Pre-Self Assessment - Stamp Duty Manual

Stamp Duties Consolidation Act 1999

1 INTRODUCTION 2

2 PART 1: INTERPRETATION 6

3 PART 2: THE CHARGE TO STAMP DUTY..10

4 PART 3: VALUATION..21

5 PART 4: ADJUDICATION AND APPEALS..22

6 PART 5: PROVISIONS APPLICABLE TO PARTICULAR INSTRUMENTS..26

7 PART 06 - SPECIAL PROVISIONS RELATING TO UNCERTIFICATED SECURITIES 48

8 PART 7: EXEMPTIONS AND RELIEFS FROM STAMP DUTY 49

9 PART 8: COMPANIES CAPITAL DUTY..77

10 PART 9: LEVIES 77

11 PART 10: ENFORCEMENT 81

12 PART 11: MANAGEMENT PROVISION..83

13 SCHEDULES AND APPENDICES..86

14 APPENDICES..91

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Reference to the SDCA in this manual is to the Stamp Duties Consolidation Act 1999.

1 Introduction

Purpose of manual

The purpose of this manual is to provide assistance to staff in dealing with stamp duty issues in relation to instruments executed prior to 7 July 2012.

[For instruments executed on or after 7 July 2012, you should refer to the current Stamp Duty Manual.]

It should be read in conjunction with the Stamp Duty Notes for Guidance (http://www.revenue.ie/en/practitioner/law/notes-for-guidance/stamp-duty/index.html). It should be noted that this manual is for guidance only and does not purport to be a definitive legal interpretation of the provisions of the Stamp Duties Consolidation Act 1999.

What is Stamp Duty?

Stamp duty is a tax on instruments. Duty is charged on any document which falls into charge under Schedule 1 of the Stamp Duties Consolidation Act 1999 (SDCA) and which falls within the territoriality provisions in section 2 (1)(b), which states that any instrument that

"is executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing to be done in the State, shall be chargeable with stamp duty."

The stamp duties chargeable in Ireland fall into two main categories.

The scope of the manual comprises the duties payable on a wide range of legal and commercial documents, including (but not limited to) conveyances of property, leases of property, share transfer forms and certain agreements. Prior to 31 December 2009, the duties in this category were denoted by means of stamps affixed to or impressed on the document. Following the introduction of the eStamping system, all instruments must be stamped by means of attaching the stamp certificate, obtained under the

eStamping system, to the instrument and, depending on the nature of the document, may be either ad valorem or of fixed amount.

Stamp Duty comprises duties and levies payable by reference to statements. These duties and levies mainly affect banks and insurance companies and include a duty in respect of financial cards (e.g. Credit, ATM, Laser and Charge cards) and levies on certain insurance premiums and certain statements of interest.

The SDCA also sets out how stamp duty is to be collected and denoted and the person liable to pay the duty. To be liable to duty the instrument must fit into one of the heads of charge set out in Schedule 1.

Unstamped instruments

Instruments which are chargeable to stamp duty but which have not been duly stamped cannot be used as evidence or be available for any purpose, except in a criminal case or in a civil proceedings by the Revenue Commissioners to recover stamp duty.

[Part 10, section 127]

Late stamping of instruments

There are penalties and interest charged on instruments which are presented for stamping more than 30 days after execution of the instrument or have not been lodged for adjudication within that period and stamped within 14 days of the issue of the notice of assessment.

[Part 2, section 14]

Adjudication

Adjudication is the process whereby the Revenue Commissioners formally assess the liability of an instrument to stamp duty. When an instrument has been adjudicated, it will bear an adjudication stamp.

Certain reliefs from stamp duty require adjudication. But even where adjudication is not compulsory the taxpayer has the right to submit any instrument for adjudication.

[Part 4, section 20]

Telephone Assessment of duty and penalties
It is not possible to give a definitive assessment of duty and/or penalty (if any) without sight of the instrument. Telephone callers may be advised of the rate of duty applicable to a class of instrument and the manner in which penalties and interest are charged.

EStamping
The eStamping system commenced on 30 December 2009. Under this system, a stamp duty return must be filed electronically through the Revenue-on-line service (ROS) together with the appropriate stamp duty liability in order to have an instrument stamped. The system will generate a Stamp Certificate and an instrument is stamped once the Stamp Certificate is attached to the instrument.
[Part 2, section 17A]

Mandatory e-Filing
Stamp duty returns and payments made to Revenue on or after 1 June 2011, must be filed electronically, regardless of the date the instrument was executed.
From that date, stamp duty returns in paper format can be filed only in the following exceptional cases.

- An instrument executed prior to 2002
- An instrument presented to Revenue prior to the introduction of e-Stamping on 30th December 2009.

For further information see:
http://www.revenue.ie/en/tax/stamp-duty/e-stamping/mandatory-efiling.html

Power to mitigate penalties
The Revenue Commissioners may mitigate penalties payable on stamping. In applying the discretion provided for the Revenue Commissioners take account of all relevant circumstances giving rise to the delay and will not apply a penalty, or the full penalty, where to do so would be unjust and unreasonable.

Any claims for mitigation should be made in writing and supported by documentary evidence.

Payment of Registry of Deeds Fee

A Registry of Deeds Fees Order was introduced on 1st May 2008, under which fees are **only** be payable directly to the Property Registration Authority by cash, cheque or electronically.

Previously, the fee in relation to a Memorial could be paid directly to the Registry of Deeds or alternatively the fee could be paid through Revenue by having a stamp impressed on the Memorial. The payment method by means of a Revenue stamp has ceased under the new Fees Order. This change will have limited impact as the majority of fees in respect of Memorials were paid directly to the Registry of Deeds.

All Memorials should be sent directly to the Registry of Deeds, Kings Inns, Henrietta Street, Dublin 7 together with the appropriate fee.

2 Part 1: Interpretation

Introduction

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

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.

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.

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.

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 transaction 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.

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.

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.

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.

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3 Part 2: The Charge to Stamp Duty

Section 2 of the SDCA
Charging of, liability for, and recovery of stamp duty

Stamp duty is chargeable if the instrument is listed in Schedule 1 of the SDCA and also

- is executed in the State, *or*
- no matter where it is executed, if it relates to Irish property or to matters or things done or to be done in the State.

When an instrument is presented for stamping the appropriate head of charge is determined first. Then the amount of duty due is calculated by reference to the rate of duty applicable to the instrument. An instrument may, in some circumstances, be liable to duty under more than one head of charge; in this case, the head of charge that will yield the most duty will be selected.

If the duty is not paid on time, penalties and interest will be charged in addition to the duty.

(i) "Relates"

Questions frequently arise around the phrase "relates to any property situated in the State or any matter or thing to be done in the State".

Where the consideration for a foreign property consists of shares in an Irish company, the document will be stampable in Ireland, even if the deed of transfer is executed abroad (See I.R.C. v Maple & Co. (Paris) Ltd 1908 A.C. 22).

The instrument and/or the underlying transaction should relate to or involve, a substantive action or obligation to be carried out or undertaken in the State. Where the only link to Ireland is the fact that one or both of the parties to the instrument are resident in Ireland, this will not be considered enough to bring the document into charge.

For example, if an Irish person is buying an apartment in Florida from another Irish person and the deed of transfer is executed in Florida, a charge to Irish stamp duty will not arise.

Section 5 of the SDCA
Composition agreements

This section simplifies the administration and collection of duties. Those who have substantial numbers of instruments which attract stamp duty may opt to pay the duty due in bulk at intervals – usually annually, bi-annually or quarterly – instead of sending in the individual documents for stamping. In order to do this, a composition agreement, which sets out the terms of payment and the types of instruments covered, is entered into with the Revenue Commissioners under section 5 of the SDCA.

Finance Act 2008 amended section 5 to allow the Revenue Commissioners to make assessments in relation to the duty collected from financial institutions and insurance companies in respect of cheques or drafts and certain policies of insurance should the need arise.

Section 80 of Finance (No. 2) Act 2008 amended section 5 of the SDCA. Currently, in the case of cheques, the duty is paid when a financial institution issues a chequebook to a customer. The amendment to section 5 will allow the Commissioners, if requested, to enter into a composition agreement in relation to cheques on the basis that the duty will be paid at the time a cheque is presented for payment to a financial institution.

This amendment applies to composition agreements entered into on or after 1 January 2009.

Section 8 of the SDCA
Facts and circumstances to be set out in the instrument

Section 8 of the SDCA puts the onus on the taxpayer to bring to the attention of the Revenue Commissioners all the facts and circumstances affecting the liability of an instrument to stamp duty. When an instrument is submitted for stamping, all the relevant facts and circumstances relating to the liability of the instrument to stamp duty must be stated in the instrument itself or in an accompanying statement.

The Revenue Commissioners may request whatever information they require to determine the liability of the instrument to duty. In addition, the Revenue Commissioners may determine the form in which that information is to be given.

Section 111(1)(c) of the Finance Act 2008, which amended section 8(2) of the SDCA, is amended so that the requirement for a statement under section 8(2) will continue to apply, when the eStamping system commences, in cases where adjudication is required and to provide that evidence in relation to the chargeability of the instrument to duty must be retained by an accountable person for 6 years rather than 4 years.

(i) eStamping penalties

The requirement for a statement under this section will continue to apply under the eStamping system where adjudication is required or where Regulations made under section 17A contain such a requirement. In addition, evidence in relation to the chargeability of an instrument to duty must be retained by an accountable person for audit purposes for 6 years from the date of stamping of the instrument under the eStamping system should the Revenue Commissioners wish to examine it.

(ii) Penalties for non-disclosure before 24 December 2008

Penalties incurred before 24 December 2008 are payable in cases where all the relevant facts and circumstances are not fully and truly set out either in the instrument or in an accompanying statement and fraud or negligence is involved. The persons liable to pay such penalties are the parties to the instrument or the persons who prepared them. In a case of fraud or negligence, the penalty is €1,265 plus the amount of duty underpaid. This amount is in addition to the requirement to pay the balance of the duty owed on the instrument.

(iii) Penalties for non-disclosure after 24 December 2008

Penalty incurred by parties to the instrument: See section 134A(2)(a) in Part 10 of this manual.

Where the penalty is incurred by the parties who prepared the instrument on or after 24 December 2008, and all the relevant facts and circumstances, of which the person is aware, are not fully and truly set out either in the instrument or in an accompanying statement, a penalty of €3,000 will be incurred.

(iv) Presumption of negligence

Negligence is presumed in

- situations where it comes to the notice of the parties, or would have come to their notice if they had taken reasonable care, that incorrect information had been provided unless the Revenue Commissioners have been informed of the error without unreasonable delay;
- cases involving voluntary dispositions *inter vivos* in certain circumstances; where a transfer or lease of property is made by way of a full or partial gift, stamp duty is chargeable by reference to the market value of the property (sections 30 and 54).

However, it is not always apparent to the Revenue Commissioners from the instrument presented for stamping that the transfer is by way of gift e.g. where some consideration is paid. All parties to an instrument are obliged to ensure that the Revenue Commissioners are aware by means of an accompanying statement that the transfer is by way of gift and the market value must also be set out in that statement. If the parties to the instrument fail to provide this information they are regarded as having acted negligently until the contrary is proven. This failure will be regarded as being deliberate for the purposes of section 134A(2)(a) where it occurs on or after 24 December 2008.

(v) Disclosure of doubt

Persons who are unsure as to whether certain facts are relevant may express to the Revenue Commissioners their uncertainty and, provided the uncertainty expressed is genuine and not a tactic to evade or avoid stamp duty, a penalty may be avoided.

Section 8A of the SDCA
Penalties: returns

This section provides for a penalty of €3,000 where an incorrect electronic or paper return is delivered in connection with the eStamping system.

Section 12 of the SDCA
Particulars Delivered stamps

This section provided that particulars in respect of certain classes of instruments were required to be furnished. The instrument was to be impressed with a "Particulars Delivered" stamp on production of the particulars.
The section was amended to provide that a PD stamp is not required where an instrument has been stamped by means of the eStamping system.

Section 14 of the SDCA
Interest and penalties on stamping instruments after execution

An instrument is chargeable with a penalty if it is not stamped within 30 days of first execution or has not been lodged for adjudication within that period and stamped within 14 days of the issue of the notice of assessment. Penalties are charged under section 14 of the SDCA. In practice, penalties are not charged if the instrument is stamped within 44 days of execution. When penalties are charged, they are charged from the date of execution of the instrument. Interest at the rates below will also apply to instruments.

The penalties are:

1—6 months late:	10% of duty payable
6—12 months late:	20% of duty payable
Over 12 months late:	30% of duty payable

Interest charged on a daily basis:

From 31/03/76 to 31/07/78	0.0492%
From 01/08/78 to 31/03/98	0.0410%
From 01/04/98 to 31/03/05	0.0322%
From 01/04/05 to 30/06/09	0.0273%
From 01/07/09 to date of payment	0.0219%

Late stamping of instruments

Section 81 of Finance (No. 2) Act 2008 amended section 14 to facilitate the introduction of eStamping by providing for an incentive to encourage the presentation to Revenue of instruments executed before the 24 December 2008 in respect of which the stamp duty chargeable had not been paid within the prescribed period of 30 days. The incentive was aimed at granting an opportunity to those taxpayers who wished to regularise their affairs before the introduction of eStamping in 2009.

