

Stamp Duties Consolidation Act 1999

**(as amended by subsequent Acts up to and including
the Finance Act 2008)**

Notes for Guidance

INTRODUCTION

The object of this book is to provide a comprehensive section by section commentary on all of the provisions of the Stamp Duties Consolidation Act, 1999, as amended by the Finance Act 2000 to the Finance Act 2008 inclusive.

These notes supersede—

- all earlier Revenue Notes for Guidance on the legislation which is now incorporated into the Stamp Duties Consolidation Act, 1999,
- leaflets SD 5 (Conveyances and Leases of Residential Property) and SD 6 (Stamp Duty Changes - Finance Act, 1999), and
- the following Statements of Practice:
 - SP-SD 2/90 (Stamp Duty on Purchases of New Residential Properties),
 - SP-SD 4/90 (Stamp Duty - Revised Stamping Procedures),
 - SP-SD 1/91 (Collection and Enforcement of Stamp Duty),
 - SP-SD 3/92 (Stamp duty on Mortgages and Further Advances), and
 - SP-SD 1/96 (Exempt New Houses).

This book contains:

- an overview of the Stamp Duties Consolidation Act, 1999 as amended by subsequent Acts up to and including the Finance Act 2008;
- a brief overview of the provisions of each Part of the Act. Provisions in other Parts of the Act which may be affected by the contents of a particular Part are referred to in the overview. Reference is also made to relevant Stamp Duty forms, leaflets and Statements of Practice, copies of which may be obtained by phoning LoCall No. 1890 48 25 82 (Dublin Stamping District), telephone no. (021) 6027050 (Cork Stamp Duty Office), or telephone no. (091) 536 300 (Galway Stamp Duty Office) or from the Revenue website: www.revenue.ie; and
- a commentary on every section in each Part of the Act. The commentary is in 2 parts - a brief summary of the section is given first (but this is dispensed with where a section is short or straightforward). This is followed by a more detailed description of the provisions and effects of the section. Where necessary for a better understanding of the section, the strict sequential order of the Act is not followed. References in the right hand margin of each page are references to the subsection (and the paragraph and subparagraph, etc.) of the section which is being read. References within the commentary on a particular section to subsections, etc., are references to subsections, etc., of the section being read. References within the commentary to other sections, etc., are, unless otherwise stated, references to other sections, etc., of the Act. Examples are included to illustrate how particular provisions work.

In addition to the various provisions contained in the Stamp Duties Consolidation Act, 1999, other legislation also impacts on stamp duties. Where appropriate, reference is made in the book to relevant provisions contained in other legislation. Readers should be aware, in particular, of the provisions contained in sections 7, 8, 487, 552(2), 811, 811A, 858, 859, 872, 900, 901, 902, 902A, 905, 906, 906A, 907, 908, 908A, 910, 1002, 1006A, 1078, 1079, 1086, 1089, 1093 and 1104 of the Taxes Consolidation Act, 1997.

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OVERVIEW OF STAMP DUTIES CONSOLIDATION ACT 1999

When stamp duties were first imposed in Ireland in 1774 they applied only to written documents. However, in more recent times the stamp duty code has been extended beyond written documents to cover—

- certain electronic transfers (see **Part 6**),
- certain transactions relating to capital companies (see **Part 8**), and
- cash cards, debit cards, combined cards, credit cards and charge cards, non-life insurance premiums, “section 84” loans and a bank levy (see **Part 9**).

The Stamp Duties Consolidation Act, 1999, consolidates the current code which is contained in the Stamp Act, 1891, the Stamp Duties Management Act, 1891, and subsequent Finance and Revenue Acts.

The Stamp Duties Consolidation Act, 1999, is divided into 12 Parts as follows:

- **Part 1** consists of definitions and rules of construction;
- **Part 2** contains the charging section (**section 2**) and other general provisions relating to the payment and recovery of stamp duties on written documents. The various types of documents which are chargeable to stamp duty are grouped together under a number of headings (referred to as heads of charge) which are set out in alphabetical order in **Schedule 1**;
- **Part 3** sets out how property is to be valued for the purposes of stamp duties;
- **Part 4** contains provisions relating to the assessment of stamp duty and appeals against such assessments;
- **Part 5** consists of a number of sections which explain and/or supplement **Schedule 1**. This Part is arranged in the same order as the heads of charge to which they refer are arranged in **Schedule 1**;
- **Part 6** imposes stamp duty on securities title to which is transferred electronically via the CREST system;
- **Part 7** contains exemptions and reliefs from the charge to stamp duty on written documents;
- **Part 8** contains the provisions relating to companies capital duty which has been abolished for transactions taking place on or after 7 December 2005;
- **Part 9** imposes a number of levies i.e. on cash (or ATM) cards, debit cards and combined cash/debit cards, on credit cards and charge cards, on non-life insurance premiums, on “section 84” loans and on banks;
- **Part 10** sets out how payment of stamp duties is to be enforced;
- **Part 11** contains those provisions previously contained in the Stamp Duties Management Act, 1891 in **Chapters 1 to 6**. **Chapter 7** deals with time limits for repayment of duty, interest payable on repayments of duty and time limits for making enquiries and raising assessments by the Commissioners and **Chapter 8** contains the provision dealing with the calculation of interest on unpaid duty and other amounts.
- **Part 12** contains provisions relating to the commencement of the Stamp Duties Consolidation Act, 1999, repeals and the short title of the Act.

STAMP DUTIES CONSOLIDATION ACT 1999

PART 1 INTERPRETATION

Overview

This Part defines certain terms, and sets out rules for the construction of certain references, used in the Stamp Duties Consolidation Act, 1999.

1 Interpretation

This section provides for the interpretation of terms and expressions used in the Stamp Duties Consolidation Act, 1999. It also sets out rules for the construction of certain references used in that Act. The various definitions and rules apply unless the context requires otherwise. Readers should also be aware that section 18 of the Interpretation Act, 2005, contains general rules for the construction of statutes which apply unless the contrary intention appears. (1) – (4)

The definitions of “accountable person”, “Commissioners”, “conveyance on sale”¹, “die”, “executed”, “execution”, “forge”, “forged”, “impressed”, “instrument”², “material”, “Minister”, “money”, “policy of insurance”, “policy of life insurance”, “stamp”, “stamped”, “stock”, “stock certificate to bearer” and “Teagasc” are self-explanatory. (1)

The definition of “bill of exchange” means a draft, an order or a cheque (drawn on an account in the State). A “bill of exchange” as defined by the 1882 Act is “an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer”. “cheque” is also defined in the Bills of Exchange Act, 1882. It is a “bill of exchange (within the meaning of the 1882 Act) drawn on a banker payable on demand”.

A “child” includes a person, being a transferee or lessee, who, prior to the date of execution of the instrument in respect of which relief from duty is claimed, has resided with, was under the care of and was maintained at the expense of the transferor or lessor throughout—

- a period of 5 years, or
- periods which together comprised of at least 5 years,

prior to such person reaching 18 years of age but only if the claim for relief is not based on the uncorroborated testimony of one witness.

A “lineal descendent” includes a person who, as transferee, is a child within the meaning of the definition of “child” as outlined in the previous paragraph.

¹ Section 6 of The Chief Rents Redemption (Ireland) Act, 1864, provides that “Every deed executed by the direction of the judge, and every certificate annexed to the contract for redemption, as aforesaid, which respectively shall have the force or operation of a conveyance of any rentcharge under this Act, shall be chargeable with ad valorem stamp duty as upon a conveyance on sale; that is to say, where the consideration for such redemption shall be a sum of money in gross the said ad valorem stamp duty shall be chargeable in respect of such sum of money as the purchase or consideration money; and where the consideration for such redemption shall be lands or tenements, then the said deed or certificate shall be chargeable with the ad valorem stamp duty which would be chargeable on a conveyance of such lands or tenements on the sale thereof in consideration of the rent contracted to be redeemed”.

² Section 58(2) of the Companies Act, 1963, deems the written particulars of certain oral contracts for sale to be an instrument - see *section 31*.

A “marketable security” is defined as—

- a security (e.g. written evidence of a debt),
- which is *capable* of being dealt in (i.e. bought and sold) on the Irish Stock Exchange (i.e. on the Official List, the Development Companies Market, the Exploration Securities Market or the ITEQ Market).

This definition, therefore, encompasses both securities which are in fact dealt in, and securities which could be dealt in, on the exchange. The securities of private companies, because they may not be dealt in on the exchange, do not fall within this definition (but see definition of “stock”).

Where a claim is made that a security which has not been listed, quoted or dealt in on the Irish Stock Exchange is a marketable security the claimant should furnish sufficient proof to satisfy the Revenue Commissioners that the security is one which according to the use and practice of the exchange is capable of being dealt in on the exchange without any amendments being made to the security or the body issuing the security in order to render the security capable of being dealt in on the exchange.

The inter-action of the definitions of “marketable security” and “stock” should be noted. The definition of “stock” includes share capital, capital stock and funded debt. The definition of “marketable security” could also include share capital, capital stock and funded debt. However, it is more likely that for the purposes of stamp duty the definition of “marketable security” was intended to cover securities not already covered by the definition of “stock” (e.g. loan capital which is not capital stock or funded debt).

The definition of “residential property” relies on Schedule 3 and 4 to the Valuation Act 2001 and is linked to the operation of the rating system.

Example

A property, originally built for use as a dwelling, is conveyed in 2003. The property is now in use as a commercial office and was rated as such in the year 2002. The property is not regarded as residential property by virtue of its commercial usage and rating.

The definition of “residential property” does not include contents but it does include the 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).

Example

A’s house is surrounded by a garden of slightly less than one acre in size. A decides to sell half the garden to B. As the garden is residential property it attracts the rate of duty appropriate to residential property.

Readers should also be aware that the Interpretation Act, 2005, contains definitions which apply unless the context otherwise requires. The definitions contained in that Act and the sections, etc., in which they are to be found in this Act are set out in **Appendix 1**.

This section also sets out how references in the Act to enactments, Parts, Chapters, sections, Schedules, subsections, paragraphs, subparagraphs, clauses or subclauses are to be construed. (2) – (4)

PART 2 CHARGING AND STAMPING OF INSTRUMENTS

Overview

Stamp duty is a duty charged on certain written documents (*section 2*). These documents are referred to as “instruments” in the stamp duty code. Not every instrument is liable to stamp duty. To be liable it must be listed in *Schedule 1*. It also must be either executed in the State or, if executed outside the State, it must relate to Irish property or to something done or to be done in the State.

Schedule 1 also contains the rate of duty, which may be ad valorem or fixed, applicable to each instrument. The Minister for Finance has the power to vary the rate of duty on certain instruments by regulation (*section 3*). The amount of duty applicable to a particular instrument is often dependent on that instrument containing a particular clause or “certificate”. Insertion of an incorrect certificate is an offence (*section 17*). (Provisions relating to certificates are contained in *sections 29(6), 53(6), 81(3)(a), 81A(7)(a), 81AA(8)(a), 81B(2)(a), 82B(3)(b)(i), 83A(3), 83B(2)(a), 91A(4), 92(1)(b), 92B(3)* and *95(2)* and in *Schedule 1* i.e. in paragraphs (1) to (4), (7) to (14A) and (15) of the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge, in the “EXCHANGE” head of charge and, in clauses (i) to (iv) of paragraph (3)(a) and clauses (i) to (ix) of paragraph (3)(b) of the “LEASE” head of charge. **Appendix 3** and leaflet SD 10(A) contain the wording of all the various certificates.)

An instrument which is liable to stamp duty must be presented to the Revenue Commissioners within the time limits specified in *section 2*: otherwise penalties for late payment will arise (*section 14*). To enable the Revenue Commissioners to determine the amount of duty chargeable on the instrument the instrument, or an accompanying statement, must contain all relevant details (*section 8*). Once the duty has been paid to the Revenue Commissioners they will impress stamps on the instrument to the value of the duty paid. Except where there is express provision to the contrary (see, for example, *sections 5* and *10*) the payment of stamp duty must be denoted by impressed stamps (*section 4*) and these stamps must appear on the face of the instrument (*section 6(1)*).

A document may be liable to more than one charge to stamp duty: if it is, then it must be separately and distinctly stamped in respect of each one of the charges (*sections 6(2)* and *7*).

The amount of stamp duty chargeable on a particular instrument may depend on the duty paid on another instrument. Where the duty chargeable on one instrument (Instrument A) is dependent on the duty paid on another (Instrument B) the Revenue Commissioners may denote on Instrument A the fact that ad valorem duty was borne on Instrument B (*section 11*).

In addition to money stamps certain instruments relating to the transfer or leasing of land require to be impressed with a Particulars Delivered stamp (*section 12*) and instruments which are duplicates of instruments chargeable to stamp duty must be impressed with a duplicate stamp (*section 13*).

Surcharges may apply where property is undervalued or overvalued for the purposes of stamp duty (*sections 15* and *16*).

If the instrument recites an amount in a foreign currency and that amount is chargeable with ad valorem duty (e.g. the purchase price for a property may be recited in US\$’s then that amount must first be converted into €’s. *Section 9* sets out the rate of exchange to be applied in such cases.

Leaflet SD 1 contains general information about stamp duties on instruments.

Readers should also be aware that section 811 of the Taxes Consolidation Act, 1997, contains general anti-avoidance provisions. The purpose of section 811 is to nullify the effects of certain transactions which have little or no commercial reality but which are carried out primarily to avoid or reduce a charge to tax (including stamp duties). In addition, section 811A of the Taxes Consolidation Act 1997 provides for a surcharge and interest to be payable where a transaction is found to be a tax avoidance transaction under section 811 and also provides for a “protective notification” to be returned to the Revenue Commissioners by a taxpayer to protect the taxpayer against the surcharge and interest.

2 Charging of, liability for, and recovery of stamp duty

Summary

Stamp duty is chargeable on any instrument which is listed in *Schedule 1*—

- if that instrument 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.

