

Stamp Duties Consolidation Act 1999

Part 5: Provisions applicable to particular instruments – Leases

This document should be read in conjunction with Part 5 of the Stamp Duties Consolidation Act (SDCA) 1999

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1 Introduction

Section 2 SDCA provides for Stamp Duty to be charged on any instrument (i.e., written document) which is specified in Schedule 1 SDCA and executed (i.e., signed or sealed, or both) in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State. One of the main heads of charge specified in Schedule 1 is the “LEASE” head of charge, which applies in respect of the creation (or grant) of a lease and, in certain circumstances, in respect of an agreement for a lease. [Stamp Duty Manual Schedule 1 - Stamp Duties on Instruments - LEASE Head of Charge](#) contains comprehensive guidance on the operation of the LEASE head of charge, including a glossary of key terms relating to leases.

The LEASE head of charge in Schedule 1 SDCA is divided into five main paragraphs, each of which describes a particular category of lease and the rate(s) of Stamp Duty chargeable in respect of each of those categories. The head of charge is primarily confined to leases of lands¹, tenements² and heritable subjects³ (paragraphs (1) to (4)). However, a fixed Stamp Duty of €12.50 is chargeable in respect of leases of any other immovable property situated in the State (or to any right over or interest in such property) where not already described in paragraphs (1) to (4) (paragraph (5)).

Part 5 SDCA contains a number of provisions that provide for leases and agreements for leases to be treated in a particular way for Stamp Duty purposes. This document provides guidance on these provisions. It should be read in conjunction with [Stamp Duty Manual Schedule 1 - Stamp Duties on Instruments - LEASE Head of Charge](#) and [Stamp Duty Manual Part 5: Section 31E - Stamp Duty on certain acquisitions of residential property](#).

2 Section 34 -Agreements in connection with sale

Section 34 SDCA is an anti-avoidance measure which provides that where a vendor enters into an agreement for the grant of a lease exceeding 35 years, or enters into an agreement granting other rights relating to a property, the subsequent transfer, with the benefit of the agreement, is charged to Stamp Duty based on the full value of the property, disregarding the agreement's value.

3 Section 35 – Deeds of enlargement

Section 35 SDCA addresses avoidance schemes involving the enlargement of leasehold interests into freeholds under section 65 of the Conveyancing Act 1881. A deed of enlargement is chargeable to Stamp Duty where:

¹ The Interpretation Act 2005 defines “land” as including tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land.

² Buildings.

³ Property capable of being passed on a death.

- the leasehold interest was created within six years of the deed,
- the term exceeds 300 years with more than 200 years remaining, and
- rent has ceased or has been released.

The chargeable consideration is the value of the land, with the term of the lease disregarded.

The Stamp Duty exemption afforded by section 82 SDCA in relation to charities does not apply to an instrument which is chargeable to Stamp Duty under this section.

4 Section 50 – Agreements for a Lease not exceeding 35 years

Section 50 SDCA provides that an agreement for a lease for any term not exceeding 35 years, or for any indefinite term, shall be charged with the same Stamp Duty as if it were a lease. The term of 35 years covers most commercial agreements.

Under the LEASE head of charge in Schedule 1, paragraph (4) provides that a lease subsequently made in conformity with such an agreement, which has been stamped under section 50, will be charged with €12.50 Stamp Duty.

In circumstances where the agreement for a lease does not lead to the actual grant of a lease, a repayment of Stamp Duty may be available.

The following confirmations will be required where a repayment application is made to Revenue:

- 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 taken possession of the property which is 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.
- The execution and cancellation of the agreement for lease does not form part of a scheme or arrangement of which the purpose is the avoidance of any tax or Stamp Duty.

Applications for repayment will be considered on a case-by-case basis having regard to the particular facts of the individual case and subject to the 4-year time limit within which repayment claims may be made (section 159A SDCA).

5 Section 50A – Agreements for a Lease exceeding 35 years

Section 50A SDCA is an anti-avoidance provision which is designed to address specific arrangements involving an agreement for a lease or with respect to the letting of any lands, tenements or heritable subjects for any term exceeding 35 years.

Section 50A(1) provides that such an agreement will be liable to Stamp Duty as if it were an actual lease made for the term and the consideration provided for in the agreement where 25% or more of the consideration has been paid.