A penalty (other than interest) did not apply in connection with the late stamping of an instrument executed before 24 December 2008, where the instrument was presented for stamping and the duty and interest on such instrument was paid before the expiration of the period of 56 days commencing on 24 December 2008.

In order for the penalty not to be payable the following conditions had to be met.

- The instrument was delivered to the Revenue Commissioners for stamping on or before 17 February 2009 and
- The stamp duty chargeable and any appropriate interest was paid on or before 17 February 2009.

Unpaid duty chargeable on an instrument executed before 17 February 1999 is deemed, for interest calculation purposes, to be chargeable from that date. This is in line with current administrative practice in connection with other time-limited voluntary disclosure schemes.

Deeds delivered in escrow

Definition: Escrow. A document which is delivered subject to certain conditions being fulfilled.

Stamp duty must be paid on an instrument within 30 days of the date of first execution. The execution of an instrument although usually thought of as a single act is in fact more a process involving, for most instruments, three individual actions – signing, sealing and delivering. This may seem an excessively legal point to some but

the fact remains that, in law, a deed is not effective unless it is at least sealed and delivered and it is now a long standing practice to sign it also.

Where stamp duty law refers to the date of first execution it is not necessarily referring to the date the instrument bears. In practice, the date of execution is taken as the time when a deed becomes an effective instrument, i.e. the date when the deed has complied with all the legal formalities so as to make it the act and deed of all the parties. The signing and sealing of a deed is apparent from the deed itself. Delivery, on the other hand, is not.

There is no special method of delivering a deed so as to give it legal effect. Delivery may be made in words or by actions. It is not even necessary that the deed should be handed over to the person intended to benefit from it (e.g. the purchaser in the case of a sale). What is required is that the person whose deed the instrument is expressed to be, by words or actions, expressly or by implication, acknowledges his intention to be immediately and unconditionally bound by it. In practice, once a deed is sealed it is presumed also that it has been delivered and is, therefore, legally effective. However, this presumption can be overthrown if it can be shown that the deed was only delivered as an escrow.

The delivery in escrow of a deed means simply that the delivery is incomplete and is conditional on the fulfilling of some condition. Therefore the parties to the deed cannot be bound by it until that condition is fulfilled. Common conditions are the payment of the balance of purchase monies or the discharge of a mortgage on the property. As with the delivery of a deed itself, there is no special form to the delivery of a deed in escrow. The important point of the delivery is that the party making the delivery should expressly or implicitly declare to be bound by the deed, not immediately, but only in the case of and upon performance of some condition stated or ascertained at the time of delivering the escrow. Further the deed may be delivered in escrow to anyone – except that if it is delivered to the person who is to benefit from it, it cannot be an escrow.

To summarise: To be effective a deed must be signed, sealed and delivered. Delivery of the deed must be unconditional. If there is a condition attaching to the delivery

which must be performed before the party making the delivery will be bound by the provisions in it, the deed is delivered as an escrow.

The interaction between stamp duty and delivery of a deed as an escrow arises from the meaning given to execution in practice. Execution occurs when the deed becomes effective. If it is delivered as an escrow it is not effective and is therefore not executed until the condition under which it was delivered is fulfilled. Accordingly, in cases of escrow the date of the deed will not give guidance as to whether it is being stamped within the time for stamping.

When it is claimed that a deed has been held as an escrow what should our approach be? In the context of the heavy penalties for late payment of stamp duty it is recommended that officers should look for firm evidence of the facts of the escrow. In general, certificates of escrow dated at the date of the delivery of the deed in escrow (and not at the date of fulfilment of the condition) should be acceptable. The certificate should set out the parties to the deed, who has held it in escrow and the condition upon which it was held. If the officer is unhappy with the certificate, he/she should look for further clarification. In seeking clarification the objective is to ascertain if in fact the deed was delivered conditionally and that it was not acted upon until the condition was fulfilled. If the parties took action which indicated that they considered themselves bound by the deed upon signing and the sealing the escrow claim should be rejected – such action would for example be, in the case of the sale of a house, if the purchaser had actually moved into it before the alleged condition was fulfilled.

In circumstances where an adequate certificate is not available, marking officers are entitled to be very cautious before accepting that the deed was not delivered on the date it bears. In general, no claim that the deed was held in escrow should be allowed in such circumstances. However, because of the lack of legal formalities in the delivery of a deed, escrow cases should be considered on their merits. If the officer is satisfied that the deed was delivered conditionally and that the condition was such as could reasonably delay completion of the transfer, the claim should be allowed. Where the officer is unsure, his/her supervisor should be consulted.

Section 15 of the SDCA
Surcharges for undervaluation in cases of voluntary dispositions inter vivos.

This section provides for a surcharge where the value of property has been understated. The surcharges are as follows:

Where the understatement of value is between 15% and 30%	25% of the duty chargeable. However, an understatement of less than €6,350 will not attract a surcharge.
Where the understatement of value is between 30% and 50%	50% of the duty chargeable.
Where the understatement of value is greater than 50%	The amount of duty chargeable.

Where a person refuses to state a value, the Revenue Commissioners will calculate the degree of understatement for surcharge purposes by reference to the consideration (other than rent) stated in the conveyance, transfer or lease.

Section 17A of the SDCA
e-Stamping regulations

The e-Stamping system, which is a new process for stamping instruments and paying stamp duty, commenced on 30 December 2009. Under the new system, a stamp duty return must be filed electronically through the Revenue-on-line service (ROS), together with the appropriate stamp duty liability in order to have an instrument stamped. The system will generate a Stamp Certificate and an instrument is stamped once the Stamp Certificate is attached to the instrument.

Regulations (S.1. 476 of 2009) have been introduced in relation to the operation of the eStamping system. Under these regulations all stampable instruments, regardless of

the date of execution of the instruments, must be stamped by means of the eStamping system where the instruments are stamped on or after 30 December 2009.

Certain legislative changes to the SDCA have also been made to facilitate the introduction of the eStamping system.

- New definitions of “approved person”, “authorised person”, “filer”, “electronic return”, “eStamping system”, “paper return”, “stamp”, “stamp certificate” and “stamped” have been inserted into section 1 SDCA.

- Section 8 SDCA has been amended

  - In subsection (2) to provide that a statement, relating to the full facts and circumstances affecting the liability of an instrument to stamp duty, is not required to be delivered (other than where adjudication is required) provided evidence in relation to the chargeability of the instrument to duty is retained by the accountable person for a period of 6 years.

  - The penalties provided for in section (3) have been replaced by the penalties provided for in section 134A SDCA (accountable person) and in section 8(4A) SDCA (person employed in the preparation of an instrument).

  - A new subsection (4A) has been inserted into section 8 to provide for a €3,000 penalty where any person prepares an instrument in which all the facts and circumstances, of which the person is aware, are not fully and truly set forth in the instrument.

- A new section 8A has been inserted into the SDCA to provide for a penalty of €3,000 in relation to the filing of an incorrect return.

- Section 12 has been amended to provide that the requirement for Particulars Delivered (PD) stamping does not apply where an instrument has been stamped by means of the eStamping system.

- Section 20 has been amended to provide for the denoting, by means of a Stamp Certificate, of an instrument which has been adjudicated.

  Further information relating to the eStamping system is available on https://www.revenue.ie

4 Part 3: Valuation

This part contains the provisions relating to the valuation of property for the purposes of stamp duty.

Valuations are required:

- in the case of voluntary dispositions inter vivos (s30 SDCA),
- in the case of transfers, or certain agreements, made in contemplation of sale (s33 SDCA),
- where the consideration consists of non marketable securities (s40(2) SDCA), and
- where the consideration is unascertainable (s44 & s55, SDCA).

Section 18 of the SDCA
Mode of valuing property

The value of the property transferred is to be determined without reference to –

- any power whereby the person who transferred the property may have the property revested in him/herself or another person on the transferor's behalf.
- Any interest that ceases if the person entitled to the interest does or does not do a certain thing.
- Any right of residence, support, maintenance or other right of a similar nature except in certain circumstances.

(i) Power to have property revested

If this power is in fact exercised and the property is reconveyed or retransferred as a result of that exercise, the Revenue Commissioners will repay the stamp duty paid.

The claim for refund must be accompanied by the original stamped conveyance or transfer. Interest may also arise on the refund.

If the power is exercised after the time limit permitted for refund has expired, stamp duty will not be refunded.

(ii) Right of residence

If the right is reserved in favour of the transferor or the spouse or civil partner of the transferor then that right may be taken into account, but only to the extent that its value does not exceed 10% of the unencumbered value of the property.

Section 19 of the SDCA
Valuation of property chargeable with stamp duty

The market value of any property is regarded as "the price which, in the opinion of the [Revenue] Commissioners, such property would fetch if sold in the open market on the date on which the property is to be valued in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property" [CATA76 s15].

(i) Valuation Office

Please see Part 19.2.8 of the Income Tax, Corporation Tax and CGT manual for information on valuation services.

5 Part 4: Adjudication and Appeals

This Part contains the provisions relating to the adjudication of instruments and appeals against stamp duty assessments. Adjudication is the process whereby the Revenue Commissioners formally assess the liability of an instrument to stamp duty. When an instrument has been adjudicated, it will bear an adjudication stamp.

Section 20 of the SDCA
Assessment of duty by the Commissioners

This section enables the Revenue Commissioners to assess the amount of duty chargeable on an instrument as they require. A taxpayer may also request adjudication by filing a return in accordance with the e-Stamping system.

Adjudication

Adjudication is the process whereby the Revenue Commissioners formally assess the liability of an instrument to stamp duty. When an instrument has been adjudicated, it will bear an adjudication stamp.

Certain reliefs from stamp duty require adjudication. But even where adjudication is not compulsory the taxpayer has the right to submit any instrument for adjudication.

When is adjudication necessary?

- Conveyances or transfers operating as voluntary dispositions inter vivos (except between spouses or civil partners) or dispositions for less than market value (section 30, SDCA).
- Instruments made in contemplation of a sale (section 33(4) SDCA).
- Leases operating as voluntary dispositions inter vivos (section 54 SDCA).
- Conveyances involving intra-group transfers (section 79 SDCA).
- Conveyances involving company reconstructions and amalgamations (section 80 SDCA).
- Demutualisation of assurance companies (section 80A SDCA)
- Conveyances where Young Trained Farmer relief is claimed (section 81AA SDCA).
- Conveyances where Farm Consolidation relief is claimed (section 81C SDCA).
- Conveyances and transfers made to charities for charitable purposes (section 82 SDCA).
- Conveyances and transfers made to approved bodies (section 82A SDCA).
- Conveyances and transfers made to approved sports bodies (section 82B SDCA).
- Certain family farm transfers (section 83B SDCA).
- Conveyances where consanguinity relief is claimed (Paragraph 15, Schedule 1 SDCA).

- Any instrument which the Revenue Commissioners require to be adjudicated.

Procedure for Adjudication

Where adjudication is required, a stamp duty return must be filed electronically through the Revenue-on-line service (ROS) and the following must be submitted:

- The original instrument and a copy of the instrument
- A letter together with any supporting documentation outlining the circumstances if not apparent from the instrument.

Section 21 of the SDCA
Appeals

Where a taxpayer is dissatisfied with a decision or an assessment made by the Revenue Commissioners in relation to stamp duty, the taxpayer may:

- arrange to have that decision or assessment reviewed internally by a senior Revenue officer, and/or
- appeal the decision or assessment to the Tax Appeals Commission.

The stamp duty appeals procedure is based on the appeals procedure which applies for the purposes of income tax. Please see the Income Tax, CGT and Corporation Tax manual for further details.

A taxpayer is required to give notice of appeal, in writing, to the Tax Appeals Commission within 30 days of the date of the assessment. The notice should set out in full the grounds of appeal. There is also a requirement for the duty to be paid in conformity with the assessment raised.

If a taxpayer is dissatisfied with the Appeal Commissioners' decision, he/she has recourse to the High Court by way of a procedure known as a "case stated".

Land Values Reference Committee

If the matter in dispute relates specifically to the value of land or buildings, the independent review will be carried out by a property arbitrator appointed by the Land Values Reference Committee.

A taxpayer should give notice of appeal on form ADJN37, within 30 days of the determination of value. The form is in duplicate. One part of the form should be sent to the relevant stamp duty office and the other part to:

The Secretary,

Land Values Reference Committee,

The Supreme Court Office,

The Four Courts,

Dublin 7.

If a taxpayer is dissatisfied with the decision of the property arbitrator, he/she may, depending on the value of the property, appeal further to either the Circuit Court or to the High Court.