Details

Charge on instruments

An instrument which is specified in *Schedule 1* and which is executed in the State is chargeable to stamp duty. If the instrument is specified in *Schedule 1* but is executed outside the State then the instrument is only chargeable to stamp duty if it relates to property situated, or matters or things done or to be done, in the State. The provision that an instrument which relates to anything done or to be done in the State is chargeable with stamp duty is capable of a very broad interpretation. The view of the Revenue Commissioners in relation to this criterion is that 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. An illustration of this view would be where an instrument is executed abroad relating to foreign property where the only connection with the State is that one of the parties is an Irish resident. The Revenue Commissioners’ view is that in such a case the instrument would not be liable to duty. (1)

Example 1

A buys land in France. The transfer document is executed in the State. As the transfer document is executed in the State stamp duty is chargeable.

Example 2

B buys shares in an Irish company. The transfer document is executed in Spain. As the document relates to Irish property stamp duty is chargeable.

Example 3

CDE Ltd, an Irish company, buys land in Germany. The consideration for the land is the issue of shares in CDE Ltd. The transfer document is executed in Germany. The transfer document is liable to stamp duty because it relates to Irish property (i.e. the shares). The transfer document is also liable because there is something to be done in the State (i.e. the issue of shares). Had the consideration been cash no stamp duty liability would have arisen because the provision of cash is not regarded as being “a matter or thing done or to be done in the State”.

In determining the appropriate head of charge for an instrument the Revenue Commissioners will look at the effect of the instrument rather than the description which the parties to it have given to it.

Example

A is the beneficial and legal owner of shares in XYZ Ltd. A transfers legal title to the shares to his nominee, B. B executes a declaration of trust to the effect that the shares are being held in trust for A. The declaration of trust is not liable to stamp duty.

Some months later A decides to sell the shares to C. B executes a new declaration of trust stating that he now holds the shares in trust for C. This declaration of trust attracts duty under the “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities” head of charge in *Schedule 1*.

Stamp duties are charged for the benefit of the Central Fund. The duties to be charged are specified in *Schedule 1* and must be applied unless the instrument in question is exempted or relieved from duty by the Stamp Duties Consolidation Act, 1999, or any other Act (see *Part 7* and *Appendix 5*). (2)

Where the same instrument is liable to stamp duty in the United Kingdom and the State a measure of relief from double taxation is provided by the Double Taxation (Relief) (Order No. 1), 1923, in that it, inter alia, provides that such an instrument when stamped in one of those countries is, to the extent of the duty it bears, deemed to be stamped in the other country. The Order, which also extends to composition agreements (see *section 5*), was made under the provisions of the Double Taxation (Relief) Act, 1923³.

Example

The Stg consideration is Stg£50,000 and the UK rate of duty is 0.5%. Stg£250 is paid and the instrument is stamped accordingly. The instrument is also liable to Irish stamp duty. The Irish rate of duty is 1%. The euro/Stg exchange rate at the date of execution of the instrument (see *section 9*) is €1 = Stg£0.6681. The amount of Irish duty chargeable is as follows:

€ value of Stg£ consideration	€74,839.10*
Amount of Irish duty chargeable	€748
<u>less credit for value of UK duty already paid</u>	€374
⇒ amount of duty payable in the State	€374

*(50,000 ÷ 0.6681)

Date payment is due

Stamp duty must be paid on chargeable instruments within the specified time limit i.e. within 30 days after the date of first execution of the instrument. In most cases, an instrument will be “first executed” when it has been executed by all of the parties to it necessary to make it effective in law and that should be the date that is inserted in the instrument - “execution” is defined in *section 1*. In the case of an instrument held in escrow the time for stamping only arises when the outstanding condition has been performed and the instrument is released from escrow. The Revenue Commissioners will always require evidence of the existence of escrow which should include such details as the date the deed went into escrow, the reason it went into escrow and the date it came out of escrow (e.g. certificate of escrow). (3)(a)

³ Similar legislation was enacted in Great Britain i.e. the Double Taxation (Irish Free State) Declaration, 1923, made under the Irish Free State (Consequential Provisions) Act, 1922.

In some cases, however, such as where the liability is not obvious, an instrument may be submitted to the Revenue Commissioners who will raise an assessment of the duty payable under **section 20**. Where the instrument is submitted within 30 days after the date of first execution there is 14 days from the date of the assessment to pay the duty. (3)

These time limits do not apply, of course, when the instrument is written on material which is already duly stamped. (3)(a)

Accountable person

Where no duty, or insufficient duty, is paid the accountable person becomes liable to pay it. If there is more than one accountable person then each accountable person becomes liable jointly and severally to pay the duty. “accountable person” is defined in **section 1**: however, **sections 31(1), 36(2), 71(a)** and **130** are also relevant as is section 4(1) of the Stock Transfer Act, 1963. (4)

Recovery of duty and penalties

The duty, together with any appropriate penalty, is deemed to be a debt owed to the Minister for Finance for the benefit of the Central Fund and may be sued for. The Revenue Commissioners may also use powers of attachment (section 1002 of the Taxes Consolidation Act, 1997) or instruct the sheriff to collect the duty (**section 132**). **Section 133** extends certain provisions relating to the recovery of penalties under the Taxes Consolidation Act, 1997, to stamp duties. **Section 134** contains provisions relating to proceedings for the recovery of stamp duty and penalties. (4)

Penalties are provided for in **sections 5(4), 8(3), 10(4), 14(1) and (2), 15(1), 16(3), 25(2), 45A(4), 59(1), 65, 66(2), 75(3) and (5), 76(2) and (3), 79(7), 80(8), 80A(8), 81(7), 81A(11), 81AA(12), 81B(9), 81C(9), 82B(4), 87(3), 87A(4), 91(2)I, 91A(6), 92(2), 92A(3), 92B(4), 108A(4), 117(3), 123(7), 123A(7), 123B(7), 124(5)(b), 125(6), 126(7), 126A(10), and 129(1)**. In addition to the specific power to remit penalties payable on stamping contained in **section 14(3)** the Revenue Commissioners also have a general power to mitigate penalties under section 35 of the Inland Revenue Regulation Act, 1890, and section 1065 of the Taxes Consolidation Act, 1997 – **section 133** applies section 1065 to stamp duty.

3 Variation of certain rates of duty by order

Summary

This section enables the Minister for Finance to exempt certain instruments from stamp duty or to reduce the rates of stamp duty on certain instruments – mainly instruments used by the financial services industry.

Details

The Minister for Finance may exempt from stamp duty (or reduce the rate of duty to which they are chargeable) all but the following instruments: (1), (2)

- instruments which relate to immovable property situated in the State or any rights or interest in such property,
- instruments which relate to any stock or share of a company having a register in the State,
- instruments which relate to any risk situated in the State in relation to the “INSURANCE” head of charge in **Schedule 1**, and
- bills of exchange.

However, instruments relating to debt factoring are within the scope of the Minister's powers as set out in **subsection (1)**. (3)

The Minister may amend or revoke any order which s/he has made under the powers conferred on him or her by this section. (4)

Any orders made by the Minister must be laid before Dáil Éireann. If a resolution annulling the order is passed by Dáil Éireann within the time limit specified by this subsection then the order is annulled. However, anything previously done under the order remains valid. (5)

All orders made under this section must be subsequently ratified by the Oireachtas within the specified period. Orders which are not ratified cease to have effect from the end of the specified period. However, anything previously done under the order remains valid. (6)

4 How duties are to be paid

The amount of stamp duty paid in respect of an instrument must be impressed by means of stamps on that instrument *except* where express provision is made to the contrary in the Stamp Duties Consolidation Act, 1999. Express provision is made to the contrary in—

- **section 5** which concerns stamp duty paid under composition agreements,
- **section 25(1)** which enables stamp duty on bills of exchange to be denoted by adhesive stamps (see also **section 23**), and
- **section 71(e)** which concerns the payment of stamp duty on securities title to which is transferred electronically.

The Revenue Commissioners may also stamp by the issue of a receipt (see definition of “stamp” in **section 1**) in certain circumstances.

5 Agreement as to payment of stamp duty on instruments

Summary

This section enables the Revenue Commissioners to enter into agreements to enable stamp duty to be collected by composition. Thus, rather than duty being paid and indicated by means of stamps on each individual instrument the duty is paid “in bulk” at intervals, usually annually, bi-annually or quarterly, and the instruments themselves bear a statement to the effect that duty has been or will be paid under an agreement with the Revenue Commissioners.

This section simplifies the administration and collection of duties. Those who have substantial numbers of instruments which attract stamp duty may dispense with the costly and time-consuming practice of sending all of those instruments to the Revenue Commissioners for individual stamping. For the Revenue Commissioners the advantages lie in an enhanced collection procedure and a reduction in the volume of instruments which actually require physical stamping.

Stamp duty on bills of exchange and on insurance policies are normally paid to the Revenue Commissioners under composition agreements.

The Double Taxation (Relief) (Order No. 1), 1923, referred to in the commentary on **section 2(2)**, extends to duties paid under composition agreements.

Information regarding composition agreements is contained in Statement of Practice SP-SD 3/90.

Details

The Revenue Commissioners may enter into composition agreements in respect of instruments chargeable to stamp duty under *Schedule 1* with (a) any person carrying on a business and who in the course of that business is a party to instruments liable to stamp duty or (b) that person's agent. The Revenue Commissioners may enter into such an agreement when they consider that such a person or his or her agent would find it inexpedient or impractical to pay stamp duty in respect of each instrument. (1)

The Revenue Commissioners decide the form, and the terms and conditions, of composition agreements. (2)

Where an agreement is in force between any person and the Revenue Commissioners, the individual instruments need not be presented for stamping but, by way of composition, that person will pay the aggregate amount of duty due, at the end of the period specified in the agreement, in respect of each instrument which would have had to have been individually stamped in the absence of such an agreement. (3)

Instruments to which a composition agreement relates must bear a statement to the effect that the appropriate stamp duty has been or will be paid over to the Revenue Commissioners. (3)

If the person who has entered into a composition agreement fails to deliver an account of all instruments liable to stamp duty in the specified period or does not pay the duty, penalties will be imposed as follows: (4)

- up to €125 per day while the default continues, and
- in addition, interest is payable at a rate of 0.0273 per cent per day (see *section 159D*) from the date when the default begins.

The Revenue Commissioners may make assessments in relation to duty due on foot of composition agreements should the need arise. (5)

6 How instruments are to be written and stamped

Summary

Stamp(s) must appear on the face of the instrument.

If 2 or more instruments are written on the one piece of paper then each one of those instruments must be separately and distinctly stamped.

Details

An instrument is to be drawn up in such a manner so as to enable the stamp to appear on the face of the instrument. The stamp should not be capable of being used for or applied to any other instrument written on the same piece of material (1)

Where more than one instrument is written on the same piece of material, each instrument is to be separately and distinctly stamped with the duty with which it is chargeable. (2)

7 Instruments to be separately charged with duty in certain cases

This section provides that if an instrument relates to several distinct matters it must be separately and distinctly charged in respect of each matter. (a)

While “matters” is not defined examples of matters to which this paragraph would apply are:

- matters which fall under more than one head of charge:

Example 1

A sells one acre and lets a further 6 acres of his land to B. The conveyance and the lease are effected in a single document. That document contains 2 distinct matters – a conveyance on sale and a lease – and must be stamped accordingly.

Example 2

A sells an office block which he owns to B. B agrees to lease the office block back to A. A single document is drawn up to effect the sale and leaseback. That document contains 2 distinct matters – a conveyance on sale and a lease – and must be stamped accordingly.

- matters which are separate transactions:

Example

A owns a distribution business. He wants to retire so he agrees to sell the business to B. He grants a lease of the premises from which the business is carried on to B. In the same instrument he also grants a lease of 2 lorries to B. The lease relates to 2 distinct types of property – movable (i.e. the 2 lorries) and immovable (i.e. the premises). As leases of these 2 types of property are treated differently by the stamp duty code the instrument relates to 2 distinct matters and is chargeable accordingly i.e. the lease of the 2 lorries is not within the charge to stamp duty while the lease of the premises is.

If the matters are not truly distinct, but merely ancillary, this paragraph will not apply. A helpful test to apply is to ask whether each “matter” would stand on its own 2 feet (e.g. are the interests of the parties separate and independent). If it would then it is probably a distinct matter and must be stamped accordingly.

Where an instrument is made for any consideration in respect of which it is chargeable with ad valorem stamp duty and also for any further or other valuable consideration then each one of the considerations is to be separately and distinctly charged as if separate instruments were involved. **(b)**

Example

A grants a lease over her licensed premises to B for a consideration of €50,000 (premium) plus rent of €200 p.a. The premium and the rent are separately chargeable to duty.

Where there is a transfer or lease of mixed property (e.g. living quarters over a pub) that transfer or lease will be treated as if it were a transfer or lease of 2 separate properties – the residential element (i.e. the living quarters) attracting the rate of stamp duty appropriate to residential property and the non-residential element (i.e. the pub) attracting the rate appropriate to non-residential property.

This section does not apply where express provision to the contrary has been made – see *sections 42(3), 43, 52(1) and (2), 57(3) and (4) and 62.*

8 Facts and circumstances affecting duty to be set forth in instruments, etc.

Summary

This section puts the onus on a person to bring to the attention of the Revenue Commissioners all the facts and circumstances affecting the liability of an instrument to stamp duty.

Details

Facts and circumstances to be disclosed

All relevant facts and circumstances relating to the liability of the instrument to stamp duty must be stated in the instrument itself. (1)

However, it is acknowledged that it will not always be practicable for the instrument to contain all relevant facts and circumstances. In such cases it is permissible to set out any facts or circumstances, not set out in the instrument, in an accompanying statement⁴. This statement must be delivered to the Revenue Commissioners at the same time as the instrument is being presented for stamping. 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. (2)

Penalties for non-disclosure

Penalties 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 negligence⁵ 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. (3)

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; (4)
- cases involving voluntary dispositions inter vivos. 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 deemed to be negligent until the contrary is proven. (5)

⁴ Instruments should be drafted on the basis of normal drafting conventions and practices. Any information which is not covered by those conventions and practices but which is relevant to the liability of the instrument to stamp duty should be set out in the accompanying statement.