A claim for repayment of Stamp Duty paid on an agreement for a lease under section 50A may be made to Revenue where the agreement for lease has been rescinded or annulled. A repayment claim is subject to the 4-year time limit, as provided for in section 159A SDCA.

Section 50A(3) provides that an agreement for a lease or for a letting, as referred to in section 50A(1), will be deemed to be executed on the date on which the 25% payment threshold is reached. This deemed date of execution will determine the due date for paying the Stamp Duty liability and filing a Stamp Duty return.

This section applies to instruments executed on or after 13 February 2013, other than instruments executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

Section 50A – Agreements for a Lease exceeding 35 Years

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

Section 51 SDCA provides that where the consideration, or part of the consideration, for a lease, or agreement for a lease, consists of any produce or other goods, the value of that produce or those goods will constitute all, or part, of the consideration. Section 51(2) provides that where:

- the value of the produce or goods is stated to amount at least to, or is not to exceed, a given sum, or
- 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.

Section 51(3) provides that 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.

7 Section 52 – Charging of Duty on Leases

Section 52 SDCA limits the amount of Stamp Duty chargeable on certain leases and agreements to lease

7.1 Section 52(1) – Penal rent and surrender or abandonment of any existing lease or agreement to lease

A lease, agreement to lease, or letting is not to be charged with Stamp Duty in respect of:

- any penal rent (a penal rent is any additional rent reserved in case the lessee commits a breach of the covenants in the lease), or
- any consideration which is expressed to be the surrender or abandonment of any existing lease or agreement to lease of the same property.

Example 1 – Lease with penal rent clause

James grants a lease of his premises for 5 years to Chris in consideration of Chris paying him €500 per month on the fifth day of every month. The terms of the lease provide that if Chris 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.

Example 2 – Surrendered lease

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

7.2 Section 52(2) – Covenant to improve

Where a lease is made for a consideration which is already chargeable with ad valorem Stamp Duty (e.g. rent and/or a premium) 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 chargeable to Stamp Duty.

Note: If the covenant to substantially improve or make additions to the property were contained in a separate deed, and chargeable with ad valorem Stamp Duty under **section 7 SDCA**, subsection (2) would not apply. In such a scenario, the lessee

(as the accountable person) must also account for the Stamp Duty arising on that separate deed or covenant.

Example – Lease including a covenant to improve

Kathleen grants a lease to Annette of a shop premises for a term of 3 years at an annual rental of €4,000 p.a. As part of the agreement Annette 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 Annette.

7.3 Section 52(4) – Payment of additional rent

Where an instrument (Instrument A) has been stamped as a lease and has rent 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 is a relieving provision to prevent double charging and is effectively redundant since the abolition in 1992⁴ of the “BOND, COVENANT, or INSTRUMENT of any kind whatsoever” head of charge. The subsection, when it did apply, only applied to increases in rents which were not provided for in the lease (Instrument A).

7.4 Section 52(5) – Apportionment of Consideration

Where the leased property:

- consists **partly of an interest** in residential property, or
- forms part of a **larger transaction or a series of transactions** involving both residential and non-residential property,

the consideration (other than rent) must be **apportioned** on a **just and reasonable** basis between the residential and non-residential elements.

8 Section 53 – Lease combined with building agreement for dwelling house or apartment

Section 53 SDCA provides for a charge to Stamp Duty where land is being leased and, in connection with, or as part of an arrangement for that lease, a house or apartment has been, is being or is to be built on that land. Stamp Duty in such cases is chargeable on the aggregate of:

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

⁴ Section 205(6) of the Finance Act, 1992

Where it is not possible to determine the aggregate consideration (other than rent) at the time of the stamping of the instrument, a multiple of 10 times the market value of the land should be used to calculate the Stamp Duty. A claim for repayment can be made within 3 years of the stamping of the instrument, where it is shown that Stamp Duty was overpaid.

Example – Partially completed property leased and subsequently completed

Alan decided to build a house for his daughter on his own land using direct labour. After the building works had been commenced Alan ran out of money. All building work ceased. Sometime later Alan agreed to lease the partially completed house to Colm for 5 years at €50,000 per annum. Colm will employ his own builder to complete the house.

The lease, giving effect to the contract, will recite a consideration of €250,000. As there is no connection between the leasing of the partially completed house and the builder chosen to complete the house, this section does not apply.