6 Part 5: Provisions applicable to particular instruments

This part of the SDCA should be read in conjunction with Schedule 1 of the SDCA. It explains and supplements the Schedule and is arranged in the same order.

Chapter 2: Conveyances on sale

Section 29 of the SDCA

Conveyance on sale combined with a building agreement for a dwelling house or apartment.

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.

The appropriate certificate should be included in the instrument to determine the rate of duty.

Section 29(6) - Conveyances on Sale

Every instrument liable to stamp duty under the Heading "Conveyance or Transfer on sale of any stocks or marketable securities or a policy of insurance or a policy of life insurance" in Schedule 1 of the SDCA had to contain a certificate indicating whether or not it comes within the provisions of Section 29.

Leaflet SD10B contained further information on certificates to be included in deeds. Leaflet SD10A has information for certificates required prior to 8 December 2010. The Stamp Duty Notes for Guidance contain further commentary on the operation of section 29, including detailed examples.

(i) Purchase of a site with a connected building agreement

This section charges duty where a site is being sold and, in connection with that sale, a house or apartments has been, is being or is to be built, on that site.

The sale of the site and the business agreement must be part of an arrangement or be connected in some way. Stamp duty in such cases is chargeable on the aggregate of –

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

The conveyance is giving effect to a contract to purchase a site; it must recite the consideration provided for in the contract to purchase the site. It must also contain a certificate stating that this section applies, and it should be submitted along with the contract to purchase the site and the building agreement.

This section does not apply where:

- ➢ a site is purchased and there is no connection between the sale of the site and the building of the house/apartment on that site. For example where a person buys a site and employs a builder unconnected with the sale of the site to construct the house/apartment.
- ➢ The purchaser will build the house by his or her own labour.

(ii) Purchase of a partially completed house

Where a person enters into a contract for a partially completed house, and it can be shown that there is no connection between the sale of the partially completed house and the builder employed to complete the house, stamp duty will be charged on the amount paid for the partially completed house.

(iii) Purchase of a completed house

This section does not apply where the contract is a contract to purchase a completed new house. The instrument should be certified to state that the section does not apply.

(iv) Connection or arrangement

The question of the existence of a connection or arrangement will be determined by the facts of each case.

The main things to consider are:

- ➢ has building commenced prior to the execution of any instrument of sale?
- ➢ Is there any relationship between the builder and the vendor of the land?

In determining the facts of a case, statements and/or statutory declarations may be required from persons concerned with the sale of the land, or with buildings on that land, or from the persons acting on behalf of such persons.

(v) Unascertainable consideration

Where it is not possible to determine the aggregate consideration at the time the instrument is presented for stamping, a multiple of between 5 and 10 times the market value of the land should be used to calculate the duty. A claim for refund can be made where it is shown that duty was overpaid.

Section 30 of the SDCA
Voluntary dispositions inter vivos chargeable as conveyances or transfers on sale

If the consideration recited in the conveyance/transfer is *natural love and affection* or where the consideration shown is less than the market value (see also section 19 of the SDCA, part 3 of this manual), the assessment to duty is based on the market value.

Section 31 of the SDCA
Certain contracts to be chargeable as conveyances on sale

This section provides that certain contracts are chargeable as conveyances on sale

Contracts for the sale of intangible property such as:

- benefit of contracts,
- goodwill,
- book debts,
- cash on deposit, and
- fixtures attaching to a leasehold property

are liable to stamp duty.

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.

Section 101A provides for an exemption from stamp duty on the sale, transfer or other disposition of an EU Single Farm Payment Entitlement.

Where a contract for sale of a property comprises both chargeable and non-chargeable property the consideration must be apportioned, as only chargeable property is liable to duty under this section.

Stamp Duty and the Land and Conveyancing Law Reform Act 2009

Section 52 of the Land and Conveyancing Law Reform Act 2009 came into operation on 1 December 2009.

Section 52 (1) provides as follows:

"Subject to subsection (2), the entire beneficial interest passes to the purchaser on the making, after the commencement of this Chapter, of an enforceable contract for the sale or other disposition of land."

Notwithstanding the enactment of section 52, Revenue does not regard this section as having any effect on any of the provisions in the Stamp Duties Consolidation 1999 (as amended) relating to (a) the timing of chargeability to stamp duty of instruments or (b) any exemptions or reliefs from the charge to stamp duty.

Accordingly, the charge to stamp duty will continue to arise on the instrument of conveyance or transfer which has the effect of implementing a contract or agreement for the sale of land.

The timing of a charge to stamp duty by reference to Section 31(1)(a) of the Stamp Duties Consolidation Act 1999, which arises on a contract or agreement for the sale of an equitable estate or interest in any property (including land), is of course unaffected by the introduction of section 52 of the Land and Conveyancing Law Reform Act 2009.

Special provisions concerning land

Section 82 of Finance (No. 2) Act 2008 repealed section 110 of the Finance Act 2007, which inserted three new sections into the SDCA – namely sections 31A, 31B and 50A. Section 110, which was subject to commencement by a Ministerial Order, was never commenced.

Section 82 also reinstated sections 31A, 31B and 50A with the same charging provisions but subject to certain exemptions. The exemptions relate to certain

transactions involving Public Private Partnership Arrangements and incentive schemes for Capital Allowances purposes in relation to Nursing Homes, Convalescent Homes, Private Hospitals, Mental Health Centres, Palliative Care Units, the Mid-Shannon Corridor Tourism Scheme and Childcare Facilities.

These sections are subject to a Ministerial commencement order.

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

Section 34 of the SDCA is an anti-avoidance provision which 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, 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.

An avoidance scheme nullified by section 34 operates as follows:

X owns a property valued at €1m. X enters into an agreement for lease of the property with Y for a term of 999 years in consideration of a premium of €999,000 and a nominal rent of €10 p.a. In view of the term of the lease, a liability to stamp duty does not arise on the agreement for lease. X sells the freehold in the property, subject to the agreement for lease, to Y's spouse/civil partner for €1,000. Section 34 ensures that the conveyance of the property by X to Y's spouse/civil partner is chargeable to stamp duty on the unencumbered value of the property i.e. €1m rather than the sum of €1,000 payable by Y's spouse/civil partner to X.

Section 83 of the Finance (No. 2) Act 2008 amended section 34 of the SDCA, confirming that schemes involving exchanges of property come within the ambit of section 34.

The amendment to section 34 applies to conveyances or transfers executed on or after 20 November 2008 (the date of publication of the Finance (No. 2) Bill 2008).

Section 41 of the SDCA
Conveyance in consideration of debt

This section provides that consideration involving the satisfaction or assumption of a debt is a chargeable consideration for the purposes of stamp duty.

There are two elements to this section:

Firstly, where property is conveyed in satisfaction of a debt, duty is charged on the amount of the debt plus any cash consideration, or on the market value of the property if it is greater than the debt.

Secondly, where property is conveyed subject to the payment of a debt, duty may be charged either on the debt plus any cash consideration or the equity of redemption.

The following examples are in respect of this second element of this section and have been divided into (a) Sale, (b) Voluntary Disposition and (c) Part Sale/Part Voluntary Disposition.

(i) Sale (Part cash/part debt)

The sale of a property for some cash consideration in addition to the transferee assuming a debt, the stamp duty is based on the total consideration being paid, i.e. the cash plus the debt. In this type of case the cash being paid and the debt assumed would equal the market value of the property.

(ii) Voluntary disposition (no cash/all debt)

The property is being transferred on condition that the transferee assumes a debt of the transferor. The consideration may be stated to be “natural, love and affection”. The amount of the debt is subtracted from the market value to establish the equity of redemption (i.e. the net value of the gift). Under section 30 of the SDCA, voluntary dispositions are chargeable to duty under the head of charge “Conveyance or transfer on sale of any property...” and the value of a voluntary disposition is substituted for the consideration recited in the deed. Revenue will assess stamp duty on the higher of these two figures, the debt assumed or the equity of redemption.

Example:

Market value €100,000

Debts assumed € 40,000

Equity € 60,000

Under section 30, stamp duty would be assessed on the equity of €60,000 (being greater than the consideration of €40,000).

(iii) Part sale/Part Voluntary disposition

Where the cash consideration being paid in the deed together with the debt assumed does not equal the market value of the property, the Revenue may deem that a gift has been made. In such cases in will be necessary to compare three figures in order to establish the liability to stamp duty.

Example 1:

The property is valued at €100,000

The debt assumed € 40,000

The cash being paid € 5,000

The equity of redemption € 60,000

The total consideration is €45,000 whereas the equity is €60,000. Under section 30 the duty is charged on the higher of the two figures. In this example, the duty will be calculated on €60,000.

Example 2:

The property is valued at €50,000

The debt assumed €30,000

The cash being paid € 5,000

The equity €20,000

The total consideration is €35,000 whereas the equity is €20,000. Under section 41 the duty is charged on €35,000.

Where the debt being assumed exceeds the market value of the property being transferred as a result of a decline in property market values or increases in banking rates, the Revenue would consider a submission, on a case by case basis, to assess duty on the market value in such circumstances.

Mortgages

Stamp duty is not chargeable on mortgages executed on or after 7 December 2006 or further advances made on or after 7 December 2006. This includes transfers of mortgages including such transfers in securitisation arrangements.

Anti avoidance

Finance Act 2010, enacted on 3 April 2010, amended section 41 of the SDCA. This amendment is an anti avoidance provision to counteract the avoidance of stamp duty through the contrived creation and use of debt (which in reality represents a shareholder's funds) and which ultimately benefits the shareholder directly or indirectly.

This amendment provides that such debt, where paid by a person other than the transferee, is to be included for stamp duty purposes as consideration for the conveyance of property, in particular circumstances.

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

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 with reference to the value of the property.

(i) Consideration Ascertainable but not yet Ascertained

It may be the case that the consideration may not be definite at the date of execution of the instrument. There may be a working capital adjustment after the execution of the instrument which would add to or subtract from total consideration.

Instruments such as this must be submitted to the stamping office along with payment of duty, with a written undertaking that any additional duty will be paid as soon as the final consideration is determined.

Section 45 of the SDCA
Apportionment of consideration

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

Where more than one property is purchased under one contract the duty is apportioned between the separate properties which are transferred by separate instruments and the apportionment is pro rata to the consideration for each property.

Example

Two houses are purchased under a single contract for a total of €1,200,000 - being the sum of €800,000 for House A and €400,000 for House B. Stamp duty is calculated on the aggregate consideration of €1,200,000.

Aggregate Consideration	Stamp Duty Calculation	Stamp Duty Due
€1,200,000	€1,000,000 @ 1% €200,000 @ 2 %	€14,000

Apportionment of duty between House A and House B

House A €14000 X €800,000 / €1,200,000 = €9,333

House B €14,000 X €400,000 / €1,200,000 = €4,667

Section 45A of the SDCA
Aggregation of transactions

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 by means of the inclusion of a transaction certificate in the instrument (see ***Schedule 1 of the SDCA***), the purpose of this section is to put beyond doubt that the rate of stamp duty on such conveyances or transfers will be determined on the basis of the value of the whole house or apartment concerned.

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.

(i) Contents of residential property

Section 45A was amended under Finance Act 2008 to provide for the exclusion of contents of residential property in determining the rate of stamp duty on the consideration attributable to residential property where the aggregation provisions in section 45A apply.

This applies to instruments executed on or after 5 November 2007.

Section 46 of the SDCA
Subsales

This section caters for situations where a person has contracted for the purchase of a property, but has not obtained a conveyance of the property, then contracts to sell the same property to a sub-purchaser. The property is conveyed directly from the original vendor to the sub-purchaser. Duty is payable on the consideration moving from the sub-purchaser.

Example:

Mark agrees to sell his house to John for €500,000. John, before actually taking a conveyance of the house, contracts to sell the house to Fiona for €600,000. The house is conveyed directly from Mark to Fiona. The stampable consideration is €600,000 (the consideration moving from Fiona). The property is residential and the duty payable is:

Chargeable consideration	€600,000
Stamp duty payable	€6,000 (1% of €600,000)

Section 48 of the SDCA
VAT and Stamp duty

Stamp duty is charged on the VAT-exclusive consideration. This is known as the "chargeable consideration". Usually, instruments presented for stamping contain a VAT-exclusive consideration and, therefore, this section should pose no practical difficulties for those involved in the day-

to-day processing of instruments. Officers may assume that instruments presented for stamping contain a VAT-exclusive consideration. If the consideration is VAT inclusive, the onus is on the taxpayer to draw this to the attention of Revenue. The most common type of instrument which may be presented containing a VAT-inclusive consideration is a new house. When an instrument of this type is presented and the taxpayer brings the matter to the attention, or if the Officer is aware of the VAT position, the VAT should be deducted before the stamp duty is assessed.