⁵ The concept of negligence is potentially very wide-ranging and ultimately in any given case the courts will decide the matter on the facts. In deciding whether actions constitute negligence the Revenue Commissioners will consider how a court might view those actions.

This provision as well as dealing with full or partial gifts also has a role to play in dealing with evasion of stamp duty by so-called “under-the-counter” payments – see **section 15**. Where a transfer of property involving such evasion cannot be prosecuted under the fraud or negligence provisions for lack of evidence, it is open to the Revenue Commissioners to deem the transfer to be a voluntary disposition inter vivos since it has been made for a stated purchase price substantially less than market value. Accordingly all parties to such instruments, or those who prepare them, could leave themselves open to prosecution for negligence.

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 prosecution for negligence or fraud may be avoided. (6), (7)

9 Mode of calculating ad valorem duty in certain cases

It may happen that the amount on which stamp duty is chargeable is expressed in a foreign currency e.g. the consideration for a foreign property may be expressed in the currency of the country in which the property is located. This section sets out how that foreign currency amount is to be converted into €’s. It provides that where the consideration is in a foreign currency the rate of exchange to be used to convert that currency into its € equivalent is the rate applicable at the date of execution of the instrument.

Example

A buys shares in B Ltd for US\$50,500. The transfer is executed on 28 January, 2004. A wants to pay his stamp duty liability in €’s. The duty is calculated as follows:

Euro/US exchange rate on 28/01/04	€1 = US\$1.2550
Consideration in US\$	US\$50,500
Euro equivalent of US\$ consideration	€40,239.04 (50,500 ÷ 1.2550)
Duty payable	€402 (i.e. 1% rounded down to the nearest €).

10 Adhesive stamps

Summary

This section provides—

- that where stamp duty is to be denoted by means of an adhesive stamp the adhesive stamp must be issued by the Revenue Commissioners. The only duty permitted to be denoted by an adhesive stamp is the duty on a bill of exchange (**section 25(1)**);
- that where an adhesive stamp is used to denote the payment of duty the adhesive stamp must be cancelled, for example, by writing across it, thereby rendering it incapable of being used on any other instrument. A penalty of €630 is incurred if the adhesive stamp is not cancelled;
- for penalties in the event that anyone fraudulently interferes with an adhesive stamp, for example, by removing the stamp from the instrument.

Details

Only adhesive stamps issued by the Revenue Commissioners may be used to denote any stamp duty permitted by law to be denoted by an adhesive stamp. (1)

An instrument on which duty may be denoted by means of an adhesive stamp will be deemed not to be duly stamped unless the adhesive stamp is cancelled. The adhesive stamp must be cancelled by the signatory (*section 25(1)*). An adhesive stamp is normally cancelled by the signatory writing his or her name or initials, or the name or initials of his or her firm, across it and adding the date on which it was so written. The cancellation must be such that the adhesive stamp cannot be used for any other instrument. (2)

Where more than one stamp is used each stamp so used must be cancelled in the manner laid down in *subsection (2)*. (3)

If an adhesive stamp is not cancelled by the person obliged to do so that person will be liable to pay a penalty of €630. (4)

A person who fraudulently removes the adhesive stamp or causes it to be removed from an instrument or affixes an adhesive stamp so removed to another instrument intending that the stamp be used again is, in addition to any other fine or penalty to which that person may be liable, guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence. (5)(a)

Any person who— (5)(b)

- sells or offers for sale, or utters, an adhesive stamp fraudulently removed from an instrument, or
- utters any instrument to which to his or her knowledge an adhesive stamp has been affixed having been fraudulently removed from another instrument, is, in addition to any other fine or penalty to which that person may be liable, guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

11 Denoting stamps

This section covers situations where the duty chargeable on one instrument (Instrument A) depends on the duty paid on another instrument (Instrument B). In such cases the Revenue Commissioners will, on request and on production of both instruments, denote Instrument A with the fact that duty was paid on Instrument B.

The stamp duty chargeable on one instrument is dependent on the duty paid on another in the following instances:

- ***Duplicates or Counterparts***

An instrument which is a duplicate or counterpart of an instrument chargeable to stamp duty is chargeable with a fixed duty of up to €12.50 under the “DUPLICATE or COUNTERPART of any instrument chargeable with any duty” head of charge in *Schedule 1* and because that fixed duty stamp is dependent on the original instrument being duly stamped, the duplicate or counterpart instrument will be impressed with a stamp denoting that the original has been duly stamped on production of the duly stamped original.

A chargeable duplicate or counterpart stamp currently in use contains the words “Counterpart – original fully and properly stamped”.

A counterpart of a lease which has not been executed by or on behalf of the lessor does not require a denoting stamp (*section 13*).

- ***Conveyances or transfers made in pursuance of a section 31 contract***

The denoting stamp bears the words “Duty Paid ad valorem”.

- ***Transfers of leasehold interests made in pursuance of a section 36 contract***

The denoting stamp bears the words “Duty Paid ad valorem”.

- ***Leases made in conformity with a section 50 agreement for lease***

The denoting stamp bears the words “Duty Paid ad valorem”.

The existence of a denoting stamp on an instrument is not a *guarantee* that the proper amount of stamp duty has been paid on the other instrument. The only stamp which “guarantees” that the proper amount has been paid is the adjudication stamp – see *section 20* (but see also *section 12*).

12 Particulars delivered stamps

Summary

Certain instruments must be stamped with a “Particulars Delivered” stamp. The Revenue Commissioners will impress this stamp on production of a completed “Particulars Delivered” form (i.e. the ST 21).

Details

The definitions of “fee simple”, “interest”, “land” and “lease” contained in section 41 (1) of the Finance (1909-10) Act, 1910, apply to this section. The definition of those terms, as set out in the 1910 Act, are as follows:

- “fee simple” means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession;
- “interest” in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance⁶ or any fixed charge⁷ or any purely incorporeal hereditament or any leasehold interest under a lease for a term of years not exceeding fourteen years or any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts;

⁶ “incumbrance” includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by the [Finance (1909-10) Act, 1910] - see footnote 7.

⁷ “fixed charge” means any rentcharge as defined by the [Finance (1909-10) Act, 1910], and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act [], or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land. “rentcharge” means tithe or tithe rentcharge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land.

- “land” does not include any incorporeal hereditament issuing or granted out of the land;
- “lease” includes an under-lease and an agreement for a lease or under-lease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption; The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined.

References to “transferee” and “lessee” include the personal representatives of such transferee or lessee. (1)

Regulations

The Revenue Commissioners may make regulations regarding— (2)

- the class or category of transfer or lease (whether the transfer or lease is on sale or by way of voluntary disposition inter vivos) for which they require particulars provided that in the case of a lease the term must exceed 14 years, and
- the particulars to be delivered in the case of each class or category of transfer or lease. Such particulars may include:
 - the form in which the particulars are to be delivered;
 - the time limits within which the particulars are to be delivered;
 - the manner in which the land is to be described or classified;
 - the furnishing of tax reference numbers of the parties to the instrument.

The Regulations which currently apply were made in 1995 i.e. Stamp Duty (Particulars to be Delivered) Regulations, 1995 (but see *section 160(4)* and *Schedule 4*). The 1995 Regulations have been amended by the Stamp Duty (Particulars to be Delivered)(Amendment) Regulations 2003 (S.I. No 542 of 2003).

Onus on transferee/lessee

It is the duty of the transferee or lessee to present the particulars. (2)

Instruments not duly stamped

A transfer or lease (not being a duplicate or counterpart or a transfer or lease) which is governed by regulations made pursuant to *subsection (2)* may not be given in evidence (*section 127*) in most court proceedings even if it has been adjudicated (*section 20*), unless it is stamped with a stamp denoting that all the particulars requested by the Revenue Commissioners have been delivered. The stamp currently in use bears the letters “PD”. (3)

Penalties

A transferee or lessee who fails to present the relevant particulars is guilty of an offence and section 1078 of the Taxes Consolidation Act 1997 applies to that offence. (4)

13 Duplicates and counterparts

This section provides that the counterpart of an instrument which is chargeable to stamp duty will not be deemed to be duly stamped unless—

- it is stamped as an original instrument, or
- it is stamped with a stamp denoting that the original is duly stamped – see *section 11*.

The counterpart of a lease, if it has not been executed by or on behalf of the lessor or grantor, does not require a denoting stamp.

14 Penalty on stamping instruments after execution

Summary

This section provides for penalties for the late payment of stamp duty.

Section 1089 of the Taxes Consolidation Act, 1997, provides that interest payable under this section is payable without deduction of income tax and not allowable in computing any income, profits or losses for any of the purposes of the Income Tax Acts and the Corporation Tax Acts.

Details

Penalties for late payment

Except where otherwise provided in this Act, where the correct amount of stamp duty (1) is not paid within the time limits laid down in *section 2* the Revenue Commissioners will only stamp the instrument on payment of the appropriate penalties. In practice, the Revenue Commissioners allow 44 days to elapse from the date of first execution of the instrument before penalties will be levied. When levied they apply from the date of first execution of the instrument. The penalties are:

- €25, and
- in addition, where the unpaid duty exceeds €30, interest is charged at the rate of 0.0273 per cent per day (see *section 159D*).

Example

A assigned a policy of insurance to B on 1 January, 2008. The stamp duty due i.e. €600 was not paid until 26 April, 2008. The penalties are calculated as follows:

Fixed penalty	€25.00	
116 days interest	<u>€18.56</u>	(i.e. 0.0273% per day for 116 days)
Total penalties due	€43.56 ⁸	

Additional penalties in the case of particular instruments

Additional penalties are imposed on a particular range of instruments (i.e. (a) (2) conveyances or transfers on sale of any property other than policies of insurance or policies of life insurance; (b) duplicates; (c) leases; and (d) instruments which operate or are deemed to operate as voluntary dispositions inter vivos) for late payment of stamp duty. These instruments yield most of the duties collected under the stamp duty charging provisions. The additional penalties are:

⁸ Except in the case where the only penalty due is the fixed penalty of €25 (*subsection (1)*) it is the practice of the Revenue Commissioners to round down the amount due to the nearest €10.

- 10% of the unpaid duty if the instrument is presented for stamping more than 44 days but not more than 6 months late;
- 20% of the unpaid duty if the instrument is presented for stamping between 6 and 12 months late;
- 30% of the unpaid duty if the instrument is presented for stamping more than 12 months late.

Example

A and B purchased a house and executed the deed of transfer on 1 March 2008. The stamp duty due (i.e. €15,000) was not paid until 14 May, 2008. The penalties are calculated as follows:

Fixed penalty	€ 25.00	
74 days interest	€ 302.66	(i.e. 0.0273% per day for 74 days)
Additional penalty	€1,500.00	(i.e. 10% of the unpaid duty)
Total penalties due	€1,827.66	

Power to mitigate penalties

The Revenue Commissioners may mitigate penalties payable on stamping (i.e. **(3)** penalties imposed by this section and by *sections 15* and *16*). In applying the discretion provided for in this subsection the Revenue Commissioners take account of all relevant circumstances giving rise to delay and will not apply a penalty, or the full penalty, where to do so would be unjust and unreasonable. As already mentioned the Revenue Commissioners allow an additional 14 days before penalties are imposed.

Claims for mitigation should be made in writing and be supported by documentary evidence where applicable. The instrument should be presented and any duty due should be paid at the same time as the claim for mitigation is made. Any person dissatisfied with a decision taken by a Revenue officer in relation to penalties may have the matter re-examined by another Revenue officer who has had no previous involvement in the case under the internal review procedure (see Statement of Practice SP-GEN/2/99 (Revised January 2005)).

Denoting of penalties on instruments

Any penalties paid are to be indicated on the instrument by means of a stamp. **(4)** Payment of a penalty is denoted by the letter “P” and if a penalty is mitigated, whether in full or in part, mitigation is denoted by the letters “PM”.

Enforcement of penalties

Penalties are collected and enforced in the same way as stamp duty is (see *section 2*). **(5)**

15 Surcharges for undervaluation in case of voluntary dispositions inter vivos

Summary

This section imposes surcharges where the value of property has been understated.

Details

Liability to pay surcharge

Where a person submits a value for property, which is being transferred or leased by way of gift (*sections 30* and *54*), and that value is less than the value determined by the Revenue Commissioners, the person will be subject to penalties by way of **(1)**

surcharge. The person has the right to appeal, under *section 21*, against the value placed on the property by the Revenue Commissioners.

Amount of surcharge

The surcharges are as follows:

- 25% of the duty chargeable where the understatement of value is between 15% and 30%. However, an understatement of less than €6,350 will not attract a surcharge; (1), (2)
- 50% of the duty chargeable where the understatement of value is between 30% and 50%;
- the amount of the duty chargeable where the understatement of value is greater than 50%.

Calculation of surcharge by Revenue Commissioners

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 or transfer or lease. (3)

Example

A conveys her shop to B. The consideration recited in the deed is €50,000. The market value is €85,000. The fact that the instrument is operating as a voluntary disposition inter vivos is not disclosed to the Revenue Commissioners (i.e. either a €50,000 valuation is submitted or no valuation at all is submitted). The Revenue Commissioners are concerned about the value recited in the deed and decide to refer it to the Valuation Office which eventually agrees the value of €85,000 with B. The following amounts are payable:

- stamp duty on the market value of €85,000 (i.e. €5,100), and
- a surcharge of €2,550 calculated as follows:

Ascertained value	€85,000
Submitted value	€50,000
Undervaluation	€35,000
Surcharge	€ 2,550*

*The surcharge is 50% of the duty as the undervaluation is over 41% i.e. $((€35,000 \div €85,000) \times 100)$.

Enforcement

Whereas surcharges are collected and enforced as if they were part of the duty, being a penalty, they may be mitigated by the Revenue Commissioners under *section 14(3)*. (4)

16 Surcharges to apply when apportionment is not just and reasonable

Summary

There are a number of situations in which it is necessary to apportion the consideration paid for a transfer/lease of property which includes residential property.

