space” in the SDCA.

The definition of “residential property” in section 1 of the SDCA includes “the curtilage of the residential property up to an area (exclusive of the site of the residential property) of one acre”. The curtilage can include ancillary buildings, structures or areas, such as outhouses, a yard, a garage, a driveway, a garden etc., which are usually enjoyed and used with the residential property. A car park space, depending on the circumstances of the transaction, can come within the scope of the definition of “residential property”.

Where a car park space is acquired with a house/apartment, the covenants relating to the car park space usually provide that the car park space is for the sole use of the owner of the house/apartment and that the ownership of the car park space cannot be assigned independently from the house/apartment.

## **2.3 House/apartment & car park space**

Where a car park space(s) is acquired in conjunction with the acquisition of a house/apartment, for use and enjoyment in conjunction with the house/apartment, the car park space is regarded as forming part of the curtilage of the property and treated as “residential property” for stamp duty purposes.

Where the owner of a house/apartment did not acquire a car park space at the time of the purchase of the house/apartment but subsequently acquires a car park space within the complex, which is to be enjoyed and used in conjunction with the house/apartment, the transaction relating to the purchase of the car park space can be regarded as the purchase of residential property.

Where separate instruments are executed in relation to the house/apartment and the car park space, each transaction forms part of a larger transaction or of a series of transactions in respect of which the consideration is attributable to residential property, and the rate of stamp duty chargeable on each of the instruments is determined on the basis of the aggregate amount payable for the apartment and the car park space.

Where the ownership of the car park space is provided for by means of the grant of an irrevocable licence, which entitles the licensee to the limited right to use the car park space, such an instrument, though described as a licence, operates as a lease for stamp duty purposes and is chargeable to ad valorem stamp duty.

### ***2.4 Car park space on its own***

Where a person acquires a car park space, which is not to be enjoyed and used in conjunction with any house/apartment, the car park space is regarded as non-residential property for stamp duty purposes.

### ***2.5 Marina berths***

Marina berths are similar to car park spaces in many respects. The term “marina berth” is not defined in the SDCA.

The definition of “residential property” in section 1 of the SDCA includes “the curtilage of the residential property up to an area (exclusive of the site of the residential property) of one acre”. The curtilage can include ancillary buildings, structures or areas, such as outhouses, a yard, a garage, a driveway, a garden, etc., which are usually enjoyed and used with the residential property.

The first situation that may arise is where the marina berth is acquired in conjunction with the acquisition of a house/apartment, for use and enjoyment in conjunction with the house/apartment. In these circumstances, the berth is regarded as forming part of the curtilage of the property and treated as “residential property” for stamp duty purposes.

Where separate instruments are executed in relation to the house/apartment and the marina berth, each transaction forms part of a larger transaction or of a series of transactions in respect of which the consideration is attributable to residential property. The rate of stamp duty chargeable on each of the instruments is determined

on the basis of the aggregate amount payable for the house/apartment and the marina berth.

The second situation that may arise is where a marina berth is acquired, not in conjunction with any house/apartment. In such a situation, the marina berth is regarded as non-residential property for stamp duty purposes.

### **3 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

Finance (No 3) Act 2011 made certain amendments to the Stamp Duties Consolidation Act 1999 following on from the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The stamp duty reliefs available to spouses have been extended to cover transfers between civil partners. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 defines the terms “civil partner” and “civil partnership”.

Section 96 and 97 of the SDCA, which are dealt with in part 7 of this manual, set out the treatment of property transfers between spouses, civil partners and transfers following the dissolution of marriages and civil partnerships.

Section 97A of the SDCA, also dealt with in part 7, sets out the stamp duty treatment applicable to certain transfers between cohabitants.

### **4 Stock**

The definition of “stock” in Section 1 of the SDCA was amended by Section 100 of the Finance Act 2012 to include “any option over any share in such stocks or funds”. The effect of this is that the 1% rate of duty now applies to transfers of options over shares - in the same way as it applies to shares – under the heading “Conveyance or Transfer on sale of any stocks or marketable securities” in Schedule 1 of the SDCA. Previously a 2% rate of duty applied to transfers of options under 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 of the SDCA – although as a matter of practice Revenue accepted a 1% rate of duty.