Chapter 4: Leases

Key Terms in relation to leases

Lessor:	Person who grants lease.
Lessee:	Person to whom lease is granted.
Lease:	A demise or letting of lands or tenements, rights of common, rent, or any hereditament, by one person, called the *lessor*, to another called the *lessee*, for a term of years or life, or at will, usually for a rent reserved. The interest created by the lease must be *less* than the lessor has in the premises, or it is not a *lease* but an *assignment*. The Law of Property Act 1925, sections 53 and 54, provides that all leases except those not exceeding three years and with a rent of not less than two-thirds of the improved annual value must be by deed.
Leasehold:	Any interest in land less than freehold. But, in practice, the word is generally applied to an estate for a fixed term of years.
Licence (in relation to property):	A permission to do an act which would otherwise be a trespass and which creates no interest in the property.
Fee Farm Grant:	A document creating an interest under which the grantee holds in fee simple from the grantor in return for a perpetual rent. The transaction recorded by this type of document has features both of a conveyance and a lease.
Premium (Leases):	A sum of money other than rent paid for the granting of a lease.

Real Property:	Immovable property recoverable by a “real action”, i.e. freehold land but not leasehold property. Leasehold property by a quirk of legal history is known as “Chattels Real”.
Seisin:	Feudal possession in immovable property of a formal nature by the owner of a freehold estate therein. Mere equitable owners or leasehold owners did not have a seisin.
Surrender (Deed of)	A document yielding up an interest, for example, a leasehold interest or a life interest.
Tenancy Agreement	A document creating a tenant’s interest in property.

“Lease” is not defined in the SDCA but it essentially means that the tenant has exclusive use of the property in return for the payment of rent. Rent or premium are also not defined but “Rent” essentially means the sum paid for the exclusive use of the land and premium is the consideration other than rent paid for the granting of the lease.

The lease head of charge in Schedule 1 of the SDCA deals only with the **creation** of a lease. It refers to leases of land, tenements or heritable subjects. “Tenements” means buildings, e.g. factory, apartment and “heritable subjects” means property capable of being passed on a death. A life interest is not capable of being passed on by the life tenant and so is not a heritable subject.

The lease head of charge only refers therefore to immovable property. The lease of a car, for example, would not fall under this head of charge.

- Consanguinity relief is not available on leases.
- Section 79 (associated companies) relief is not available on leases.

Charge to duty

A lease is chargeable to stamp duty under paragraph 3 of the "Lease" head of charge on both the premium (or fine) and the rent payable under the lease.

The duty chargeable on the premium is at the rate for residential or non-residential property as appropriate.

Rent Review

Many leases contain a rent review clause. Where a lease contains such a clause, the lease is chargeable at an additional €12.50 under paragraph (5) of the Lease head of charge.

Developer retaining unit in complex

It has been agreed with the Law Society of Ireland that the following procedure may be used where a developer of an apartment/housing complex or a commercial development retains ownership of one or more of the units in the development and the freehold interest, including the common areas are transferred to a Management Company.

- The Developer grants a lease of the retained unit(s) to a nominee of the Developer.
- The Nominee executes a Declaration of Trust in favour of the Developer.
- The Developer transfers the freehold reversion, including the common areas, to the Management Company.
- The Nominee assigns the leasehold interest in the retained unit(s) to the Developer.

A liability to ad valorem stamp duty does not arise in relation to any of the instruments giving effect to the above legal structure.

Section 50 of the SDCA

Agreement for lease not exceeding 35 years

This section 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 duty as if it were a lease. The term of 35 years covers most commercial agreements.

Under the "Lease" head of charge, paragraph (4) provides that a lease subsequently made in conformity with such an agreement, which has been stamped under section 50, shall be charged with €12.50 duty.

Where the lease is not actually granted

In circumstances where the agreement for lease does not lead to the actual grant of a lease, a refund of stamp duty *may* be available.

The following confirmations will be required where a refund 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 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.
- 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 duty.

Applications for refund should be considered on a case by case basis having regard to the particular facts of the individual case.

Section 52 of the SDCA
Charging of duty on leases

A lease or agreement to lease or a letting is not to be charged with 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) *(Section 52(1))*

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. *(Section 52(1))*

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.

Covenant to improve ***(Section 52(2))***

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 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.

Payment of additional rent *(Section 52(3))*

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, which is a relieving one, is effectively redundant since the abolition in 1992[1] 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

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.

Section 53 of the SDCA
Lease combined with building agreement for dwelling house or apartment

Please also see section 29 of the SDCA, which deals with conveyances combined with building agreement for a dwelling house or apartment.

Section 53 of the SDCA 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 rent) 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 it is shown to the satisfaction of the Revenue Commissioners that 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.

Certificate to be contained in lease

Every instrument liable to stamp duty under the "LEASE" head of charge in *Schedule 1* must contain a certificate indicating whether or not it comes within the provisions of this section. The wording of the certificate is—

Where section 53 applies:

"It is hereby certified that section 53 (lease combined with building agreement for dwelling house/apartment) of the Stamp Duties Consolidation Act, 1999, applies to this instrument."

Where section 53 does not apply:

"It is hereby certified that section 53 (lease combined with building agreement for dwelling house/apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument."

Section 55 of the SDCA
Procedure to apply where consideration cannot be ascertained

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.

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.

Example

Where 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

Where 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.

Section 56 of the SDCA
VAT and Stamp duty

Stamp duty is charged on the VAT-exclusive consideration. This is known as the "chargeable consideration". Usually, instruments presented for stamping contain a VAT-exclusive consideration and, therefore, this section should pose no practical difficulties for those involved in the day-to-day processing of instruments. Officers may assume that instruments presented for stamping contain a VAT-exclusive

consideration. If the consideration is VAT inclusive, the onus is on the taxpayer to draw this to the attention of Revenue. The most common type of instrument which may be presented containing a VAT-inclusive consideration is a new house. When an instrument of this type is presented and the taxpayer brings the matter to the attention, or if the Officer is aware of the VAT position, the VAT should be deducted before the stamp duty is assessed.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Chapter 5: Mortgages, etc.

Section 57 of the SDCA
Charging of duty on mortgages

The mortgage head of charge was deleted in Finance Act 2007 with effect from 7 December 2006. Mortgages are no longer chargeable to stamp duty.

Section 63 of the SDCA
Letter of renunciation

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 exchange.

7 Part 06 - Special provisions relating to uncertificated securities

Introduction

Part 6 deals with shares which are transferred electronically via the Crest system. CREST is the electronic system, which settles transfers of shares that are dealt with on the Irish and UK Stock Exchanges. Under the CREST system, an instrument is not produced – the shares are transferred electronically, i.e. CREST is a paperless system of transferring shares. Legislation was introduced under the 1996 Finance Act, which provided for the payment of stamp duty on electronic messages, which affect the transfer of shares.

Please see the Crest Manual for information on electronic transfer of shares.

Section 75 of the SDCA
Intermediary relief

This section provides for a relief from stamp duty for recognised intermediaries and member firms involved in the business of dealing in securities.

Section 75A of the SDCA
Relief for clearing houses

This section provides for a relief from stamp duty for recognised clearing houses.

Application forms

Application form to become a recognised intermediary

Application Form to reclaim stamp duty - Intermediary Relief (PDF, 103 KB)

Application form to reclaim stamp duty – No change in Beneficial Ownership

8 Part 7: Exemptions and Reliefs from Stamp duty

Part 7: Chapter 1: Instruments which must be presented to the Commissioners for adjudication in order to obtain exemption or relief

Finance Act 2011
Termination of residential property reliefs

Finance Act 2011 was enacted on 6 February 2011. The provisions in the Act included a new rates schedule for stamp duty on residential property and the abolition of certain reliefs and exemptions on residential property.

The following reliefs/exemptions were abolished with effect from 8 December 2010:

- Section 83A of the Stamp Duties Consolidation Act 1999 – Transfer of a site from a parent to a child
- Section 91A of the Stamp Duties Consolidation Act 1999 – Exemption for purchase of a new house/apartment not exceeding 125 square metres by an owner occupier.
- Section 92 of the Stamp Duties Consolidation Act 1999 – Exemption for purchase of a new house/apartment where the floor area exceeds 125 square metres by an owner occupier.
- Section 92B of the Stamp Duties Consolidation Act 1999 – Exemption for purchase of a house/apartment by a First Time Purchaser.
- Consanguinity relief on residential property.

Transitional arrangements

Transitional arrangements apply where, as a result of the new rates or the termination of the reliefs or exemptions, a taxpayer is disadvantaged compared to the stamp duty treatment applicable prior to 8 December 2010. The transitional arrangements apply where an instrument is executed on or after 8 December 2010 and before 1 July 2011 solely in pursuance of a binding contract which had been entered into prior to 8 December 2010.

To avail of the benefit of the transitional arrangements, the instrument should contain the following certificate:

"It is hereby certified that this instrument was executed solely in pursuance of a binding contract entered into prior to 8 December 2010".

Section 79 of the SDCA

This section provides for a relief from stamp duty on certain transfers of property in a corporate group.

(i) Body corporate

The term "body corporate" is not defined in legislation, however it includes:

- Limited and Unlimited companies,
- Foreign companies,
- Industrial and provident societies,
- Building societies,
- Incorporated associations.

Foreign bodies corporate which do not have a capital structure based on share capital may also claim the relief by reference to section 79 (9), provided they have a capital structure which is equivalent to a share capital structure and also comply with all other conditions of the relief.

(ii) Heads of charge

The relief is confined to instruments chargeable under or by reference to the heads of charge

- "Conveyance or Transfer on sale of any stocks or marketable securities...."
- "Conveyance or Transfer on sale of a policy of insurance or a policy of life insurance where the risk to which the policy relates is located in the state"
- "Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of life insurance."

As "Lease" is a separate head of charge, leases **do not** come within the scope of the relief.

(iii) Adjudication

Adjudication is required to claim this relief and a statutory declaration by a responsible officer or the solicitor of the body corporate confirming the conditions are met should accompany the claim for relief.

(iv) Beneficial ownership

Relief is available in relation to an instrument under which a beneficial interest in property is conveyed or transferred between associated bodies corporate.

A company will cease to be the beneficial owner of property if it is in liquidation or has entered into an un-conditional contract to sell the property.

(v) Associate status

To qualify for intra-group relief under section 79 SDCA both the primary test in Section 79(3) and the secondary test in Section 79(4) must be satisfied.

(vi) Primary test

The primary test (prior to 6 February 2003) was based on 90% of issued share capital.

Under the Finance Act 2003 (section 136) the basis for the primary test was amended to ordinary share capital, which means the issued share capital excluding "capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the body corporate".

(vii) Secondary test

The secondary test is provided for in Section 79(4) and must be satisfied in addition to the primary test in Section 79(3). The amendment introduced in the Finance Act 2003 did not impact on subsection (4). The secondary test focuses on the entitlement to 90% of (a) profits available for distribution and (b) assets available for distribution on a winding-up. Section 79(8) provides that, for the purposes of subsection (4), the required percentage to be held within the group is to be calculated in line with Sections 414 and 415 of the Taxes Consolidation Act 1997.

The percentage test in Sections 414 and 415 of the TCA is calculated on the basis of the entitlement of equity holders in the company and an equity holder takes its meaning from Section 413 of the TCA. An equity holder is a holder of shares other than fixed-rate preference shares as defined in Section 413.

(viii) Anti-avoidance provisions

The relief will not apply unless it can be shown that the instrument was *not* executed in pursuance of or in connection with an *arrangement* where:

- the consideration (or any part of it) for the transfer was to be provided or received directly or indirectly by an unassociated third party, or
- the beneficial interest was previously conveyed or transferred, directly or indirectly, by an unassociated third party, or
- the transferor and transferee were to cease to be associated.

The relief will not be denied where the consideration (or any part of it) is borrowed from a financial institution as part of an independent commercial transaction.

(ix) Intermediaries

Group relief under section 79 of the SDCA is not allowed on a transfer of Irish shares to a connected company by a recognised intermediary whose own purchase of the shares concerned was exempt from stamp duty by virtue of the "relief for intermediaries" in section 75 of the SDCA.

(x) Clawback of the relief

A clawback of section 79 relief arises where:

- it is found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or
- the qualifying relationship between the transferor and the transferee ceases to exist within the period of two years from the date of the instrument.

The clawback provision in section 79(7)((b) of the SDCA, linked to the requirement to maintain the group relationship for a period of two years, is designed to enhance the other anti-avoidance provisions in section 79. There may be circumstances where the group relationship is broken without undermining the underlying rationale of the relief.

Example

Subsidiary company A transfers all its assets to its parent company B and obtains relief under section 79. Company A is now dormant and it is to be liquidated. The liquidation and strike off of company A results in the cessar of the group relationship between company A and company B. A clawback will not be pursued in such circumstances where

- the transferred assets are retained within the company group for the period of two years from the date of the original transfer,
- the liquidation is effected for bona fide commercial reasons and
- the transaction is not part of a scheme or arrangement for the avoidance of any tax or duty.

The availability of the above treatment will be decided on a case-by-case basis having regard to the facts and circumstances of each individual case.