This section provides for surcharges where liability to stamp duty is reduced either because the residential property element of the consideration is undervalued or it is overvalued. Surcharges will only apply in the event of undervaluations or overvaluations greater than 10%.

Details

Definition

“residential consideration” is self-explanatory. (1)

Estimates of value to be submitted

Whenever an apportionment is necessary (e.g. under *sections 45(2)* and *52(5)*) both the vendor/lessor and the purchaser/lessee 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. Where the requirements of this section are not complied with by any person who executes the instrument which effects the sale is deemed, until the contrary is proved, to have acted negligently for the purposes of *section 8(3)*. (2)

Further information regarding apportionment details together with a suggested format for submission of those details are contained in **Appendix 2**.

Amount of surcharge

A surcharge will be payable in the event of an undervaluation or overvaluation greater than 10% by the purchaser/lessee. Where the undervaluation or overvaluation is between 10% and 30% the surcharge is 50% of the loss of duty involved. Where the undervaluation or overvaluation is greater than 30% the surcharge is 100% of the loss of duty involved. The purchaser/lessee is entitled to recover up to one-half of the surcharge from the vendor/lessor depending on the degree of underestimation or overestimation (if any) made by the vendor/lessor. The purchaser/lessee has the right to appeal, under *section 21*, against the value placed on the property by the Revenue Commissioners. (3), (4)

Example

In 2008 A sold her licensed premises with rented residential accommodation overhead to B for €1,900,000. B submitted a value of €400,000 for the residential portion of the property. The value as ascertained by the Revenue Commissioners was €300,000. The duty and surcharges are calculated as follows:

Duty payable in accordance with ascertained value

Non-residential portion	€1,600,000 x 9% = €144,000
Residential portion	€300,000 - €125,000 x 7% = <u>€ 12,250</u>
Total amount of duty due	€156,250

Duty payable in accordance with submitted value

Non-residential portion	€1,500,000 x 9% = €135,000
Residential portion	€400,000 - €125,000 x 7% = <u>€ 19,250</u>
Total amount of duty due	€154,250

Surcharge

Loss of duty	€2,000 (€156,250 - €154,250)
Overvaluation of residential portion	€100,000 (€400,000 - €300,000) or 33.33% (€100,000 ÷ €300,000) x 100)
Surcharge	€2,000 (100% of the loss of duty as the over valuation is 33.33% (>30%).

Enforcement

Whereas surcharges are collected and enforced as if they were part of the duty, being a (5) penalty, they may be mitigated by the Revenue Commissioners under *section 14(3)*.

17 Furnishing of an incorrect certificate

Knowingly furnishing an incorrect certificate for the purpose of *Schedule 1* is deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997, and is, consequently, a revenue offence.

PART 3 VALUATION

Overview

This Part contains provisions relating to the valuation of property for the purposes of stamp duties. Valuations are required, for example—

- in the case of voluntary dispositions inter vivos (*sections 30* and *54*) and exchanges (*section 37*),
- in the case of transfers, or certain agreements, made in contemplation of sale (*sections 33* and *34*),
- where the consideration consists of stock or securities (*section 40*), and
- where the consideration is unascertainable (*sections 44* and *55*).

When shares in unquoted companies are to be valued a completed form SD 4 should be submitted to the Revenue Commissioners.

18 Mode of valuing property

This section provides that the value of property conveyed or transferred is to be determined without reference to—

- (a) any power whereby the property or any part of it or any interest in it may be revested in the disponent or in any other person on the disponent's behalf;
- (b) any annuity, life or other interest reserved out of the property provided that the annuity, etc., is subject to forfeiture. In other words, any interest that ceases on the person entitled to the interest doing or failing to do a certain thing;
- (c) any right of residence, support, maintenance or other right of a similar nature. However, if the right is reserved in favour of the transferor or the spouse 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.

Example

A transfers the family farm to his daughter. He reserves a right of residence, support and maintenance for himself in the family home. The unencumbered value of the farm is €200,000. The right of residence, support and maintenance is valued at €50,000 i.e. 25% of the unencumbered value of the farm. In determining the value of the farm for the purposes of levying stamp duty on the transfer the value of the right of residence will be restricted to €20,000.

If the power referred to in *paragraph (a)* is in fact exercised *and* the property has been reconveyed or retransferred as a result of that exercise, the Revenue Commissioners will repay the stamp duty paid. While this section provides that a claim for a refund must be made within 6 years after the making or execution of the conveyance or transfer, the 6 year time limit has been changed (see *section 159A*) to 4 years from the date the conveyance or transfer was stamped by the Revenue Commissioners, for a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of the passing of the Finance Act 2003). The claim for refund must be accompanied by the original stamped conveyance or transfer. Interest may arise on the refund – see *section 159B*. Of course, the power may be exercised after the time-limit permitted for refund has expired (if the instruments so permit) but the stamp duty will not be refunded in such cases.

19 Valuation of property chargeable with stamp duty

This section provides that when property has to be valued by the Revenue Commissioners the provisions of section 26 of the Capital Acquisitions Tax Consolidation Act 2003, apply. Section 26 of that Act provides that 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”. The Revenue Commissioners are empowered to ascertain the market value of any property. This normally involves using the services of the Valuation Office when the property comprises land. Where the property comprises shares in an unquoted company a completed form SD 4 should be submitted to the Revenue Commissioners.

PART 4 ADJUDICATION AND APPEALS

Overview

This Part contains 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. The advantage of having an adjudication stamp is that the instrument may be produced in evidence in most court proceedings notwithstanding the fact that doubts may be expressed later as to whether the correct amount of stamp duty was in fact paid in relation to the instrument - see *section 20(6)*. Certain instruments, however, may not be produced in evidence unless they bear, in addition to the adjudication stamp, the Particulars Delivered stamp - see *section 12*. More than one adjudication stamp may be needed in certain circumstances - see *section 7*.

Exemption or relief from stamp duty is often dependent on the instrument being adjudicated. But even where adjudication is not compulsory a person has a right to submit any instrument for adjudication. Furthermore, the Revenue Commissioners may adjudicate an instrument even though a person has not sought adjudication.

A person has the right to appeal against a stamp duty assessment. In addition to this statutory right the Revenue Commissioners also operate an internal review procedure under which a person who is dissatisfied with a decision or an assessment made by a Revenue officer may arrange to have that decision or assessment reviewed by another Revenue officer. Details of the internal review procedures are contained in Statement of Practice SP-GEN/2/99 (Revised January 2005).

20 Assessment of duty by the Commissioners

Summary

This section enables the Revenue Commissioners to assess the amount of duty chargeable on an instrument and when the duty is paid to impress the instrument with a special stamp, called the adjudication stamp.

Adjudication is compulsory when certain exemptions or reliefs from stamp duty are being claimed (see *Chapter 1 of Part 7*). It is also compulsory in the following cases:

- *section 30(3)* - conveyances or transfers operating as voluntary dispositions inter vivos *except* transfers between spouses (*section 96*) and certain transfers between former spouses (*section 97*),
- *section 33(4)* - instruments made in contemplation of a sale, and
- *section 54(3)* - leases operating as voluntary dispositions inter vivos.

In addition, as a matter of practice the Revenue Commissioners require all instruments in respect of which consanguinity relief, relief for commercial woodlands and relief for shared ownership leases is being claimed to be adjudicated (see paragraph (15) of the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge in *Schedule 1* and *sections 95* and *103*, respectively).

In practice, the Companies Registration Office normally insists on written contracts, or particulars of oral contracts, relating to the transfer of property in consideration of the allotment of shares in limited companies for a consideration other than cash to be submitted for adjudication (see section 58(2) of the Companies Act, 1963, and *section 31*).

In all cases where adjudication is sought or is compulsory a special form (called the Adjudication Warrant) must be completed and submitted to the Revenue Commissioners together with the original executed instrument, a photocopy of the instrument and any further necessary information - see individual sections for details.

Details

Power to raise assessments

The Revenue Commissioners may raise assessments at their own discretion or at the request of any person. (1)

To prevent a situation occurring in which a person could obstruct the assessment and collection process by simply refusing to deliver an instrument for assessment the Revenue Commissioners may make assessments “to the best of their knowledge, information (including information received from a member of the Garda Síochána) and belief” on instruments which have not been delivered to them. On delivery, a substitute assessment under **subsection (10)** may be made, if appropriate. The accountable person is liable for the payment of any stamp duty assessed by the Revenue Commissioners. (2)

Production of evidence

The Revenue Commissioners may call for any evidence they deem necessary in order to verify that they have been made aware of all the facts and circumstances relating to the liability of the instrument to duty. (3)

Instruments not chargeable

The Revenue Commissioners may, if they are satisfied that the instrument is not chargeable with duty, impress the instrument with a special stamp (called the adjudication stamp) denoting that it is not chargeable. The stamp currently in use bears the letters/words “AEUR – Exempt”. (4)

Instruments chargeable

The Revenue Commissioners may, if they believe the instrument is chargeable, assess the amount of duty with which it is chargeable and after the instrument has been stamped in accordance with the assessment the Revenue Commissioners may impress the instrument with a special stamp (called the adjudication stamp) denoting that duty has been paid on it. The stamp currently in use bears the letters “AEUR”. (5)

An instrument may only be stamped in accordance with the assessment. (7)

Admission in evidence

An instrument bearing either of the adjudication stamps referred to in **subsection (4)** or **(5)** is admissible in evidence and available for all purposes even though the assessment may subsequently prove to be incorrect (but see **section 12**). (6)

Instruments which may not be assessed

The Revenue Commissioners may not adjudicate an instrument which by law may not be stamped after execution. This is because the amount of duty assessed (if any) could not be stamped on the instrument. (8)

Statutory declaration

If a person makes a statutory declaration in relation to any matters related to the assessment that declaration may not be used against that person except in so far as an enquiry into the amount of duty chargeable on an instrument is concerned. (9)

Power to vary assessments already made

The Revenue Commissioners may make correcting assessments where an assessment already made is incorrect or incomplete. (10)

The Revenue Commissioners may make an assessment of additional duty payable in circumstances where it comes to notice that the duty already paid is insufficient – see also **section 159C** as regards the time limit for making certain assessments from 1 January 2005. (11)

21 Right of appeal of persons dissatisfied with assessment

Summary

This section gives a right of appeal to the Appeal Commissioners against a stamp duty assessment (see **section 20**).

The stamp duty appeals procedure is based on the appeals procedure which applies for the purposes of income tax.

Details

Definitions

"Appeal Commissioners" and "appellant" are self-explanatory. (1)

Accountable person may appeal

An accountable person, who is dissatisfied with an assessment, may appeal against that assessment to the Appeal Commissioners. An appeal may only be lodged following payment of stamp duty in conformity with the assessment. The decision of the Appeal Commissioners is final unless the appeal is required to be reheard by the Circuit Court or is submitted to the High Court on a point of law. (2)

Time limit to lodge appeal

A person intending to appeal must give written notice of that intention to the Revenue Commissioners within 30 days after the date of the assessment. (3)

Income Tax appeal provisions to apply

The provisions relating to appeals under income tax legislation apply to stamp duty appeals. (4)

Appeals against value of land

Appeals against the value of land are not heard by the Appeal Commissioners: rather they must be made to the Land Values Reference Committee. (5)

Particulars delivered (**section 12**) may be received as prima facie evidence of what they contain in any appeal. (6)

PART 5 PROVISIONS APPLICABLE TO PARTICULAR INSTRUMENTS

Overview

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

CHAPTER 1

Bills of Exchange

22 Bills and notes purporting to be drawn outside the State

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

23 Restriction on stamping after execution

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

24 One bill only of a set need be stamped

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

25 Denotion of duty by adhesive stamps

Summary

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

Details

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

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

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

A person to whom an unstamped bill is presented for payment (say, a bank) may affix a 30 cent stamp to it. On cancelling the stamp so affixed, the bank may then pay the sum mentioned in the bill and either— (3)

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

A bill to which the 30 cent stamp has been affixed and cancelled by the person to whom it was presented unstamped is deemed to be a valid bill. (3)

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

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

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

27 Stamping of certain foreign bills of exchange

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

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

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

CHAPTER 2

Conveyances on Sale

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

Summary

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

- a site with a connected building agreement,
- a partially completed house, or
- a completed house.

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

To enable the amount or value of the consideration for a new house or apartment *and* the rate of duty applicable to be determined, conveyances of new houses and apartments must contain the appropriate certificates (see *sections 29(6), 91A* and *92* and the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge in *Schedule 1*.) For ease of reference the wording of all the various certificates and the rates of duty are set out in **Appendix 3**. (See also leaflet SD 10(A).)

Purchase of site with a connected building agreement

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

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

At the time the conveyance giving effect to the purchase of the site is made the construction works may not have commenced *or* they may have commenced but have not been completed *or* they may have been completed. In any event because the conveyance is giving effect to a contract to purchase a site the conveyance must recite only the consideration provided for in the contract to purchase the site. The conveyance, which must also contain a certificate to the effect that this section applies (see **subsection (6)**), should be submitted to the Revenue Commissioners together with the contract to purchase the site and the building agreement.

Example

A contracted to buy a site from B, a vendor/developer, for €50,000. A building agreement was also entered into with B, whereby B undertook to build a house on the site for A for €150,000. B would not have sold the site to A if A had not also entered into the building agreement. After the construction works were completed a conveyance giving effect to the purchase of the site was executed in 2008. Though the conveyance recited a consideration of €50,000, the stampable consideration is €200,000. As the property is residential property the duty applicable is €5,250 (€75,000 (€200,000 - €125,000) x 7%).

The existence of the certificate in the conveyance to the effect that this section applies is sufficient to put all interested persons on notice that the stampable consideration is greater than the consideration recited in the instrument and that to determine the stampable consideration it is necessary to submit the contract to purchase the site and the building agreement to the Revenue Commissioners.