The stampable consideration is €250,000 and, as the property being leased is residential property, the Stamp Duty is €2,500 (i.e. €250,000 x 1%).

9 Section 54 – Leases operating as gifts

Section 54 SDCA provides that if a lease is not executed in good faith and for valuable consideration, it will be deemed to operate as a “voluntary disposition inter vivos” (i.e., a gift). A lease is treated as not being for valuable consideration where it confers a substantial benefit on the lessee. This will usually happen because the consideration is below market value, but the section also allows for “other circumstances”. Essentially, insufficient consideration is addressed by attributing a value to the benefit conferred on the lessee (a notional premium) and taxing this value.

In such instances, Stamp Duty is charged on the rent plus the notional premium. The notional premium is the minimum amount or value at which the lease, (taking into account the rent payable, if any) would not operate as a gift because there is now sufficient and valuable consideration treated as being given for it.

Section 8(5) SDCA imposes an obligation to notify Revenue when an instrument operates as a gift. To enable this obligation to be fulfilled, the Stamp Duty return contains a box which the filer should tick if the consideration does not represent the open market value of the property being leased.

Example 1 – Calculation of Stamp Duty on lease deemed a gift

A lease is deemed a gift due to lack of valuable consideration. Stamp Duty is calculated on the rent plus the notional premium necessary to make the lease a market value transactional agreement.

Example 2 – Rent payable is less than open market rate (no premium)

Colin leases an office building to Philip for 3 years at an annual rent of €15,000. No premium is payable. If let on the open market on these terms (i.e. 3 years, no premium) an annual rent of €40,000 would be obtainable. A premium of €75,000 ($€40,000 - €15,000 = €25,000$ per year for 3 years) should have been included in the lease to ensure that the office building was leased at full market value. The stampable consideration is therefore €15,000 rent and €75,000 notional premium.

Example 3 – Rent payable is less than open market rate (with premium)

Mary leases a house to Ann for 6 years at an annual rent of €15,000. No premium is payable. The open-market annual rent for the property is €40,000. A premium of €150,000 (i.e. $€40,000 - €15,000 = €25,000 \times 6$ years) should be charged to ensure the property is leased for its full market value. The stampable consideration is, therefore, the notional premium of €150,000 @ 1% (residential rate).

As the average annual rent of €15,000 is less than €50,000, Stamp Duty is not chargeable on the rent

10 Section 55 - Procedure to apply where consideration cannot be ascertained

Where both the rent and the 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, section 55 SDCA provides that 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.

Example 1 – Where either the rent or the premium cannot be ascertained

Robert leases his restaurant to his brother, Shane, 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.

Example 2 – Amount of the premium is stated in the lease

Where the amount of the premium is stated in the lease as €10,000, and only the rent cannot be ascertained, Stamp Duty is charged, in addition to the premium, on the market rent that can be obtained for a lease of the premises for 5 years with a €10,000 premium.

Example 3 – Where only the premium cannot be ascertained

Where the amount of the rent is stated to be €2,000 p.a., and only the premium cannot be ascertained, Stamp Duty is charged, in addition to the rent, on the market premium that can be obtained for a lease of the premises for 5 years with an annual rent of €2,000.

10.1 Unascertainable consideration and rent review clauses

A **rent review clause** is chargeable under paragraph (5) of the LEASE head of charge (Schedule 1 SDCA). However, if Revenue are not satisfied about the genuineness of the rent expressed in the lease and how the rent review clause is expressed to operate, they may invoke section 55.

11 Section 56 – VAT and Stamp Duty on leases

Under section 56 SDCA, Stamp Duty is charged on the VAT-exclusive consideration (i.e. the premium) or rent provided for in the lease of property. Accordingly, the amount of the consideration (i.e. premium) or rent to be inserted in the self-assessed Stamp Duty Return filed under the eStamping system should exclude any VAT element of the consideration (i.e. premium) or rent payable under the lease.

Example – VAT exclusive consideration

A new house is leased for a premium of €400,000 which includes VAT at 13.5%. The VAT exclusive consideration on which Stamp Duty is charged is:
 $\text{€}400,000 / 1.135 = \text{€}352,422.90$

12 Section 67 – Surrender and merger of leasehold interests

Section 67 SDCA provides for a charge to Stamp Duty on instruments evidencing the surrender or merger of a leasehold interest into a superior interest based on the consideration or value of the interest surrendered.