(xi) Procedure for claiming relief

In order to obtain the relief the instrument must be adjudicated under section 20 of the SDCA.

The application for adjudication should be accompanied by a statutory declaration by a responsible officer of the company or a solicitor, confirming that the relevant conditions have been complied with.

Applications for relief should be referred to the National Stamp Duty Office, Cross Block, Dublin Castle, Dublin 2 for examination and processing.

(xii) Mergers/dissolutions of foreign companies

The merger or dissolution of foreign companies can sometimes involve the transfer of Irish property, such as shares, buildings or land. Normally, the transfer of Irish property will attract a charge to stamp duty. However, in certain jurisdictions, a merger or dissolution can be effected by an act of law or an administrative act which will transfer the *beneficial* interest in the property held by one company to some other company. Transfer of the *legal* interest in the property will still require the execution of a formal instrument of transfer and the question arises as to the stamp duty treatment of the instrument. The point at issue is whether the instrument will attract a liability to ad valorem duty.

It is not possible to give a definitive answer because the mechanisms for dissolving or merging companies vary considerably from jurisdiction or jurisdiction. There can even be variations within a jurisdiction. The incidence of duty will depend on the nature and effect of the legal or administrative act and the documentation associated with it. This is particularly the case with mergers. Thus, it will be necessary to consider the precise form of the act, the circumstances in which it is carried out and the effect of the foreign law before the stamp duty liability can be determined. In short, each case must be considered on its merits.

Several jurisdictions have the necessary company law provisions to enable companies to merge or dissolve by legal or administrative act, including: France, Holland, Finland, Switzerland, Canada, Delaware and Ohio (this is not an exhaustive list). It must be emphasised that because a merger can be carried out by a legal or administrative act it does not necessarily follow that any instrument executed in connection with such an act will not attract a liability to ad valorem duty.

Where it can be shown to the satisfaction of the Revenue that, as a consequence of a legal or administrative act effecting a dissolution or merger, the beneficial interest in Irish property is transferred from one company to another, any instrument executed to transfer the legal interest in the property will not attract a liability to duty.

Section 80 of the SDCA

For various commercial reasons, a company may rearrange its business activities by

(A) merging with another company;

(B) acquiring another company, or

(C) reorganising its corporate structure.

These transactions generally involve transfers of either shares or property. When shares are issued as consideration for the shares or property transferred the transaction may be classed as a "reconstruction" or "amalgamation".

(i) Reconstruction

There is no statutory definition of a "reconstruction", however it has been held that a scheme for the reconstruction of a company comprises the transfer of the undertaking, or part of the undertaking of an existing company to a new company with substantially the same members, and must involve the carrying on by the new company of substantially the same business as that transferred (Brookland*s* Selangor Holdings Ltd v IRC [1970] 2 All ER 76 *and* Baytrust Holdings Ltd v IRC [1971] 3 All ER 76)

Reconstructions and amalgamations can be effected in two ways:

1. share for share exchange – in which the acquiring (transferee) company issues shares to the shareholders of the target (particular existing) company in exchange for their shares in the target company, or
2. share for undertaking exchange – where the acquiring company issues shares to either the target company or to shareholders in the target company in exchange for the undertaking or part of the undertaking of the target company.

(ii) Conditions

Availability of the relief is subject to meeting certain conditions, including

- There must be a bona fide scheme of reconstruction or amalgamation.
- The scheme must be effected for bona fide commercial purposes.
- The purpose of the reconstruction/amalgamation must not be tax avoidance.
- The acquiring company must be limited. It is to be incorporated or a pre-existing company has its nominal share capital increased, with a view to the acquisition of:
  - 90% of the issued share capital of the target company; or
  - the undertaking or part of the undertaking of the target company.

The issue of authorised (nominal) but unissued share capital by the acquiring company will be regarded as an increase in its nominal share capital.

The consideration for the acquisition (other than any portion comprising the transfer to or discharge by the acquiring company of liabilities of the target company) must consist of not less than 90% in the issue of shares in the acquiring company to

- the shareholders in the target company (where shares are being acquired), or
- the target company or holders of shares in the target company (where an undertaking is being acquired).

An instrument in respect of which the relief is being claimed must have been executed within 12 months of the date of the registration of the acquiring company or the date of the resolution increasing the nominal share capital of the acquiring company, or have been made for the purposes of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which have been filed, with the Registrar of Companies within the 12 month period.

To be properly stamped, an instrument qualifying for the relief must bear an adjudication stamp.

A company will not be regarded as a target (particular existing) company unless it is provided in the memorandum of association of the acquiring company that, if it is registered or incorporated for the purposes of the acquisition, it has as one of the objects the acquisition of the undertaking of, or shares in, the target company. In the case of an increase in capital, the resolution must show that the increase is authorised for the purposes of acquiring the

undertaking of, or shares in, the target company. The memorandum of association or the resolution of the acquiring company must identify the target company with reasonable certainty.

A claim for the relief must be accompanied by a statutory declaration of a solicitor setting out the details of the transaction.

(iii) Undertaking

The term "undertaking" has a wide meaning. It involves a level of activity as opposed to the mere ownership of assets. The meaning of "undertaking" has been discussed in a number of cases, some of which are referred to in the table below.

(iv) Territoriality

For the relief to apply, the acquiring company must be incorporated in a member state of the European Union. The target company can be incorporated anywhere in the world. The Isle of Man, Channel Islands and Gibraltar **do not** come within the definition of Member State.

(v) Status of acquiring/target companies

The acquiring company must have limited liability. There is no requirement that the target company have limited liability.

Finance Act 2008 provided for a change to section 80 of the SDCA for instruments executed on or after 1 June 2005. This change allows societies registered under the Industrial and Provident Societies Act 1893 to avail of relief under section 80.

(vi) Clawback

Section 80 provides for a claw-back of the relief in certain circumstances:

- Where the statutory declaration or any other evidence furnished in connection with a claim for the relief is found to be false in any material way.

- Where, in the case of a share for undertaking exchange, the target company ceases to be the beneficial owner of the shares issued to it by the acquiring company within two years of the date of incorporation, or the date of the authority for the increase in the capital, of the acquiring company (as the case may be) otherwise than in consequence of a further reconstruction or amalgamation or liquidation. It should be noted that there is no such two-year restriction in the case where shares have been issued to the holders of shares in the existing company – any disposal by them does not affect the exemption.
- Where, in the case of a share for share exchange, the acquiring company ceases to be the beneficial owner of the shares acquired in the target company within two years of the date of incorporation, or the date of the authority for the increase in the capital, of the acquiring company (as the case may be) otherwise than in consequence of a further reconstruction or amalgamation or liquidation.

(vii) Extended reconstructions or amalgamations

In some instances a scheme of reconstruction or amalgamation may take place over an extended period. In such circumstances, stamp duty must be paid on any stock transfer forms the execution of which do not bring the % of the issued share capital acquired over the 90% threshold. The duty will be refunded if it can be shown that, under the provisions of the scheme, at least 90% of the issued share capital of the target company has been acquired within a period of six months from the earlier of:

- the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition, or
- the date on which the invitation was issued to the shareholders of the target company to accept shares in the acquiring company.

(viii) Definitions/explanations of terms used in section 80

Some of the terms used in section 80 and a number of the concepts associated with reconstruction and amalgamation transactions are not legally defined. In some cases, their meanings have been established in case law. In others, they have been elaborated in textbooks. The references set out below are the authoritative sources for meanings and interpretations.

Term/Concept	*References*
RECONSTRUCTION AND AMALGAMATION	• Swithland Investments Ltd. V IRC [1990] STC 448.
	• Re South Africa Supply and Cold Storage Co. Ltd. [1904] 2Ch. 268.
	• IRC V Kent Process Control Ltd. [1989] STC 245.
	• Crane Freuhauf Ltd. V IRC [1975] STC 51.
	• Brooklands Selangor Holdings V IRC [1970] 2 All ER 76.
	• Baytrust Holdings Ltd. V IRC [1971] 3 All ER 76.
	• Thomas Firth & John Brown (Investments) Ltd. V IRC [1971] 3 All ER 76.
	• Re Walkers Settlement [1935] Ch. 567.
	• IRC V Ufitec Group Ltd. [1977] 3 All ER 924.
PARTICULAR EXISTING COMPANY	• Chelsea Land and Investment Company Ltd. V IRC [1978] 2 All ER 113.
Undertaking	• Baytrust Holdings Ltd. V IRC [1971] 3 All ER 76.
	• E. Gomme Ltd. V IRC [1964] 3 All RE 497.
	• Salaried Person's Postal Loans v HMRC
	• McGregor v Adcock [1977] STC 206

	• Mannion v Johnston [1988] STC 758
Issue of shares	• Murex V IRC [1933] 1 KB 173.
	• Oswald Tillotson V IRC [1933] 1 KB 134.
	• Baytrust Holdings Ltd. V IRC [1971] 3 All ER 76.
	• Crane Freuhauf Ltd. V IRC [1975] STC 51.
	• Brotex Cellulose Fibres V IRC [1933] 1 KB 158.
Consideration for the acquisition	• Central and District Properties Ltd. V IRC [1966] 2 All ER 433.

The following textbooks (which may be found in the Revenue library) contain extended discussions on section 80 relief or its UK equivalent:

Sergeant and Sims on Stamp Duties (Pub: LexisNexis Butterworths).

The Law of Stamp Duties (O'Connor & Cahill).

The Law and Practice of Irish Stamp Duty (Power, Tom & Scully, Emmet)

The Law of Stamp Duties (Monroe).

Irish Stamp Duty Law (Donegan & Friel).

Section 80A of the SDCA
Assurance company demutualisation

Section 80A of the SDCA provides for an exemption from stamp duty on any instrument made for the purposes of or in connection with the demutualisation of an assurance company which carries on a mutual life business.

A demutualisation is an arrangement between an assurance company and its members whereby the business carried on by the assurance company is transferred to a limited

company and shares or the right to shares in that company or its parent are issued or, as the case may be, granted to members of the assurance company.

Instruments in respect of which exemption is sought under section 80A must be submitted for adjudication under section 20 of the SDCA together with a statement setting out details in support of the claim for exemption.

Section 81AA of the SDCA

Young Trained Farmer

This section provides for relief on the transfer of land to a “Young Trained Farmer”.

The purpose of the relief is to encourage the transfer of land into the hands of a younger, more trained generation of farmers.

Leaflet SD2B describes the relief available for deeds of transfer executed on or after 2 April 2007 and on or before 31 December 2012.

For deeds of transfer executed on or after 25 March 2004 and before 2 April 2007, please see the leaflet SD2A.

For deeds of transfer executed prior to 25 March 2004, please see the leaflet SD2.

Finance Act 2010 enacted on 3 April 2010 inserted a new qualification into schedule 2B. Please see amended leaflet SD2B for further details.

Section 81C of the SDCA

Farm Consolidation

This section contains the provisions relating to Farm Consolidation Relief. The purpose of the relief is to encourage the consolidation of farm holdings in order to reduce fragmentation and improve the operation and viability of the farm(s) concerned.

Leaflet SD81C describes the relief in detail.

Section 82 of the SDCA

Charities

This section provides an exemption from stamp duty for conveyances, transfers and leases of land for charitable purposes in the State or Northern Ireland to a body of

persons established for charitable purposes only or to the trustees of a trust so established.

Where an appropriate charity (CHY) number has already been assigned by Charities Section, Nenagh, and stamp duty relief is claimed, the relevant instrument will be dealt with by the relevant stamp duty office.

If Charity exemption has not already been obtained, an application form is available together with an explanatory booklet "Applying for relief from tax on the income and property of Charities". The application should be completed and forwarded to Charities Section, Government Offices, Nenagh, Co. Tipperary. On receipt of a "CHY" number, an application for relief from stamp duty should be made in the normal way.

Section 82A of the SDCA

Donations to approved bodies

Section 82A of the SDCA exempts from stamp duty donations of publicly quoted securities to approved bodies which come within the scheme of tax relief for donations to charities, schools and third level colleges as well as other approved bodies under section 848A of the Taxes Consolidation Act 1997. Instruments in respect of which the exemption is sought must be submitted for adjudication.

This exemption applies to instruments transferring such securities executed on or after 31 March 2006.

Section 82B of the SDCA

Approved Sports Bodies

This section provides for an exemption from stamp duty for conveyances, transfers and leases of land to an approved sports body approved under section 235 of the Taxes Consolidation Act, where that land will be used for the sole purpose of promoting athletic or amateur games or sports.

Section 83A of the SDCA

Transfer of a site to a child

This exemption was abolished with effect from 8 December 2010.

This section provides for an exemption from stamp duty where a parent transfers a site to a child for the purpose of that child building their principal place of residence.

The value of the site must not exceed €500,000 and the size, exclusive of the area that the dwelling house will be constructed on, must not exceed 1 acre.

The child does not need to be a First Time Buyer to avail of the relief but can only avail of it once.