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

This section does not apply to the following:

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

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

Purchase of a partially completed house

Where a person enters into a contract for the purchase of a partially completed house, and, where it is shown to the satisfaction of the Revenue Commissioners that there is

no connection between the sale of the partially completed house and the employment of the builder chosen to complete the construction work, stamp duty will be based on the amount paid for the partially completed house. The conveyance giving effect to this contract must recite the consideration provided for in the contract and contain a certificate to the effect that this section does not apply (see **subsection (6)**).

Example

A decided to build a house for his daughter on his own land using direct labour. After the building works had been commenced A ran out of money. All building work ceased. Some time later A agreed to sell the partially completed house to C for €330,000. C will employ his own builder to complete the house. The conveyance, executed in 2008, giving effect to the contract will recite a consideration of €330,000. As there is no connection between the sale of the partially completed house and the builder chosen to complete the house the conveyance will contain a certificate to the effect that this section does not apply. The stampable consideration is €330,000 and, as the property being transferred is residential property, the duty is €14,350 (€205,000 (i.e. €330,000 - €125,000) x 7%).

Purchase of a completed new house

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

Example

A builds a house on his land in 2008. As soon as the house is built he sells it for €295,000. The conveyance giving effect to the sale is within the charge to duty under the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge in **Schedule 1**.

Where the conveyance is giving effect to a contract to purchase a completed new house the conveyance must recite the consideration provided for in the contract and contain a certificate to the effect that this section does not apply (see **subsection (6)**). In the above example the conveyance will recite a consideration of €295,000 and, as the property being transferred is residential property, the duty applicable is €11,900 (€170,000 (i.e. €295,000 - €125,000) x 7%).

Reliefs available

Purchases of new houses by, or on behalf of, a person who intends to occupy the house as his or her only or principal place of residence may qualify for one of the reliefs contained in **sections 91A** or **92**.

Details

Definitions

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

(1)(a)

Charge to stamp duty

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

(2)

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

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

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

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

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

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

Calculation of liability where aggregate consideration not known

Where, in the opinion of the Revenue Commissioners, it is not possible to determine the aggregate consideration at the time the instrument is presented for stamping (e.g. where information regarding the cost of the building is not available) the Revenue Commissioners will use a multiple of between 5 and 10 times the market value of the land as a basis for calculating the stamp duty liability. (4)(a)

If, subsequently, it is shown that the duty paid exceeded the amount which would have been initially payable had the combined value of the land and building been known and available at the date of stamping the Revenue Commissioners will refund the excess. Where the claim for repayment is made before 1 November 2003 the repayment will be made with interest at the rate of 0.0161% per day or part of a day (0.5% per month or part of a month before 1 September 2002). In any other case, interest will be paid on repayments made on or after 1 November 2003 if the repayment is not made by the Revenue Commissioners within 183 days of receiving a valid claim for repayment as provided for in **section 159B** and then only at 0.011% for each day or part of a day from the expiration of the 183 day period. The application for refund must be made within 3 years after the date of stamping of the instrument and be accompanied by the original stamped instrument. Repayments of stamp duty may be made to the person who paid it or to any person who can satisfy the Revenue Commissioners that s/he is entitled to recover moneys from the person who actually paid the stamp duty. (4)(b) (1)(b)

Evidence required

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

Certificate to be contained in conveyance

Every instrument liable to stamp duty under the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge in **Schedule 1** must contain a certificate indicating whether or not it comes within the provisions of this section. The wording of the certificate is— (6)

- in a case to which **section 29** applies:

“It is hereby certified that section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act, 1999, applies to this instrument.”, and

- in a case to which **section 29** does not apply:

“It is hereby certified that section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument.”.

For ease of reference the wording of all the various certificates which must be inserted into a deed of conveyance of a new house or an apartment is set out in **Appendix 3**. (See also leaflet SD 10(A).)

The furnishing of an incorrect certificate is deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997, and is, therefore, a revenue offence.

Refunds

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

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

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

30 Voluntary dispositions inter vivos chargeable as conveyances or transfers on sale

Summary

This section imposes a charge to stamp duty on a voluntary disposition inter vivos in any case where there is no consideration for the property conveyed or transferred or where the consideration is inadequate. Where there is no consideration or the consideration is inadequate stamp duty is chargeable on the market value of the property transferred. In all cases, therefore, where the conveyance or transfer is by way of a voluntary disposition inter vivos a valuation of the property must be submitted to the Revenue Commissioners (see **Part 3**). In the case of voluntary dispositions inter vivos of shares in unquoted companies form SD 4 must be completed and submitted.

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

Section 8(5) imposes an obligation to tell the Revenue Commissioners when an instrument operates as a voluntary disposition inter vivos. Surcharges may be payable in the event of undervaluation (**section 15**).

Details

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

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

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

A conveyance or transfer operating as a voluntary disposition inter vivos may not be given in evidence in most court proceedings or be available for any purpose unless it is adjudicated - see **section 20**. Details of the property together with a valuation (see **Part 3**) of the property must be submitted with the application for adjudication. This obligation to have the instrument adjudicated does not apply in the case of transfers between spouses (**section 96**) and certain transfers between former spouses (**section 97**). (See also **subsection (5)**.) (3)

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

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

Example

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

Where the voluntary disposition inter vivos is subject to a mortgage the Revenue Commissioners will, as a matter of practice, deduct the mortgage liability in arriving at the value of the benefit passing. Stamp duty is chargeable on the net benefit taken i.e. on the equity of redemption.

Example

A gives B her farm worth €150,000. The farm is subject to a mortgage of €40,000. Stamp duty is chargeable on the equity of redemption i.e. €110,000. As the property is non-residential the rate of duty is 7%.

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

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

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

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

31 Certain contracts to be chargeable as conveyances on sale

Summary

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

Details

- (a) Contracts for the sale of an equitable estate or interest in property (e.g. a contract to sell a life interest in property, an option to purchase a legal interest in property, an agreement in writing to execute a declaration of trust of property in favour of a purchaser), and **(1)**
- (b) contracts for the sale of property other than—
- land, tenements, hereditaments, or heritages,
 - property locally situated outside the State,
 - goods, wares or merchandise (electricity is deemed to be “goods, wares or merchandise” under section 95 of the Electricity (Supply) Act, 1927 - see **Appendix 5**),
 - stock or marketable securities,
 - a ship, vessel or aircraft or any part interest, etc., in a ship, vessel or aircraft,

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

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

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

In addition, contracts for the sale of bearer shares⁹ are chargeable under this section.

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

Where a contract for the sale of property (e.g. the sale of a sole trader's business) comprises both chargeable and non-chargeable property the consideration must be apportioned as only the chargeable property is liable to duty under this section. The Revenue Commissioners provide a form (ADJN 14) on which the apportionment should be carried out.

Example

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

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

⇒ Net Value = €50,000.

B agrees to pay A €77,000 consisting of a cash consideration of €50,000 and the assumption of A's business liabilities. A written agreement is entered into. That agreement is chargeable as a conveyance on sale of the goodwill, tenant's fixtures, book debts and deposit a/c. In practice, the current a/c is not regarded as being within the scope of **section 31**. The chargeable consideration is €18,000. As the property is non-residential and a larger transaction (see head of charge in **Schedule 1**) is involved the rate of duty applicable is 5%.

⁹ This section (i.e. **section 31**) refers to share warrants issued in accordance with section 88 of the Companies Act, 1963. Section 88 provides that a "company limited by shares if so authorised by its articles, may, in relation to any fully paid up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares included in the warrant". Share warrants entitle the bearer of the warrant to the shares specified in the warrant. Shares may be transferred by delivery of the warrant. It is the view of the Revenue Commissioners that share warrants may not be issued by private companies because they would be subject to restrictions relating to when they may be delivered. By definition a share warrant should not be subject to any restrictions on delivery.

A also assigns the leasehold premises to B. The chargeable consideration for the assignment is €40,000. Again the rate of duty applicable is 5% because a larger transaction is involved (see head of charge in *Schedule 1*).

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

It is often the case that an existing business is sold to a company in return for the issue of shares in that company. Section 58(2) of the Companies Act, 1963, provides that where shares are allotted by a limited company incorporated in the State for a consideration other than cash a duly stamped contract relating to the property contracted to be transferred to the acquiring company, or, if such a contract has not been reduced to writing, particulars of such contract duly stamped as if it were such a contract, must be filed with the Registrar of Companies (see *section 117(1)*).

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

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

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

The Revenue Commissioners will refund any duty paid on the contract if the contract is later rescinded, annulled or not substantially performed or carried into effect so as to operate as or be followed by a conveyance or transfer. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by *section 159A* from the date the contract is stamped, in respect of a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). All such claims should be accompanied by the original stamped contracts. Interest may arise on the refund – see *section 159B*. (4)

31A Resting in contract

This section provides that a charge to stamp duty will arise on a contract or agreement for the sale of an estate or interest in land in the State, where 25 per cent or more of the consideration for the sale has been paid to the holder of the estate or interest. The charge will arise where a conveyance or transfer of the lands concerned has not been presented for stamping within 30 days after that amount of consideration has been paid. The new section also provides that where stamp duty has been paid on a contract or agreement, a conveyance or transfer made in conformity with such contract or agreement will not be liable to stamp duty and the Revenue Commissioners will, on request, either denote the payment of the duty on the conveyance or transfer or will transfer the duty to the conveyance or transfer on production to them of the stamped contract or agreement. **The section is to come into operation by way of a Ministerial Order.**

31B Licence agreements

This section provides that a charge to stamp duty will arise where the holder of an estate or interest in land in the State enters into an agreement with another person under which that other person is allowed to carry out development on that land and 25 per cent or more of the market value of the land is paid to the holder of the estate or

interest in the land, other than as consideration for the sale of all or part of the land. The charge will arise within 30 days after that amount of consideration has been paid. **The section is to come into operation by way of a Ministerial commencement order.**

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

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

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

Example 1

A agrees to pay B an annuity of €10,000 during B’s lifetime in consideration of a lump sum payment by B to him of €80,000. The instrument creating the annuity is chargeable as a “conveyance on sale” and the stampable consideration is €80,000. The rate of duty is 5%.

Example 2

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

33 Conveyance or transfer in contemplation of sale

Summary

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

Details

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

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

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

For a valid refund claim arising after 25 March 2003 and made on or after 1 January 2005, the 6 year time limit referred to in the section is replaced by a 4 year time limit (see *section 159A*). The claim for a refund should be accompanied by the original stamped instrument. Interest may arise on the refund – see *section 159B*.

In a case where the sale was completed for a consideration lower than the value on which the duty had been paid in the first place the duty will not be repayable if the circumstances are such that duty would be payable on the transaction as a voluntary disposition inter vivos for inadequate consideration. (3)

The instrument must be adjudicated by the Revenue Commissioners in accordance with *section 20*. (4)

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

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

This section provides that where a vendor enters into an agreement for the grant of a lease for a term exceeding 35 years or enters into an agreement to give other rights in relation to the property, the subsequent conveyance, 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.

35 Deeds of enlargement

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

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

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

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

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

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

This section prevents a mechanism whereby sales of leasehold interests in land could be achieved without liability to stamp duty as conveyances on sale. Where a purchaser entered into a contract for the purchase of a leasehold property but, instead of taking an assignment of the property from the vendor of that interest (which would be chargeable as a conveyance on sale) the purchaser could buy out, at its nominal value, the landlord's reversionary interest in the property and then direct the vendor to orally surrender the leasehold interest to him or her. As there would be no instrument of surrender, no stamp duty liability would arise.

As a result of the 2 transactions, there was a merger of the 2 interests – the leasehold interest and the reversion – in the hands of the purchaser. The result was that the purchaser got a good title without the necessity for any formal assignment of the leasehold interest.

This section counters this by providing that a contract for the sale of a leasehold interest in immovable property will be treated as if it were an actual transfer on sale—

- if the purchaser enters into possession before having obtained a duly stamped transfer of that leasehold interest, and
- a transfer of that leasehold interest is not stamped within 9 months from the first execution of the contract for the sale of that interest. The Revenue Commissioners are empowered to extend the 9 month period e.g. if the parties encounter difficulties relating to title or in funding the transaction.

The purchaser is liable to pay the duty on the contract at the rates of duty applicable at the time of execution of the contract. However, where a charge arises under this section, on or after 1 March 2003 in respect of a contract executed before 4 December 2002, the rate of duty payable on such contract will be at the rates of duty applicable on the date that the charge arises.

The transfer of the leasehold interest made in pursuance of the contract for the sale of that interest is not chargeable to duty if the contract for sale has been duly stamped.

The payment of the duty may be denoted on the instrument of transfer (see *section 11*) or be transferred to that instrument on production of the duly stamped contract.

The duty will be refunded if it is shown that the contract has been rescinded or annulled. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by *section 159A* from the date the contract is stamped, in respect of a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of the passing of the Finance Act 2003). All such claims should be accompanied by the original stamped instrument. Interest may arise on the refund – see *section 159B*.

This section has been deleted by *section 110(1)(b)* of the Finance Act 2007 which is to come into operation by way of Ministerial Order.

37 Exchanges

This section provides that where an exchange of immovable property (i.e. land and buildings) is effected duty will be charged on the value of that property. This applies in cases where immovable property is exchanged for other immovable property or any property. It also applies where some consideration was paid e.g. where the properties were of unequal value. Where immovable property situated in the State is exchanged for foreign property, immovable or otherwise, duty is payable on the value of the Irish immovable property only.

The following examples illustrate the operation of the section.

Example 1

In 2008 A exchanges his house worth €190,000 for B's farm worth €150,000, both situated in the State. B pays A €40,000 equality money. One deed of exchange is executed. Duty on that deed is €16,550 calculated as follows:

<u>Property</u>	<u>Chargeable Consideration</u>	<u>Rate</u>	<u>Duty Payable</u>
A's House	€190,000 (€190,000 – €125,000)	7%	€ 4,550
B's Farm	€150,000*	8%	<u>€12,000</u>
			€16,550

*the equality money is ignored.

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

<u>Property</u>	<u>Chargeable Consideration</u>	<u>Rate</u>	<u>Duty Payable</u>
Deed (A to B)	€190,000 (€190,000 – €125,000)	7%	€ 4,550
Deed (B to A)	€150,000*	8%	<u>€12,000</u>
			€16,550

*the equality money is ignored.