Where relief under section 83A is claimed by a child on the transfer of a site from their parent, it will be regarded as having been properly claimed in circumstances where

- the site is subsequently transferred into the joint names of the child and his/her spouse,
- the transfer into joint names is being effected in the context of the raising of funds from a financial institution for the purposes of the construction a house on the site and
- the house constructed on the site will be occupied by the child, in conjunction with his/her spouse as their only or main residence.

Section 83B of the SDCA

Certain Family Farm Transfers

Section 83B provides for an exemption from stamp duty for transfers of farmland from a child to a parent in the context of certain family arrangements to which the provisions of section 599 of the Taxes Consolidation Act 1997 (as amended by section 52 of the Finance Act 2007) apply for capital gains tax purposes. A child for the purposes of section 599 includes a child of a deceased child, certain nephews and nieces and foster children.

Section 83C of the SDCA

Property "trade in" scheme

Section 20 of the Finance Bill 2009 introduced the stamp duty "trade-in" scheme announced by the Minister for Finance in his Supplementary Budget on 7 April 2009.

The details of the scheme are contained in a new section 83C, which is inserted into the Stamp Duties Consolidation Act 1999.

The scheme operates by means of a deferral of the stamp duty, which the person acquiring an old house would otherwise incur by virtue of section 37 of the Stamp Duties Consolidation Act 1999, on the transfer of an old house to a house builder in exchange (or part exchange) for a new house. The person acquiring the new house pays stamp duty in the normal way, subject to any existing reliefs that may apply.

The stamp duty deferred becomes due and payable, **in the form of a clawback**, on the earlier of (a) the sale-on of the old house or (b) 31 December 2010.

Part 7: Chapter 2: Other instruments

Section 85A of the SDCA

Certain Investment Certificates

Section 85A of the SDCA was inserted into the SDCA by Finance Act 2010. The section provides that stamp duty shall not be chargeable on the issue, transfer or redemption of an investment certificate within the meaning of section 267N of the Taxes Consolidation Act 1997.

Section 88 of the SDCA

Certain Stocks and Marketable securities

Transfers of shares in companies registered outside the State are not chargeable to Irish stamp duty. For example, a transfer of shares in British Gas plc is not chargeable to Irish stamp duty - even if the stock transfer form is executed in Ireland. The exemption does not apply if the transfer of the foreign shares “relates” to Irish immovable property or to Irish shares.

Section 90 of the SDCA

Certain Financial Services Instruments

This section provides for an exemption from stamp duty for a wide range of instruments used primarily in the financial services industry. These exemptions do **not** apply if the instruments concerned relate to Irish immovable property or Irish stocks of marketable securities.

Section 90A of the SDCA

Greenhouse gas emissions

This section, introduced under Finance Act 2008, provides for an exemption from stamp duty on the sale, transfer or other disposition of a "greenhouse gas emissions allowance". Any contract or agreement for the sale of a "greenhouse gas emissions allowance" is covered by the exemption.

The section applies to instruments executed on or after 5 December 2007.

Section 91A of the SDCA

New houses or apartments with a floor area compliance certificate

This exemption has been abolished with effect from 8 December 2010, subject to transitional arrangements.

New dwelling houses and apartments with floor area compliance certificate Houses, where the floor area is not less than 38 square metres and not greater than 125 square metres are exempt from a charge to stamp duty for purchasers who are owner occupiers. This exemption only applies where there is a valid "Floor Area Compliance Certificate". The certificate is issued by the Department of the Environment, Heritage and Local Government. Certificates are only issued in respect of newly constructed houses or apartments which meet the required building standards and where the floor area is not less than 38 square metres and does not exceed 125 square metres.

This relief is subject to clawback provisions.

Please see Notification of Receipt of Rent form.

(i) "Rent to buy schemes"

Where an intended purchaser occupies a new house under a "Rent with an option to buy" scheme and the house is subsequently purchased by that person as part of the scheme, the property will be regarded as new for the purposes of reliefs that apply on the purchase of a new house.

Where the prospective purchaser does not ultimately purchase the property, the property is regarded as a second-hand property in relation to any subsequent purchase of the property by another person.

Part 22.1.3 of the Income Tax, Corporation Tax and CGT Manual provides further guidance on these schemes.

Section 92 of the SDCA

New dwelling houses and apartments with no floor area compliance certificate

This exemption has been abolished with effect from 8 December 2010, subject to transitional arrangements.

This section provides for a reduction in the amount of the consideration that is chargeable to stamp duty in the case of a new house or apartment with a floor area greater than 125square metres purchased by, or on behalf of, an owner-occupier.

Under the relief stamp duty is payable on the greater of:

- a quarter of the total cost of the house, or
- the consideration paid for the site.

VAT should be excluded from the above figures before determining the duty as per section 48 of the SDCA.

Section 92B of the SDCA

First time buyer relief

This exemption has been abolished with effect from 8 December 2010, subject to transitional arrangements.

A First Time Purchaser is a person, (or, where there is more than one purchaser, each of such persons):

- who has not on any previous occasion, either individually or jointly, purchased or built on his/her own behalf a house (in Ireland or abroad) and
- where the property purchased is occupied by the purchaser, or a person on his behalf, as his/her only or principal place of residence and

- where no rent, other than rent under the stamp duty rent a room arrangement, is derived from the property for two years after the date of the current purchase. For stamp duty purposes, there is no limit to the amount of rent which may be obtained for the room or rooms in the property which are let.

Prior to 5 December 2007, the period where no rent could be obtained was five years. Under the Finance Act 2008, this period has been reduced from 5 years to 2 years for deeds executed on or after the 5 December 2007.

For instruments executed before 5 December 2007, to the extent that a dwelling house or apartment is rented out on or after 5 December 2007, it will not involve a clawback of the relief where this occurs in the third, fourth or fifth year of ownership.

(i) Co-Mortgagors

To qualify for the relief the entirety of the purchase monies, including any borrowings, must be provided by the first time buyer. Any person, who provides part of the purchase monies or who is a party to any borrowings relating to such purchase, is also regarded as a buyer of the house and the relief will not be available unless that other person is also a first time buyer.

The basis for this treatment is that, in such circumstances, the house is held for the person providing the monies used in the purchase of the house by way of a resulting trust presumed in favour of that person. This treatment applies whether or not all the parties providing the purchase monies, or all the parties to any borrowings, are actually named in the deed of transfer.

Notwithstanding this treatment, to take account of particular situations, Revenue is prepared to accept that a child, who is a first time buyer, will not be precluded from claiming first time buyer relief where a parent acts as a co-mortgagor in the following circumstances:

1. The transfer of the house is taken in the name of the child.
2. It is the intention of both the child and the parent that the parent is not to take a beneficial interest in the house.

3. The parent has been joined into the mortgage solely at the request of the lending institution for the purpose of providing additional security for the monies being advanced for the purchase.
4. It is not intended that the parent will be contributing to the repayment of the mortgage in the normal course.

Where the four conditions set out above are satisfied, Revenue will treat the parent as effectively acting in the role of guarantor for the loan.

Consistent with the above approach, Revenue will also be prepared to treat persons other than parents of the first time buyer, who satisfy similar conditions to those set out above, as effectively acting in the role of guarantor for the loan. Their involvement in that capacity will not be treated by Revenue as precluding a claim to first time buyer relief. In such circumstances the conditions are as follows:

1. The transfer of the house is taken in the name of the first time buyer.
2. It is the intention of both the first time buyer and the other person that the other person is not to take a beneficial interest in the house.
3. The other person has been joined into the mortgage solely at the request of the lending institution for the purpose of providing additional security for the monies being advanced for the purchase.
4. It is not intended that the other person will be contributing to the repayment of the mortgage in the normal course.

The relief from stamp duty is intended to benefit only genuine first time buyers and Revenue will continue to use an audit programme to ensure that there is no abuse of the relief.

(ii) Definition of "purchaser"

Finance Act 2008 inserted a definition of "purchaser" into section 92B. A purchaser is defined as an individual who purchases a dwelling house or an interest in a dwelling house, where the consideration for the purchase is derived from the individual's own

means, which can be or may include consideration derived from an unconditional gift or a bona fide loan evidenced in writing.

For the purposes of the section, a "gift" shall be deemed *not* to be unconditional and a "loan" shall be deemed *not* to be bona fide where the donor/lender concerned:

- is not a party to the instrument giving effect to the purchase of the dwelling house or the interest in the dwelling house, and
- intends to, or does, occupy the dwelling house with the purchaser as a principal place of residence, or
- there is an understanding that the dwelling house, or an interest in same, will be transferred to the donor or lender at any time following the purchase.

However, where a parent moves in to live with his or her child having given the child a gift, or having made a loan to a child, towards the purchase of the house, the child will *not* be precluded from claiming first time purchaser relief *provided* there is no understanding or agreement under which the house or an interest in the house can be transferred to the parent after the purchase.

The measure applies to instruments executed on or after 31 January 2008.

(ii) Deemed First Time Purchaser

There are three particular situations where a person is deemed to be a First Time Purchaser.

(A) The *trustees* of a trust (to which section 189A of the Taxes Consolidation Act, 1997, applies), whose trust funds are raised by *public* subscriptions for the benefit of permanently incapacitated persons, in respect of the first house(s) bought after the establishment of the trust, for occupation by the beneficiary or if more than one, each of the beneficiaries.

(B) A *spouse* to a marriage the subject of a decree of *judicial separation,* a *deed of separation,* a decree of *divorce* or a decree of *nullity* in the case of the first acquisition of a house by the spouse following the separation or divorce provided that the spouse had, in relation to the former marital home,

- not retained an interest in that home;

- whose separated/former spouse occupied that home, which home was occupied by both spouses immediately prior to the decree or deed of separation or dissolution of the marriage.

Relief will be denied where the claimant was beneficially entitled to an interest in another house/apartment apart from the family home immediately prior to the date of the decree.

The definition of "deed of separation" in section 92B(8)(b) has no specific territoriality limitation. A foreign deed of separation would be included if it has like effect to a deed of separation executed in the State and would be recognised in the State.

(C) Finance Act 2011 inserted a new subsection into section 92B, which provides that first time buyer relief apples to the purchase, by either the parent(s) of an individual who is permanently incapacitate by reason of mental infirmity or by a trust established exclusively for the benefit of such individual, of a residential property for occupation by that incapacitated person as his or her principal place of residence, where the purchase is in the period 1 January to 7 December 2010. The property must not be occupied by either parent of the incapacitated individual or by a trustee as his or her principal place of residence.

Section 95 of the SDCA

Commercial Woodlands Relief

Section 95 provides partial relief from stamp duty in respect of certain instruments relating to the sale or lease of land on which commercial woodlands are growing.

The relief only applies to a sale or lease of land and is not available in the case of a gift.

The woodlands must be growing on a substantial part of the land (a substantial part is regarded as not less than 75% of the land) and the woodlands must be managed on a commercial basis and with a view to the realisation of profits.

The relief applies to the portion of the consideration which represents the value of the trees growing on the land. An apportionment of the consideration between the land and the trees growing on the land is required.

Section 96 of the SDCA

Transfers between spouses and civil partners

This section provides that all transfers/leases of property between spouses and civil partners (unless the transfer is a subsale) are exempt from stamp duty. If any other person is a party to the instrument the exemption does not apply.

Adjudication is not required.

Section 97 of the SDCA

Certain transfers following the dissolution of marriage or civil partnership

Following a divorce or dissolution of a civil partnership, property may be transferred between spouses/civil partners pursuant to a court order. These transfers are exempt from stamp duty. If any other person is a party to the instrument the exemption does not apply.

Section 97A of the SDCA

Certain transfers by cohabitants

This section provides for an exemption from stamp duty where a property is transferred pursuant to an order under section 174 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 by a cohabitant to his or her cohabitant.

If any other person is a party to the instrument the exemption does not apply.

This section applies to transfers made on or after 1 January 2011. Section 101 of the SDCA

Intellectual Property

This section provides for an exemption on the sale, transfer or other disposition of intellectual property as defined in the section.

Intellectual property includes any patent, trademark, copyright, registered design, design right, invention, domain name, supplementary protection certificate or plant breeders' rights. Contracts and agreements for sale of such intellectual property are also covered by the exemption.

Goodwill may also be exempt, but only to the extent that it is **directly attributable** to the intellectual property. Where there is business goodwill and goodwill that is attributable to the intellectual property, the consideration must be apportioned between the two on a just and reasonable basis.

Finance Act 2009 amended section 101 to extend the categories of intellectual property provided for in the section. This amendment also extended the exemption to

“Authorisations without which it would not be permissible for

- a medicine, or
- a product of any design, formula, process or invention, to be sold for any purpose for which it was intended.”

The amendments apply for instruments executed after 7 May 2009.

Section 101A of the SDCA

Single Farm Payment

Section 101A of the SDCA provides for an exemption from stamp duty on the sale, transfer or other disposition of an EU Single Farm Payment Entitlement.