Example 2

In 2008 A transfers her house worth €190,000 to B in exchange for B's yacht worth €100,000 and €90,000 equality money. A deed of transfer of the house is executed. Ownership of the yacht passes by delivery. The duty on the deed of transfer is €4,550 (€190,000 - €125,000 x 7%) as the property is residential.

38 Partitions or divisions

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

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

Example

A and B are co-owners of agricultural land held in fee simple. The value of the lands is €180,000. They wish to partition the lands - A taking a part worth €110,000 and B taking the remaining part worth €70,000. A agrees to pay €20,000 equality money to B. The stampable consideration is €20,000 and as the property is non-residential the rate of duty is 1%.

In a case where there is more than one instrument for completing the title of either party the principal instrument is to be ascertained and the other instruments are not chargeable to duty as they are not regarded as conveyances or transfers on sale where the ad valorem duty has been paid on the principal instrument. (2)

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

This section limits the duty chargeable on an order for foreclosure to the value of the property to which the order relates and it provides that any statement as to value contained in that order is to be used for the purposes of calculating stamp duty. (1)

This section also provides that where ad valorem duty is paid on the order any conveyance following on such order is exempt from ad valorem duty. (2)

40 Calculation of ad valorem duty on stock and securities

Summary

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

Details

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

Example

A sells 10 acres to B for €30,000 plus 10,000 shares in XYZ Ltd. The shares are valued at €50,000 on the date of the conveyance. The stampable consideration for the conveyance of the 10 acres is €80,000. As the property is non-residential the rate of duty is 5%.

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

Example

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

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

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

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

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

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

Example 1

A sells B 4 acres in satisfaction of a debt of €32,000 which A owes to B. The chargeable consideration for the conveyance of the 4 acres is €32,000. As the property is non-residential the rate of duty is 3%.

Had B paid A €4,000 in addition to writing off the debt the chargeable consideration would have been €36,000. The rate of duty would still have been 3%.

If the value of the land had exceeded the value of the debt - say the value of the land was €40,000 - **section 30** would have applied and, in consequence, the chargeable consideration would have been the value of the land i.e. €40,000. The rate of duty would still have been 3%.

Example 2

A sells non-residential property (value €80,000) to B for €65,000. B also agrees to pay off a debt of €15,000 which A owes to C. The chargeable consideration is €80,000 (€65,000 + €15,000). As the property is non-residential the rate of duty is 5%.

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

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

Example 1

A sells his house (value €235,000) to B for €220,000 in 2008. The house is subject to a mortgage of €15,000 which B also agrees to take over. The chargeable consideration is €235,000 (€220,000 + €15,000) and, as the property is residential, the duty is €7,700 (€110,000 (i.e. €235,000 - €125,000) x 7%.

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

Example 2

A gives B non-residential property (value €50,000). A debt of €15,000 is charged on the property. B agrees to assume that debt. As the equity of redemption (i.e. €35,000) exceeds the value of the debt assumed the chargeable consideration is the equity of redemption i.e. **section 30** applies. The rate of duty is 3%.

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

42 Charging of consideration consisting of periodical payments

Summary

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

Details

This section provides that where—

(1)

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

duty is chargeable on the total payable.

Example 1

A sells non-residential property to B in consideration of B paying A €5,000 p.a. for 20 years. The chargeable consideration is €100,000 (€5,000 x 20). The rate of duty is 6%.

Example 2

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

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

Example

A sells non-residential property to B in consideration of B paying A €4,000 p.a. for 30 years. The chargeable consideration is €80,000 (€4,000 x 20). The rate of duty is 5%.

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

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

43 Further consideration in respect of substantial improvements not chargeable

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

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

then that further consideration is not chargeable to stamp duty.

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

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

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

Example

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

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

Each contract is independent of the other. At the time the contract to purchase the site is entered into building work has already commenced - approximately €20,000 has been spent on building works - but substantial works remain to be carried out. Stamp duty is chargeable on the cost of the site plus the value of the works completed at the date of the contract i.e. on €45,000. In practice the Revenue Commissioners will charge the rate of duty appropriate to the chargeable consideration i.e. the rate appropriate to €45,000 (i.e. 4%) rather than the rate appropriate to €100,000 (i.e. 6%). If the building works had been substantially complete at the date of the contract stamp duty would have been chargeable on the total consideration payable i.e. on €100,000. If the contract for the sale of the site and the contract for the building works had been interlocked (i.e. where the contracts are dependent or conditional on each other to the extent that the purchaser is not entitled to an assurance of the site without the building) stamp duty would have been chargeable on the aggregate of the consideration paid for the site and the building even if the building works had not been substantially completed.

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

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

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

Example

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

This section does not apply to cases covered by *section 29(4)(a)*. *Section 29(4)(a)* (2) provides for a method of calculating duty on certain new houses or apartments where the price of the building work cannot be ascertained (the section provides for a multiple of between 5 and 10 to be applied to the site value in such cases).

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

45 Directions as to apportionment of consideration

Summary

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

Details

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

Example

A bought a number of units in a new commercial development. He subsequently sold 2 of the units to B for a total consideration of €280,000. Each unit is conveyed by a separate deed to B. The total consideration must be apportioned between the 2 deeds i.e. between the 2 deeds the total of the apportioned considerations must equal €280,000. In this case as each unit was worth the same the parties decided that each deed would recite a consideration of €140,000. The stampable consideration is €140,000 in respect of each conveyance. As the property is non-residential and part of a larger transaction, the rate of duty applicable to each conveyance is 9%.

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

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

Example 1

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

The stampable consideration in respect of each conveyance is €180,000. Because it is part of a larger transaction the duty applicable to each conveyance is the duty applicable to a consideration of €360,000 which is divided in two and applied to each conveyance. Duty on aggregate consideration of €360,000 = €16,450 (€360,000 - €125,000 = €235,000 @ 7%) x 50% = €8,225 for each conveyance.

Example 2

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

	<u>Stampable Consideration</u>	<u>Rate of Duty</u>
conveyance of pub		
• non-residential element	€320,000	9%*
• residential element	€ 80,000	#
conveyance of house	€200,000	#

*this attracts the rate of duty applicable to a conveyance of non-residential property for a consideration in excess of €150,000 i.e. 9%. If the consideration had not exceeded €150,000 the rate of duty applicable would have been the rate applicable to the lower consideration as the sale of the pub is not part of a larger transaction involving non-residential property.

#as this is part of a larger transaction involving residential property the duty applicable is the duty applicable to a consideration of €280,000. The conveyance of the living quarters over the pub is not exempt from stamp duty because it is part of a larger transaction. Duty on aggregate consideration of €280,000 = €10,850 (€280,000 - €125,000 = €155,000 x 7%). Duty on residential element of pub on a consideration of €80,000 = €3,100. Duty on the house on a consideration of €200,000 = €7,750.

Apportionment details must be submitted by both the vendor and the purchaser (see **section 16**).

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

Example

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

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

The stampable consideration in respect of the conveyance to B is €65,000 (at the rate appropriate to a consideration of €65,000 i.e. 4%) and in respect of the conveyance to C is €135,000 (at the rate appropriate to a consideration of €135,000 i.e. 8%). However, the lower rates of duty will not apply in circumstances where the transaction effected by each of the deeds of conveyance forms part of a larger transaction or a series of transactions – (see paragraph 2 – “Rate of Duty – larger transaction or series of transactions” under the heading “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.” in the notes on *Schedule 1*.)

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

Example

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

45A Aggregation of transactions

Summary

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

Details

“dwellinghouse” includes an apartment. (1)

Where an existing interest in a house (e.g. house owned by one person) or existing interests in a house (e.g. house owned by two or more persons as tenants in common) is conveyed or transferred by more than one instrument, executed within a period of 12 (2)

months, **subsection (3)** will apply to each of those instruments whether the instrument gives effect to a sale or a gift of an interest in the house.

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

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

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

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

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

together with interest charged on that amount, at a rate of 0.0273 per cent per day (see **section 159D**) from the date of execution of the instrument to the date the penalty is paid.

For the purpose of determining the amount of duty chargeable under **subsection (4)(i)** **(5)** (above), that amount is to be determined without applying first time purchaser relief under **section 92B**, unless the transferee or each transferee, if there is more than one, in both the first transfer and any subsequent transfers are first time purchasers.

Where **subsection (3)** applies to an instrument conveying or transferring an interest in a house, first time purchaser relief will not apply to the instrument unless the transferee or each transferee, in any previous conveyance or transfer, executed in the previous 12 months, of other interests in the same house, were first time purchasers. **(6)**

Example 1

By deed dated 8 November 2007, A transfers a one-third interest in a house valued at €450,000 to B, who is a first time purchaser, for a consideration of €150,000. No stamp duty is payable.

By deed dated 1 May 2008, A transfers the other two-thirds interest in the house to C, who is not a first time purchaser, for a consideration of €300,000. As the second deed has been executed within 12 months of the first deed, this section applies and stamp duty of €15,166* is payable on the second deed. A penalty of €7,583** is also payable in relation to the first deed together with interest at the rate of 0.0273 per cent per day from the date of execution of the first deed to the date the penalty is paid.

The total of the stamp duty and the penalty (€15,166 + €7,583) is equal to the stamp duty which would have been payable if the house had been transferred by a single deed from A to B and C for a consideration of €450,000.

* €450,000 - €125,000 = €325 @ 7% = €22,750.
 €22,750 x €300,000 ÷ €45,000 = €15,166.

** €22,750 x €150,000 ÷ €450,000 = €7,583.

Example 2

Two sisters, A and B, own a house valued as €360,000 as tenants-in-common. By deed dated 1 January 2008, sister A gifts her 50% interest in the house to her nephew C who is not a first time purchaser. By deed also dated 1 January 2008, sister B gifts her 50% interest in the house to her nephew's partner D.

As both deeds have been executed within a period of 12 months, this section applies to both of the deeds. Stamp duty of €4,112* is payable on the gift from A to C and stamp duty of €8,225* is payable on the gift from B to D. Consanguinity relief (see *Schedule 1*) applies to the gift from A to C but not to the gift from B to D.

* €360,000 - €125,000 = €235,000 @ 7% = €16,450.
 €16,450 x 50% = €8,225 x 50% (consanguinity relief) = €4,112

46 Directions as to sub-sales

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

Example 1

A agrees to sell her house to B for €400,000. B, before taking a conveyance, contracts to sell the house to C for €435,000. At B's direction the house is conveyed directly from A to C. The stampable consideration is €435,000 i.e. the consideration moving from C. As the property is residential the duty chargeable is €21,700 (€310,000 (i.e. €435,000 - €125,000) x 7%).

Example 2

A agrees to sell 10 acres to B for €80,000. An agreement is signed but before the conveyance is executed B enters into a contract with C for the sale of the land to C for €60,000 (say the market has dropped and B decides to get out). On closing, the conveyance is executed from A to C. The stampable consideration is €60,000 i.e. the consideration moving from C. As the property is non-residential the rate of duty applicable is 4%.

Example 3

A agrees to sell a site to B for €65,000. An agreement is signed but before the conveyance is executed B enters into a contract with C for the sale of the property to C for €45,000 (i.e. at undervalue). On closing, the conveyance is executed from A to C. As the conveyance is by way of gift (see *section 30*) the stampable consideration is the market value of the property i.e. €65,000. As the property is non-residential the rate of duty applicable is 4%.

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

Example

A agrees to sell her farm of 90 acres to B for €160,000. Before taking a conveyance B sells 50 acres to C for €100,000 and 40 acres to D for €70,000. At B's direction A conveys 50 acres directly to C and 40 acres directly to D. The stampable consideration in respect of the conveyance to C is €100,000 (at the rate of duty applicable to non-residential property i.e. 6%) and in respect of the conveyance to D is €70,000 (at the rate of duty applicable to non-residential property of €70,000 i.e. 4%).

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

Example

In 2008 A agrees to sell her house to B for €130,000. B, before taking a conveyance, contracts to sell his beneficial interest in the house to C for €135,000. B conveys his beneficial interest in the house to C and C pays ad valorem duty of €700 (€10,000 (i.e. €135,000 - €125,000) @ 7%). Subsequently, A also executes a conveyance transferring her legal interest in the house to C. The conveyance from A is not chargeable to duty as it would not be regarded as a conveyance or transfer on sale.

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

- the value of any—
 - covenant,
 - power,
 - condition, or
 - arrangement,

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

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

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

Example

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

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

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

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

47 Principal instrument, how to be ascertained

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

Example

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

48 Stamp duty and value-added tax

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

CHAPTER 3

Conveyances on any occasion except sale or mortgage

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

An instrument effecting the transfer or vesting of property where the transfer is neither on sale nor on foot of a mortgage is to be treated as if it were a conveyance or transfer.

CHAPTER 4

Leases

50 Agreements for not more than 35 years charged as leases

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

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

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

50A Agreements for more than 35 years charged as leases

This section provides that an agreement for a lease for any term exceeding 35 years will be charged with the same duty as if it were an actual lease made for the term and the consideration mentioned in the agreement, where 25 per cent or more of the consideration has been paid. **The section is to come into operation by way of a Ministerial Order.**

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

Summary

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

Details

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

Where—

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

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

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

52 Charging of duty on leases, etc.

Summary

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

Details

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

- any penal rent (a penal rent is any additional rent reserved in case the lessee commits a breach of the covenants in the lease).

Example

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

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

Example

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

Where a lease is made for a consideration which is chargeable with ad valorem duty 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. **(2)**

Example

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

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

Subsection (2) does not apply in respect of any further consideration in the lease consisting of a covenant which if it were contained in a separate deed would be chargeable with ad valorem duty. The lease is chargeable with duty in respect of the covenant under *section 7*. **(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 1992¹⁰ of the “BOND, COVENANT, or INSTRUMENT of any kind whatsoever” head of charge. (4)

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.

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

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

See examples in *section 45(2)*.

53 Lease combined with building agreement for dwellinghouse or apartment

Summary

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

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

¹⁰ Section 205(6) of the Finance Act, 1992.