Where the Single Farm Payment Entitlement forms part of a transaction consisting also of chargeable property, the consideration is to be apportioned on a just and reasonable basis as between the Single Farm Payment Entitlement and the other property and the part of the consideration attributable to the Single Farm Payment Entitlement should be disregarded when determining the liability to stamp duty on the chargeable property.

The apportionment provisions in Section 45 of the SDCA also apply where relevant.

This exemption applies to instruments executed on or after 1 January 2005.

(i) Milk quotas

The transfer of a milk quota gives rise to a charge to stamp duty as the milk quota is intangible property for stamp duty purposes and a conveyance or transfer of a milk quota would fall into the “Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of insurance of a policy of life insurance” head of charge and would be chargeable

at the non-residential property rates. Stamp duty will arise on an instrument of transfer of a milk quota on the consideration payable for the transfer of the milk quota or the market value of the milk quota in the case of a gift. A liability to stamp duty may also arise, under section 31 of the Stamp Duties Consolidation Act 1999, on a contract for sale of a milk quota.

Section 106B of the SDCA

Housing Authorities/Affordable Homes Partnership

Section 106B was inserted into the SDCA under Finance Act 2008. Section 106B replaced the existing exemption relating to housing authorities in section 8 of the Housing (Miscellaneous Provisions) Act 1992 and also provided for a similar exemption for the Affordable Homes Partnership

Section 64 Finance Act 2011 substituted a new section 106B for the old section 106B.

The new section 106B retains the exemption from stamp duty in respect of a conveyance, transfer or lease of a house, building or land ***to***

- a Housing Authority in connection with any of its functions under the Housing Acts 1966 to 2004 or
- the Affordable Homes Partnership in connection with the services specified in article 4(2) of the Affordable Homes Partnership (Establishment) Order 2005 as amended.

However, the new section also provides, with effect from 1 April 2011, for a maximum stamp duty charge of €100 in respect of a conveyance, transfer, or lease of a house, building or land ***by***

- a Housing Authority in connection with any of its functions under the Housing Acts 1966 to 2004 or
- the Affordable Homes Partnership in connection with the services specified in article 4(2) of the Affordable Homes Partnership (Establishment) Order 2005 as amended.

Section 111 of the SDCA

Oireachtas Funds

If the stamp duty payable on an instrument would be payable out of funds provided by the Oireachtas, then this section exempts the instrument from duty. To qualify the entirety of the stamp duty would have to be payable out of Oireachtas funds.

Section 113 of the SDCA

Miscellaneous instruments

There are some miscellaneous instruments which are exempt from duty. These are:

- transfers of shares in the stocks or funds of the Government of the Oireachtas or of the Government or Parliament of the late United Kingdom of Great Britain and Ireland which are registered in the books for the Bank of Ireland in Dublin,
- transfers of shares in the stock or other form of security to which section 39 or section 40 of the TCA 1997 applies.
- Transfer (including a transfer by way or mortgage) of any ship, vessel or aircraft or any part, interest, share or property of or in any ship, vessel or aircraft,
- wills and codicils, and
- instruments made by, to, or with the Commissioners for Public Works.

Certificates required when claiming exemptions

The provisions of Part 7 which provide for a certificate are set out below:

SDCA	Comment
Section 81(3) - Young trained farmers	The instrument should contain a certificate stating that section 81 applies. This relief does not apply to instruments executed on or after 25 March 2004.
Section 81A(7) - Young trained farmers	The instrument should contain a certificate stating that section 81A applies. This relief does not apply to instruments executed on or after 2 April 2007.

Section 81AA - Young trained farmers	The instrument should contain a certificate stating that section 81AA applies.
Section 81B(2) - Farm consolidation relief	The instrument should contain a certificate stating that section 81B applies. This relief does not apply to instruments executed on or after 30 June 2007.
Section 82B(3) - Approved Sports Bodies	The instrument should contain a certificate stating that section 82B applies.
Section 83A(3) - Transfers of site to child	If the instrument was executed before 8 December 2010, it should contain a certificate stating that section 83A applies. This relief does not apply to instruments executed on or after 8 December 2010.
Section 83B(2) - Certain family farm transfers	The instrument should contain a certificate stating that section 83B applies.
Section 83C(2) - Exchange of houses	If the instrument was executed before 31 December 2010, it should contain a certificate stating that section 83C applies. This relief does not apply to instruments executed on or after 31 December 2010.
Section 91(2) - New dwelling houses and apartments with floor area certificate	If the instrument was executed before 1 April 2004, it should contain the certificate required by this section. This relief does not apply to instruments executed on or after 1 April 2004.
Section 91A(4) - New dwelling houses and apartments with floor area compliance certificate	If the instrument was executed before 8 December 2010, it should contain the certificate required by this section. This relief does not apply to instruments executed on or after 8 December 2010.
Section 92(1)(b) - New dwelling houses and apartments with no floor area compliance certificate	If the instrument was executed before 8 December 2010, it should contain the certificate required by this section. This relief does not apply to instruments executed on or after 8 December 2010.

Section 92A(2) - Residential property owner occupier relief	If the instrument was executed before 6 December 2001, it should contain the certificate required by this section. This relief does not apply to instruments executed on or after 6 December 2001.
Section 92B(3) - Residential property first time purchaser relief	If the instrument was executed before 8 December 2010, it should contain the certificate required by this section. This relief does not apply to instruments executed on or after 8 December 2010.
Section 92C(2) - Residential property investor relief	If the instrument was executed before 6 December 2001, it should contain the certificate required by this section. This relief does not apply to instruments executed on or after 6 December 2001.
Section 95(2) - Commercial woodlands	The instrument should contain a certificate stating that trees were growing on a substantial part of the land.

9 Part 8: Companies Capital Duty

Companies Capital Duty

Companies Capital Duty was abolished with effect from 7 December 2005.

Forms:

Form B5 may be found on the Companies Registration Office website www.cro.ie

Form 25B

10 Part 9: Levies

This part of the SDCA imposes a number of levies. The levies are imposed on cash cards, combined cards, debit cards, credit card accounts and charge cards, life assurance premiums, non-life insurance premiums and a levy on pension schemes.

Please also see:

Leaflet on Financial cards

Section 123B of the SDCA

Cash, combined and debit cards

Section 123B provides for the following stamp duty charges on cash card, debit cards and combined cards

Type of card	Charge
Cash (ATM) card	€2.50
Debit (Laser) card	€2.50
Combined Cash/Debit card	€5.00

Section 124 of the SDCA

Credit cards and charge cards

Section 124 provides for the following stamp duty charges on credit cards and charge cards

Type of card	Charge
Credit card	€30
Charge card	€30

Section 124B of the SDCA

Certain premiums of life assurance

Section 124B provides for a levy of 1% on life assurance premiums. For each quarter, commencing with the quarter ending on 30 September 2009, an insurer must deliver to the Revenue Commissioners a statement showing the assessable amount for the insurer for the quarter. The statement must be accompanied by the amount of stamp duty payable.

The assessable amount for the quarter ending 30 September 2009 is the amount of premiums received by the insurer on or after 1 August 2009 for contracts of assurance, whenever entered into by an insurer.

For subsequent quarters, the assessable amount is the amount received by the insurer for contracts of assurance, whenever entered into by an insurer.

Finance Act 2010, enacted on 3 April 2010, amended section 124B of the SDCA to exclude pensions and reinsurances businesses from the levy. The section was also amended to bring forward the due date for the payment of the levy by the insurer and also an update of the EEA definition.

Section 125 of the SDCA

Certain premiums of insurance

Section 125 provides for a stamp duty of 3% on the gross amount received by an insurer in respect of certain non-life insurance premiums. The exceptions are re-insurance, voluntary health insurance, marine, aviation and transit insurance, export credit insurance and certain dental insurance contracts.

The 3% rate of duty applies to premiums received on or after 1 June 2009 in respect of offers of insurance or notices of renewal of insurance issued by an insurer on or after 8 April 2009. In relation to notices of renewal or offers of insurance issued prior to 8 April 2009, stamp duty at a rate of 2 per cent applies.

An insurer must deliver a quarterly statement showing the assessable amount to Revenue. The statement must be accompanied by the amount of stamp duty payable.

Section 125A of the SDCA

Levy on authorised insurers

Finance Act 2011 amended section 125A of the SDCA to provide for an increased levy on health insurers. The increased levy applies to all renewals and new contracts entered into from 1 January 2011, at the rate of €66 in respect of each insured person aged less than 18 years and €205 in respect of each insured person aged 18 years or over.

Section 125B of the SDCA

Levy on pension schemes

Finance (No. 2) Act 2011 inserted Section 125B of the SDCA which provides for a levy on pension schemes in each of the years 2011, 2012, 2013 and 2014. The levy is

charged at 0.6% on the value of the assets in a scheme on the 30 June in each year. It is payable on 25 September and must be paid electronically.

Chargeable person
The chargeable person is the insurer in relation to a contract of assurance and the administrator in relation to any other assets of a scheme.

Chargeable amount
The chargeable amount on which the 0.6% levy is calculated is the aggregate market value of the assets of the pension scheme (and in the case of land the market value is calculated net of any outstanding borrowings used to acquire the land) on a fixed valuation date of 30 June in each of the year. In the case of defined benefit occupational pension schemes and small self-administered schemes, as respects the assets of such schemes other than contracts of assurance, the administrator may choose to value the assets at 30 June in each year or, where it has been customary to prepare accounts to an appropriate accounting standard to a different date, to use the valuation of the assets on the last day of the most recent scheme accounting period ended in the preceding 12 months. However, see Tax Briefing No.4 of 2011 (issued on 31 August 2011) which provides clarification on the limitation on the use of the alternative "accounting date" for the purposes of calculating the chargeable amount, in the case of defined benefit schemes and small self-administered schemes that are not contracts of assurance. In order for a date to be valid as a valuation date, the chargeable person must have held the assets concerned as administrator or insurer on that date.

Administrator
The administrator means the trustees or other persons having the management of the assets of a scheme and specifically includes an administrator of a retirement benefits scheme, an insurer carrying on a business of granting retirement annuity contracts and annuity contracts providing death in service benefits, and an administrator of a personal retirement savings account.

Assets
The assets include all property, including investments, deposits, debts and contracts of assurance, held for the purposes of a scheme, other than assets that represent the liabilities of an occupational pension scheme in respect of benefits to members whose employment is and always was exercised wholly outside the State. It should be noted that the assets of pension funds that are referable to individuals who are, or were, temporarily assigned to work abroad are not exempt from the levy.

Market value
The market value is the same as in Section 548 of the Taxes Consolidation Act 1997, which generally provides that market value is the price that an asset might reasonably be expected to fetch on an arm's length sale in the open market.

Schemes affected

A scheme to which the levy applies includes a retirement benefits scheme, an annuity contract or a trust scheme and a personal retirement savings account, but does not include a retirement benefit scheme in respect of which the trustees have passed, prior to the due date, a resolution to wind-up the scheme and the employer is insolvent.

Payment
The levy is to be paid using ROS. By entering the correct stamp duty payable into ROS, chargeable persons will be regarded as satisfying the requirement to include the chargeable amount in a statement to be delivered to Revenue. A separate note on the payment of the levy has been published on the Revenue website.

Disposal of assets to pay the levy
A chargeable person who is liable to pay the levy is entitled to dispose of or appropriate scheme assets for the purposes of meeting the amount of the levy payable and where a chargeable person who is not a trustee, for example a Life Office in respect of insurance contracts held as assets of a scheme, pays the levy through the disposal or appropriation of scheme assets, the trustees must allow that course of action. There is an explicit protection for a chargeable person from any court action by reason of having paid the levy by way of disposal or appropriation of scheme assets.

Enforcement & Penalties
There are standard provisions that (a) provide for enforcement and penalties in relation to non-compliance and (b) deal with situations where a business is taken over by a successor.

Levy not allowed as a deduction
Stamp duty charged by the section cannot be claimed as a deduction or a credit in computing any other tax or duty.

Review
Finally, Revenue has authority to review any case to ensure that disposals are in keeping with or needed in order to pay the levy. Large Cases Division will carry out any such reviews. Any adjustments must ensure that any diminution in value of the benefits does not exceed the amount of the levy on the assets attributable to the schemes liabilities in respect of any member and it also allows Revenue to consult with appropriate experts, where necessary.

Revised 31st August 2011

11 Part 10: Enforcement

Section 127 of the SDCA
Terms on which instruments not duly stamped may be received in evidence

This section provides that an unstamped instrument may not be used in evidence or for any purpose except as evidence in criminal proceedings by the Revenue Commissioners to recover stamp duty.

Section 129 of the SDCA
Penalty for enrolling inadequately stamped forms

Every company is obliged by law to keep a Share Register, which lists the names of all shareholders and the numbers and classes of the shares held. The Share Register is maintained by the Company Secretary. The Company Secretary may not register a change of shareholder on foot of an inadequately stamped share/stock transfer form. Under section 129 of the SDCA, the company secretary may be fined €630 for each such registration.