- the consideration (other than rent¹¹) 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.

Purchases of new houses or apartments by, or on behalf of, a person who intends to occupy the house as his or her only or main place of residence may qualify for the relief contained in **section 91A** or **92**.

Details

Definitions

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

Charge to stamp duty

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

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

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

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

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

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

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

¹¹ Any rent payable will attract duty under the ‘LEASE’ head of charge in **Schedule 1**.

Calculation of liability where aggregate consideration not known

Where, in the opinion of the Revenue Commissioners, it is not possible to determine the aggregate consideration at the time the instrument is presented for stamping (e.g. where information regarding the cost of the building is not available) the Revenue Commissioners will use a multiple of between 5 and 10 times the market value of the land as a basis for calculating the stamp duty liability. **(4)(a)**

If, subsequently, it is shown that the duty paid exceeded the amount which would have been initially payable had the combined value of the land and building been known and available at the date of stamping the Revenue Commissioners will refund the excess. Where the claim for repayment is made before 1 November 2003 the repayment will be made with interest at the rate of 0.0161% per day or part of a day (0.5% per month or part of a month before 1 September 2002). In any other case, interest will be paid on repayments made on or after 1 November 2003 if the repayment is not made by the Revenue Commissioners within 183 days of receiving a valid claim for refund as provided for in **section 159B** and then only at 0.011% for each day or part of a day from the expiration of the 183 day period. The application for refund must be made within 3 years after the date of stamping of the instrument and be accompanied by the original stamped lease. Repayments of stamp duty may be made to the person who paid it or to any person who can satisfy the Revenue Commissioners that s/he is entitled to recover moneys from the person who actually paid the stamp duty. **(4)(b)**
(1)(b)

Evidence required

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

Certificate to be contained in lease

Every instrument liable to stamp duty under the "LEASE" head of charge in **Schedule I** must contain a certificate indicating whether or not it comes within the provisions of this section. The wording of the certificate is— **(6)**

- in a case to which **section 53** applies:

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

- in a case to which **section 53** does not apply:

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

For ease of reference the wording of all the various certificates which must be inserted into a lease of a new house or apartment is set out in **Appendix 3**. (See also leaflet SD 10(A).)

The furnishing of an incorrect certificate is deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997, and is, therefore, a revenue offence.

Refunds

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

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

54 Leases deemed to operate as voluntary dispositions inter vivos

Summary

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

Details

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

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

Example

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

Rent: €15,000 *and* Premium: €40,000.

Leases operating as voluntary dispositions inter vivos must be adjudicated (see **section 20**). (3)

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

Summary

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

Details

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

Example

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

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

Example 1

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

Example 2

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

This section does not apply to cases covered by **section 53(4)(a)**. **Section 53(4)(a)** (3) provides for a method of calculating duty on certain new houses and apartments where the price of the building work cannot be ascertained (the section provides for a multiple of between 5 and 10 to be applied to the site value in such cases).

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

56 Stamp duty and value-added tax

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

CHAPTER 5

Mortgages, etc

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

CHAPTER 6

Policies of Insurance

Overview

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

59 Penalty for policy of insurance not duly stamped

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

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

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

60 Short-term life insurance policies

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

61 Location of insurance risk for stamp duty purposes

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

- Where the insurance relates to —
 - buildings, or to buildings and their contents where the contents are covered by the same policy, the risk is located in the State if the property is in the State; (2)(a)
 - vehicles of any kind, the risk is located in the State if the vehicles are registered in the State; and (2)(b)
 - travel or holiday risks and the policy is of a duration of 4 months or less, the risk is located in the State if the policyholder took out the policy in the State. (2)(c)
- In any other case the risk is located in the State—
 - where the policyholder is an individual and the policyholder has his or her habitual residence in the State. (2)(d)

Example

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

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

Example 1

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

Example 2

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

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

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

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

CHAPTER 7

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

63 Letters of renunciation

Summary

This section charges the renunciation of a letter of allotment to stamp duty on the same basis as if it were an actual share transfer. The section applies, however, only to stocks and shares where the company concerned has none of its shares quoted either on the official list or the unlisted securities market of a recognised stock exchange¹².

Details

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

¹² For stamp duty purposes the Revenue Commissioners interpret the phrase “recognised stock exchange” to mean not only the Irish Stock Exchange but any stock exchange operating in another country which—

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

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

CHAPTER 8

Share Warrants and Stock Certificates to Bearer, etc.

64 Instruments passing by delivery in pursuance of usage

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

65 Penalty for issuing share warrant not duly stamped

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

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

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

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

CHAPTER 9

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

67 Surrender and merger of leasehold interests

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

PART 6 SPECIAL PROVISIONS RELATING TO UNCERTIFICATED SECURITIES

Overview

PART 6 extends the charge to stamp duty to shares title to which is transferred electronically via the CREST system. The CREST system enables trades dealt on the Irish and UK stock exchanges to be settled electronically. In the absence of this charge transfers through the system would have escaped liability to stamp duty because no instruments (see **section 2**) are produced by the system.

Prior to the making of the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996, the Registrar of a company could not register a transfer of title to securities unless an instrument of transfer (i.e. a stock transfer form) had been received. These Regulations enable title to securities to be transferred and evidenced electronically i.e. without a stock transfer form. However, shareholders still have the option of holding share certificates if they wish.

Under the Regulations, a Registrar may update the register on receipt of a valid electronic message (called an operator-instruction) from CRESTCo., the UK company which is the operator of the CREST system. The charge to stamp duty in **section 69** is based on deeming that operator-instruction to be an instrument of transfer. This method has the advantage that the provisions of the stamp duty code, including exemptions and reliefs, carry over automatically to the operator-instruction. However, as the stamp duty code requires that an instrument be “impressed” with a stamp, obviously certain parts of that code do not fit neatly into this new scenario. The appropriate adjustments are made in **section 71**.

In reading the provisions of this Part it is helpful to bear in mind that—

- the “relevant system” means CREST;
- the “operator-instruction” means the electronic message which is sent by the operator of CREST (i.e. CRESTCo.) advising the Registrar of a company to register a transfer of title to securities;
- the “system-member” means the CREST member or sponsored member. In order to have one’s name on the company register as the holder of securities in electronic form one must be a CREST member or sponsored member. A CREST member will have a computer-link with the CREST system. A sponsored member does not have such a link but is sponsored by a person who does.

Leaflet CREST 1 contains general information regarding stamp duties and CREST.

68 Interpretation (*Part 6*)

This section contains definitions which are required for the purposes of **Part 6**. (1), (2) “certificated securities”, “securities” and “uncertificated securities” are self-explanatory. Certain definitions are taken from the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996. These are the Regulations which enable title to securities to be transferred and evidenced electronically. The definitions (including the definitions set out in the associated footnotes) taken from these regulations are set out below:

- “generate”, in relation to an operator-instruction, means to initiate the procedures by which an operator-instruction comes to be sent;
- “instruction” includes any instruction, election, acceptance or any other message of any kind;

- “operator” means any person specified in regulation 28 [of the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996,] or approved by the Minister [for Enterprise, Trade and Employment] under [those] regulations as operator of a relevant system;
- “operator-instruction” means a properly authenticated dematerialised instruction¹³ attributable to an operator;
- “relevant system” means a computer based system and procedures which enable title to units of a security¹⁴ to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters and “relevant system” includes an operator-system¹⁵;
- “system-member”, in relation to a relevant system, means a person permitted by an operator to transfer title to uncertificated units of a security¹⁶ by means of that system and includes, where relevant, 2 or more persons who are jointly so permitted.

This section also provides that references to title to securities in **Part 6** include any legal (3) or equitable interest in securities.

69 Operator-instruction deemed to be an instrument of conveyance or transfer

Summary

This section charges stamp duty on securities title to which is transferred electronically through the relevant system i.e. CREST.

Details

The electronic message (i.e. the operator-instruction) sent by the operator of the system, (1) CRESTCo., to the Registrar of a company instructing that Registrar to update the register is deemed to be an executed instrument of conveyance or transfer. This subsection also provides that that message is deemed to be executed on the date it is generated.

Where an operator-instruction is generated in relation to the transfer of an equitable (2) interest in securities that instruction is also chargeable to duty as an instrument of conveyance or transfer. This is designed to cater for a situation where the same nominee is acting for both the vendor and purchaser of shares: in such situations only an equitable interest in the shares is being transferred.

¹³ “dematerialised instruction” means an instruction sent or received by means of a relevant system.

¹⁴ “unit of a security” means the smallest possible transferable unit of the security (for example a single share).

¹⁵ “operator-system” means those facilities and procedures which are part of the relevant system, which are maintained and operated by or for an operator, by which the operator generates operator-instructions and receives dematerialised instructions (see footnote 13) from system-participants and by which persons change the form in which units of a participating security are held. “system-participant” in relation to a relevant system, means a person who is permitted by an operator to send and receive properly authenticated dematerialised instructions. “participating security” means a security, title to units of which is permitted by an operator to be transferred by means of a relevant system. “securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989, and other securities of any description.

¹⁶ “uncertificated unit of a security” means a unit of a security title to which is recorded on the relevant register of securities as being held in uncertificated form, and title to which, by virtue of these [i.e. Companies Act, 1990 (Uncertificated Securities) Regulations, 1996] regulations, may be transferred by means of a relevant system and corresponding expressions shall be construed accordingly.

Where no operator-instruction is generated in connection with the transfer through a relevant system of an equitable interest in securities, that transfer is, for the purposes of this Part, deemed to have been effected by an operator-instruction generated on the date of the transfer. This provision is necessary to ensure that shares transferred within the pool nominee (CREPON)¹⁷ operated by CRESTCo. do not escape liability to stamp duty. (3)

Where there is a transfer of title to securities through a relevant system in respect of a single netted settlement of 2 or more contracts for the sale of securities, the operator-instruction giving effect to that transfer is deemed to be a separate operator-instruction (generated on the date of the operator-instruction for the single netted settlement) for each of the contracts involved so that each deemed conveyance or transfer is chargeable to stamp duty. Transfers of title to securities falling within this subsection are not chargeable under *subsection (1)* so a double charge is avoided. (4)

Where there is no operator-instruction generated because the effect of a single netted settlement of 2 or more contracts for the sale of securities is that an operator-instruction is not necessary, a separate operator-instruction is deemed to have been generated on the date of the single netted settlement in respect of each contract included in the single netted settlement. Each deemed operator-instruction is deemed to be an executed conveyance or transfer of the securities in the contracts concerned and the date of execution of each conveyance or transfer is the date of the single netted settlement. (5)

70 Rate of duty

This section provides for a flat rate of duty of 1% of the consideration paid for shares title to which is transferred electronically. (1)

Where the transfer operates as a voluntary disposition inter vivos, the duty will be calculated by reference to the value of the securities transferred. (2)(a)

In the event that the calculation of duty results in an amount which is not a multiple of a cent the amount is to be rounded to the nearest cent, any half cent being rounded up to the next whole cent. (2)(b)

71 Application and adaptation of other Parts of this Act

Summary

The stamp duty code requires that a document be impressed with a stamp. Since it is not possible to impress a stamp on an operator-instruction it is necessary to adjust certain parts of the code. These adjustments are made in this section. In the main they provide that—

- the duty becomes due and payable on the date the operator-instruction advising the Registrar of a company to update the register is generated,
- the penalties for late payment of the duty apply to electronic transfers as they apply to written transfers,
- the Revenue Commissioners may assess the duty due on an operator-instruction and the appeal procedures will apply to such assessment, and

¹⁷ CREPON was established in response to concerns expressed by market makers that it would be damaging to their ability to provide a market if they could be seen to be building up, or disposing of, large shareholdings. CREPON meets these concerns by keeping the individual market maker's name off the share register. Transfers to CREPON are liable to ad valorem duty if the beneficial interest passes.

Details

This section adapts the stamp duty code to ensure that most of the existing provisions will apply notwithstanding the fact that there is no document which can be physically stamped.

The transferee is accountable for the payment of stamp duty on operator-instructions (a)

The operator-instruction does not have to be stamped. Stamp duty on an operator-instruction is due and payable on the date that the operator-instruction is generated. The operator-instruction is deemed to be duly stamped for the purposes of *section 2(4)* (and notwithstanding *section 30(3)* which provides for compulsory adjudication in the case of voluntary dispositions inter vivos) when the duty and any penalty relating to such duty has been paid to the Revenue Commissioners. (b)

Where there is an agreement in place, under *section 72*, between the Revenue Commissioners and the operator of the system, any duty collected by the operator is deemed to have been paid to the Revenue Commissioners on the date on which it became due and payable even though it may actually be paid over on a different date. In the absence of such an agreement the duty would have had to be paid over to the Revenue Commissioners on the date the operator-instruction was generated (see *paragraph (b)*). (c)

Penalties for late payment of stamp duty are to apply to electronic transfers as they apply to written transfers. (d)

Certain provisions of the stamp duty code do not apply to electronic transfers. The provisions which do not apply relate in the main to instruments and the physical impression of stamps on instruments (e)

The Revenue Commissioners may make an assessment (including correcting assessments) of any duty due on an electronic transfer (see also *section 159C* as regards the time limit for making certain assessments from 1 January 2005). The appeal procedures contained in *section 21* apply to such assessments. (f)

Reliefs or exemptions from stamp duty (see *Part 7*) which require the document to be adjudicated (see *section 20*) by the Revenue Commissioners also apply to an operator-instruction notwithstanding the fact that the operator-instruction cannot be stamped with an adjudged stamp (g)

72 Collection and payment of duty

This section enables the Revenue Commissioners to enter into an agreement with the company which operates the electronic transfer system, CRESTCo., whereby CRESTCo. will collect the stamp duty paid by the transferee and then pass on the duty so collected to the Revenue Commissioners. Such an agreement has been entered into

73 Exemptions

This section contains an exemption from stamp duty in respect of an operator-instruction effecting the transfer of rights to securities in a quoted company, on or after 1 March 2003, by way of a renunciation of those rights under a letter of allotment. In addition, all the exemptions which apply when shares are transferred using stock transfer forms (see *Part 7*) apply to shares transferred electronically. (1)

The deposit of securities into the CREST system so that they can be converted from paper to electronic form (i.e. dematerialisation) does not attract a stamp duty charge if the legal ownership only is being transferred. This subsection applies to written transfers only. (2)

74 Exemption for market makers

Section deleted in respect of instruments of transfer executed on or after 1 October 2007.