Because of this legal imposition on the company secretary, registration can be refused and the new shareholder may be instructed to have the share/stock transfer form adjudicated.

Section 134A of the SDCA
Penalties
This section provides for a penalty of €1,265 plus a tax geared further penalty where a person acts deliberately or carelessly, in relation to—

(a) the execution of an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which ***section 8(2)*** relates,

(b) the entering of an incorrect electronic instruction in the CREST system,

(c) the delivery of an incorrect electronic or paper return under the e-stamping system,

which gives rise to an underpayment in amount of stamp duty due and payable. The section provides for a specific level of

penalty to apply depending on whether the category into which the person's duty default falls is deliberate or careless. The section puts the practices as regards the level of tax geared penalties sought in Revenue audits and investigations by reference to the Code of Practice for Revenue Auditors on a statutory footing.

The section applies to penalties incurred on or after 24 December 2008.

12 Part 11: Management Provision

Section 137A of the SDCA

Information exchange with the Property Registration Authority

Section 137A was inserted into the SDCA in Finance Act 2010, enacted on the 3rd April 2010. This section provides for the exchange of information between the Revenue Commissioners and the Property Registration Authority.

Section 155 of the SDCA

Lost Instruments

Where an instrument has been lost and a replacement instrument is presented for stamping, the following information should be submitted.

1. A statutory declaration by a person or persons fully cognisant of the facts, (i.e. those engaged in the actual sending, delivery, etc. of the missing deed to the Revenue Commissioners), covering the following points:
    - date of stamping of the original deed;
    - evidence of stamping of the original deed;
    - evidence of the loss of the original deed.
2. Original or copy correspondence (if any) with this office on the stamping of the original deed.
3. Original or copy correspondence (if any) with An Post on the subject.
4. A copy of the missing deed, preferably of the stamped deed.
5. A copy (front and back) of cashed cheque, bank draft or payable order relating to the payment of stamp duty in respect of the missing stamped deed.
6. A substitute deed (unstamped).
7. An undertaking that the missing deed, if found, will be surrendered to the Revenue Commissioners.

Section 159A of the SDCA

Time limits for claiming a repayment of stamp duty

This section restricts the repayment of stamp duty to a valid claim (within the meaning given in section 159B (see below)) made within 4 years of the date of stamping of an instrument by the Revenue Commissioners,

Section 159B of the SDCA

Interest on repayments of stamp duty

This section provides that interest on a repayment will only be paid where the repayment has not been made by the Revenue Commissioners within the period of 93 days (for repayments made before 2 April 2007 it was 183 days) of receiving a valid claim for repayment and then only from the expiration of that period to the date of repayment. An exception to this general rule is that interest will be paid from the date of payment giving rise to the repayment where the Revenue Commissioners have made an error in the operation of stamp duty. The section also provides that the rate of interest on such repayments is at the rate of 0.011 per cent per day or part of a day.

Section 159C of the SDCA

Time Limits for making enquiries etc. and assessments by the Revenue Commissioners

This section restricts the period within which the Revenue Commissioners may make enquiries or raise assessments in relation to underpayments of stamp duty to a period of 4 years from the date the instrument was stamped by the Revenue Commissioners, the date the statement of liability (e.g. in the case of levies and companies capital duty) was delivered to the Revenue Commissioners or the date the instruction of the type referred to in ***section 76*** (CREST provisions) was made. This restriction does not apply where the underpayment arises from fraud or neglect. The 4 year time limit came into operation on 1 January 2005 by virtue of S.I. No. 514 of 2003 entitled “Finance Act 2003 (Commencement of Section 142) Order 2003”.

Section 159D of the SDCA

Calculation of interest on unpaid duty and other amounts

This section provides for the rate of interest applicable on unpaid duty and other amounts, due to be paid whether before, on or after 1 April 2005, for periods of delay arising on or after 1 April 2005.

Please see section 159D of the SDCA Guidance Notes for the formula to be used in calculating interest due.

13 Schedules and Appendices

Schedule 1

Schedule 1 lists in alphabetical order the various instruments that are within the charge to stamp duty if executed in the State, or no matter where they are executed, if they relate to Irish property or matters or things to be done within the State. When determining the liability of an instrument to duty, we must look at what the instrument actually does and not what it is called by the parties.

Fixed duty

The fixed duty charge of €12.50 was abolished under the Finance Act 2007 in respect of instruments executed on or after 2 April 2007 in relation to the following Heads of Charge in Schedule 1 of the SDCA.

- "CONVEYANCE or TRANSFER of any kind not already described in Schedule 1"
- "EXCHANGE" (other than an exchange relating to immovable property which is chargeable to ad valorem duty under Section 37 of the SDCA)
- "RELEASE or RENUNCIATION of any property, or of any right or interest in any property" (other than an instrument which operates as a sale or a gift)
- "SURRENDER of any property, or of any right or interest in any property" (other than an instrument which operates as a sale or a gift)

In addition, the certification requirement under each of these Headings was also abolished.

As these instruments do not fall into charge under the SDCA, it is not necessary for the above instruments to be presented to the Revenue Commissioners prior to being lodged with the Land Registry or Registry of Deeds.

Bills of Exchange

The stamp duty payable on Bills of Exchange is €0.50 for Bills drawn on or after 15 October 2008.

In the case of cheques, the increase applies to cheques supplied by financial institutions to customers on or after 15 October 2008.

Conveyance on sale of any stocks or marketable securities

A sale of shares in an Irish registered company for a cash consideration is chargeable to stamp duty under the "Conveyance or Transfer on sale of any stocks or marketable securities" head of charge and is liable to duty at the rate of 1% of the consideration.

Section 87 of the Finance (No. 2) Act 2008 amended Schedule 1 of the SDCA to provide for an exemption from the 1% stamp duty on stock transfer forms where the consideration paid is €1,000 or less.

To avail of the exemption (from the maximum stamp duty charge of €10) the instrument must be certified as follows:

"It is hereby certified that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to stocks or marketable securities exceeds €1,000."

The certificate should be inserted on the reverse side of the stock transfer form and **signed by the transferee**. Where the stock transfer form is duly certified, the form will not need to be presented to Revenue for stamping and should be forwarded directly the company registrar (i.e. the person who maintains the share register of the company and **not** the Registrar of Companies).

A similar treatment will apply in relation to an instrument which operates as a gift of stocks or marketable securities with the substitution of the value of the stocks or marketable securities for the amount or value of the consideration for the sale.

Where the consideration for a particular transfer of stocks or marketable securities is €1,000 or less but the transfer **does form part** of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to stocks or marketable securities exceeds €1,000, the instrument will be chargeable to ad valorem stamp duty at 1% and must be submitted to Revenue for stamping. The same applies to a gift made in

similar circumstances with the substitution of the value of the stocks or marketable securities for the amount or value of the consideration for the sale.

The change does not affect electronic transfers of stocks or marketable securities. Accordingly, ad valorem stamp duty at 1% will continue to be chargeable on transfers effected in CREST regardless of the amount or value of the consideration for the sale concerned.

The change applies to such transfers executed on or after 24 December 2008 (date of enactment of Finance (No 2) Act 2008).

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

Consideration

Stamp duty is chargeable on the amount of the consideration. The consideration is the actual consideration and not the consideration recited in the instrument if that consideration differs from the actual consideration.

Transfers by way of voluntary disposition are charged on the market value of the property transferred [section 30 SDCA].

Rate of duty

Different rate structures apply in the case of residential property and non-residential property.

The rate structure for residential property is set out in the table below.

Aggregate Consideration	Rate of Duty
First €1,000,000	1%
Excess over €1,000,000	2%

Aggregation applies in determining the stamp duty liability where a transaction forms part of a larger transaction or of a series of transactions involving residential property. The stamp duty liability is calculated on the basis of the aggregate consideration and the duty is then apportioned between the separate properties which are transferred by separate instruments. The apportionment is pro rata to the consideration for each

property. The instrument must contain the appropriate transaction certificate if the highest rate is not to apply to the consideration.

Mixed property

In a mixed property situation, the residential portion of the property is not aggregated with the non-residential portion of the purposes of determining the appropriate rate of duty. The consideration should be apportioned between the residential and non-residential elements and each type of property is to be separately certified to the applicable threshold and the appropriate rate of duty is chargeable in respect of each of the residential and non-residential parts of the transaction.

Both the vendor and the purchaser must submit to the Revenue Commissioners separate estimates of the value to be attributed to the **residential** element together with the amount or value of the aggregate consideration. A suggested format for the apportionment can be found on the Revenue website and at Appendix 2 in the Stamp Duty Guidance Notes.

Section 16(2) of the SDCA provides for the estimates in conjunction with section 8 (2) of the SDCA.

Where the requirements of section 16 are not complied with, any person who executes the instrument which affects the sale is deemed, until the contrary is proved, to have acted negligently for the purposes of section 8(3) of the SDCA.

Section 8 provides that all relevant facts and circumstances affecting the liability to duty should be set out in the instrument. Where this is not practical, section 8 (2) provides for facts and circumstances to be set out in a statement which must accompany the instrument when it is presented for stamping.

When instruments are presented for stamping an apportionment form signed off by both the vendor and the purchaser should accompany the instruments. The apportionments should be checked in the stamp duty office and a query raised if the apportionments are not included.

The purchaser is the accountable person for the purposes of stamp duty and as such is responsible for the payment of duty. Any surcharge arising from an inaccurate apportionment is chargeable and recoverable in the same manner as if it were part of

the duty. In certain situations the purchaser may seek to recoup up to half this surcharge from the vendor.

The only role of the vendor in relation to the stamping of the deed is to furnish apportionment details. Revenue will agree/determine with the purchaser - who is the accountable person in relation to the stamp duty liability - on the apportionment for stamp duty purposes.

Retention of units in a development by developer

It has been agreed with the Law Society of Ireland that the following procedure may be used where a developer of a residential complex/commercial development retains ownership of one or more of the units in the development and the freehold interest, including the common areas are transferred to a Management Company.

The Developer grants a lease of the retained unit(s) to a nominee of the Developer.

The Nominee executes a Declaration of Trust in favour of the Developer.

The Developer transfers the freehold reversion, including the common areas, to the Management Company.

The Nominee assigns the leasehold interest in the retained unit(s) to the Developer.

A liability to ad valorem stamp duty does not arise in relation to any of the instruments giving effect to the above legal structure.

Consanguinity relief

Consanguinity relief applies to transfers of non-residential property to certain relatives. These are lineal descendant (child, grandchild etc.), parent, grandparent, brother, sister, aunt, uncle, niece, nephew.

The relief is also available to certain classes of relative who are not related by blood. These are adopted child, step-parent, step-child, and foster-child.

Finance (No. 3) Act 2011 extended the relief to civil partners, lineal descendants of civil partners and children of civil partners.

Adjudication is required and where the relief is granted, the duty chargeable is reduced to half the normal rate. The relief does not apply to transfers of residential property, leases or shares.

Examples:

1. Residential property, transfer to daughter

   Mary transfers her house to her daughter. The house is valued at €255,000. Duty payable: €2,550 (€255,000 *1%)

2. Non-residential property, transfer to brother

   Mary transfers land to her brother. The land is valued at €255,000.

   Duty payable: €7,650 ((€255,000*6%)/2)

3. Non-residential property, transfer to civil partner's son

   John transfers land to his civil partner's son. The land is valued at €255,000

   Duty payable: €7,650 (€255,000*6%)/2)

Certificates required

For deeds executed before 8 December 2010, please see Leaflet SD10A.

For deeds executed after 8 December 2010, please see Leaflet SD10B.

Schedule 2

Schedule 2 lists the qualifications required for Young Trained Farmer relief.

Schedule 2A

Schedule 2A lists the qualifications required for Young Trained Farmer relief.

Schedule 2B

Schedule 2B lists the qualifications required for Young Trained Farmer relief.

See Leaflet SD2B

14 Appendices

Appendix 2

Rates of stamp duty and certificates required

For deeds executed before 8 December 2010, please see leaflet SD10A.

For deeds executed after 8 December 2010, please see leaflet SD10B.

Non-residential property stamp duty rates

Section 87 of the Finance (No. 2) Act 2008 confirmed the reduction in the top rate of stamp duty payable on non-residential property from 9% to 6%. The reduced rates, which were announced in the Budget, apply to instruments executed on or after 15 October 2008.

Aggregation continues to apply in determining the stamp duty liability where a transaction forms part of a larger transaction or of a series of transactions involving non-residential property. Accordingly, where the chargeable consideration is less than €80,000, the instrument should contain the usual certificate* reciting the appropriate threshold. However, where the top rate of 6% is payable there is no requirement to include a certificate in the instrument.

* It is hereby certified that the consideration (other than rent) for the sale/lease is wholly attributable to property which is not residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds

€10,000/€20,000/€30,000/€40,000/€70,000/€80,000.

Appendix 6

Advice of Receipt of Rent or Payment in the Nature of Rent