75 Relief for intermediaries

Summary

This section replaces the “old” *section 75* containing “broker/dealer relief” and provides for a new relief for intermediaries for instruments of transfer executed on or after 1 October 2007. See Commencement Order entitled “Finance Act 2007 (Commencement of section 109) October 2007” (S.I. No. 649 of 2007).

Details

The core provision of the new *section 75* is in *subsection (3)*. This subsection grants an exemption from stamp duty on the transfer of securities to a person or a person’s nominee, where—

- A. the person is a member firm of an exchange/market,
- B. the person is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the exchange or market,
- C. the transfer of securities is effected either—
 - o on the exchange or market in respect of which the intermediary is a recognised intermediary, or
 - o on any exchange or market operated by the Irish Stock Exchange Limited (e.g. the ISE Main Market and IEX) or the London Stock Exchange plc (e.g. LSE Main Market and AIM), or
 - o on any other exchange or market designated by the Revenue Commissioners for this purpose in regulations, and
- D. the transfer is not effected in connection with an excluded business.

The concepts used, in each of these requirements, are defined/interpreted in *subsections (1) & (2)* of the new *section 75*. *Subsection (1)* also includes some consequential definitions. The requirements at **A**, **B**, **C** and **D** above, are explained as follows:

A. the person is a member firm of an exchange/market

“Member firm” means —

(5)

- o a member of the Irish Stock Exchange Limited,
- o a member of the London Stock Exchange plc, or
- o a member of such other exchange/market¹⁸ that is designated for this purpose by the Revenue Commissioners in regulations, that they are empowered (under *subsection (5)*), to make.

¹⁸ Plus Markets PLC (and the markets operated by it), POSIT (operated by Investment Technology Group Limited), SWX Europe Limited (formerly known as virt-x Exchange Limited) and Eurex Deutschland have been designated by the Revenue Commissioners as exchanges/markets for the purposes of the relief (See S.I. No. 651 and 677 of 2007 and S.I. No. 156 of 2008.)

B. *the person is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the exchange or market*

An “intermediary” means a person who carries on a bona fide business of dealing in securities. The entering into derivative agreements referenced directly or indirectly to securities is treated, for the purposes of the definition of “intermediary” as the carrying on of a business of dealing in securities. The purchase of securities to hedge these derivative agreements would be considered as part of the carrying on of that business.

C. *the transfer of securities is effected either—*

- *on the exchange or market in respect of which the intermediary is a recognised intermediary, or*
 - *on any exchange or market operated by the Irish Stock Exchange Limited (e.g. the ISE Main Market and IEX) or the London Stock Exchange plc (e.g. LSE Main Market and AIM), or*
 - *on any other exchange or market designated by the Revenue Commissioners for this purpose in regulations*
- A transfer of securities is effected on an exchange/market if—
 - it is subject to the rules of the exchange/market, and
 - it is reported to the exchange/market, in accordance with the rules of that exchange/market.

Thus, *for example*, where a member firm of the ISE is an intermediary and is approved by the Revenue Commissioners as a recognised intermediary in accordance with arrangements made by the Revenue Commissioners with the ISE, that member firm can, where appropriate, claim an exemption from stamp duty on a transfer of Irish securities to it even if that transfer is effected on the LSE or on another exchange or market designated by the Revenue Commissioners for this purpose.

Transfers of shares executed on or after 1 November 2007 which are required by a competent authority (e.g. IFSRA), in accordance with the EU Markets in Financial Instruments Directive (MiFID) to be reported directly or indirectly to the competent authority are deemed to satisfy the “effected on exchange/market” condition of the exemption above, subject to all other conditions being satisfied.

D. *the transfer is not effected in connection with an excluded business carried on by the intermediary*

For an exemption from stamp duty to be available to an intermediary on any particular transfer of securities, it is necessary that the securities are not being acquired in connection with various business activities termed “excluded business”. That does not mean that the intermediary cannot engage in such business. However, any transfer in connection with such business is not exempt from stamp duty.

An excluded business means any business which—

- consists in the making or managing investments,
- consists in providing services for connected persons,
- consists in insurance business, or assurance business,
- consists in administering, managing or acting as trustee in relation to pension business,
- consists in operating or acting as trustee in relation to collective funds.

75A Relief for clearing houses

This section contains an exemption from stamp duty for transfers of securities to and from a central counterparty commonly known as a “CCP”, in specified circumstances. A CCP is an entity which introduces post-trade anonymity on exchanges or markets where member firms submit orders for shares. The relief applies to instruments of transfer executed on or after 1 October 2007. See Commencement Order entitled “Finance Act 2007” (Commencement of Section 109) Order 2007 (S.I. No 649 of 2007).

76 Obligations of system-members

Summary

A system-member must keep particulars of transfers on which no stamp duty is paid, for example, where an exemption from stamp duty is claimed. Provisions similar to those in *section 8* will apply if stamp duty is underpaid as a result of fraud or neglect.

Details

A system-member must retain evidence in legible written form, or readily convertible (1) into such a form, of each instruction entered into the system on which no duty will be calculated by the system. The evidence must be retained for 6 years from the date of the instrument and must be made available to the Revenue Commissioners on request.

A system-member which does not comply with the provisions of *subsection (1)* will be (2) liable to a penalty of €1,265 for each default.

Provisions similar to those contained in *sections 8(3)* and *(4)* will apply to incorrect (3), (4) instructions entered fraudulently or negligently into the system.

An incorrect instruction to which *subsection (3)* applies is deemed to be the production (5) of an incorrect document for the purpose of section 1078(2)(d) of the Taxes Consolidation Act, 1997, and is, therefore, a revenue offence.

77 Overpayment of duty

Summary

This section enables the Revenue Commissioners to refund any duty overpaid. The refund claim must be made within a period of 6 years beginning on the date on which payment was made. While this section provides that a claim for refund must be made within 6 years, the 6 year time limit has been changed (see *section 159A*) to 4 years from the date the operator-instruction is made, for a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*.

Details

The Revenue Commissioners may refund any duty overpaid. (1)

The refund claim must— (2)

- be made (in writing) within 6 years (*but see summary*) beginning on the date on which payment was made,
- set out the grounds on which the refund is claimed,
- contain a computation of the amount claimed, and

- be supported by documentation, if so required by the Revenue Commissioners.

If the person claiming the refund is not resident in the State or has no branch or agency in the State the Revenue Commissioners may require that person to appoint and maintain a tax representative in the State. *(3), (4)*

78 Regulations

This section enables the Revenue Commissioners to make regulations to provide for the administration, assessment, collection, recovery and repayment of duty paid or payable in respect of the electronic transfer of title to shares.

PART 7 EXEMPTIONS AND RELIEFS FROM STAMP DUTY

Overview

Certain instruments are exempted from the charge to stamp duty or bear a reduced amount of duty. This Part contains details of those instruments.

In order to benefit from an exemption or relief the instrument may or may not have to be presented to the Revenue Commissioners. For ease of reference this Part distinguishes between those instruments where adjudication (see *section 20*) is compulsory in order to benefit from an exemption or relief - see *Chapter 1* - and other instruments - see *Chapter 2*. However, even though an instrument may not need to be presented in order to benefit from an exemption or relief the instrument may still have to be presented for impression of the "Particulars Delivered" stamp (see *section 12*).

Exemptions and reliefs from stamp duty may be either general or specific. If the exemption or relief is general then the instrument is not liable to duty under any head of charge in *Schedule 1*. A specific relief or exemption, on the other hand, relates only to a particular head of charge in *Schedule 1*. This means that if the instrument is liable under another head of charge it will be chargeable under that other head.

In addition to the various exemptions and reliefs from stamp duty detailed in *Chapter 1* paragraph (15) of the "CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance" head of charge in *Schedule 1* contains a relief for transfers of property between certain blood relatives (i.e. consanguinity relief). This head of charge together with paragraph (3) of the "LEASE" head of charge also provide for reduced rates of duty to apply where the appropriate certificate is contained in the instrument (see these heads of charge in *Schedule 1*). Adjudication (see *section 20*) is compulsory in the case of instruments to which this Chapter applies. In addition, it is the practice of the Revenue Commissioners to require all instruments in respect of which consanguinity relief, commercial woodlands relief (*section 95*) and relief for shared ownership leases (*section 103*) is claimed to be adjudicated.

In addition to the exemptions contained in *Chapter 2*, exemptions from stamp duty are also to be found in—

- *sections 31(3), 36, 39(2), 42(3), 43, 52(1), 73, 74, 75 and 146(3)*;
- the following heads of charge (i.e. these are specific exemptions):
 - "BILL OF EXCHANGE",
 - "CONVEYANCE or TRANSFER on sale of any stocks or marketable securities",
 - "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" - paragraphs (1) and (7),
 - "EXCHANGE",
 - "LEASE" - paragraphs (3)(a)(i) and (3)(b)(i),
 - "RELEASE or RENUNCIATION of any property, or of any right or interest in any property", and

- “SURRENDER of any property, or of any right or interest in any property”, and
- miscellaneous Acts - see **Appendix 5**.

CHAPTER 1

Instruments which must be presented to the Commissioners for adjudication in order to obtain exemption or relief

79 Conveyances and transfers of property between certain bodies corporate

Summary

This section grants a relief from stamp duty on certain transfers of property between Irish and/or non-Irish associated bodies corporate. While “body corporate” is not defined it would include limited and unlimited companies, foreign companies, industrial and provident societies, building societies and incorporated associations. The relief is confined to instruments chargeable as conveyances or transfers on sale or by way of gift i.e. it does not extend to leases. Where it is applicable no stamp duty is payable in respect of the particular transfer. Instruments in respect of which relief is sought under this section must be submitted to the Revenue Commissioners for adjudication (see **section 20**). A statutory declaration (in the format set out on form ADJN 6) by a responsible officer of the parent body corporate or by its solicitor confirming that the various conditions for granting the relief have been complied with must accompany the application for adjudication.

Details

Instruments to which the section applies will not be liable to stamp duty under or by reference to the following heads of charge in **Schedule 1**: **(1)**

- “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”, or
- “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”.

The following conditions must be satisfied before relief will be granted:

- the instrument, in respect of which relief is sought, must convey or transfer a beneficial interest in property from one body corporate to another; **(3)**
- at the time of (i.e. immediately before) execution of the instrument the transferor and transferee must be associated with each other to the extent that— **(3)**
 - one body corporate was the beneficial owner of not less than 90% of the ordinary share capital (previously “issued share capital” for instruments executed before 6 February 2003) of the other body corporate, or a third body corporate was the beneficial owner of not less than 90% of the ordinary share capital (previously “issued share capital” for instruments executed before 6 February 2003) of both the transferor and the transferee, and

- in addition, valuable rights in relation to entitlement to dividends and entitlement to assets on a winding-up must have attached to the shares i.e. (4), (8)

- one body corporate is beneficially entitled to not less than 90% of any profits available for distribution (being profits available for distribution as defined in section 414 of the Taxes Consolidation Act, 1997) to the shareholders of the other body corporate, or a third body corporate is beneficially entitled to not less than 90% of any profits available for distribution to the shareholders of the transferor and the transferee, and
- one body corporate is beneficially entitled to not less than 90% of any assets of the other body corporate available for distribution (being assets available for distribution as defined in section 415 of the Taxes Consolidation Act, 1997) to its shareholders on a winding-up, or a third body corporate is beneficially entitled to not less than 90% of any assets available for distribution to the shareholders of the transferor and the transferee on a winding-up.

Beneficial ownership or entitlement may be— (3), (4)

- direct,
 - through another body corporate or other bodies corporate, or
 - partly directly and partly through another body corporate or other bodies corporate;
- the instrument must *not* have been executed under an *arrangement* whereby— (5)
 - the consideration (or any part of it) was to be provided or received directly or indirectly by an unassociated company, or
 - the beneficial interest in the property was previously conveyed or transferred by an unassociated company, or
 - the transferor or transferee were to cease to be associated.

The scope of the expression “arrangement” includes the involvement of a non-associated company in the transaction. However, in practice, 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;

- the instrument must be adjudicated (see *section 20*). (2)

“ordinary share capital” means all the issued share capital of a body corporate other than 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. (3A)

The Revenue Commissioners may seek statutory declarations and such further evidence as they may require to ensure that the relief is properly claimed. In practice the application for relief should always be accompanied by a statutory declaration (in the format set out on form ADJN 6) by a responsible officer of the parent company, or a solicitor, confirming that the relevant conditions have been complied with. (6)

The relief will be clawed back in any case where— (7)

- it is subsequently found that any evidence given in support of the claim was untrue in any material particular, or

- the transferor and transferee ceased, within 2 years of the date of the conveyance or transfer, to be associated.

Where the relief is clawed back because it was granted on the basis of false information interest at the rate of 0.0273 per cent per day (see *section 159D*) is chargeable from the date of the conveyance to the date the stamp duty is paid. Where the transferor and transferee cease to be associated interest is payable at the rate of 0.0273 per cent per day (see *section 159D*) from the date they ceased to be associated to the date the stamp duty is paid. (7)

Relief will be granted to foreign bodies corporate which do not have a capital structure based on share capital provided that they have a capital structure which is equivalent to a share capital structure and also comply with all other conditions of the relief. (9)

Relief under this section is not allowed in respect of a conveyance or transfer of shares (executed on or after 31 January 2008), in a case where the preceding transfer of some or all of those shares had the benefit of an exemption from stamp duty under *section 75* (relief for intermediaries) and to the extent of the consideration paid for those shares under this section that is attributable to the shares that had the benefit of the exemption under *section 75*. (10)

80 Reconstructions or amalgamations of companies

Summary

This section grants a relief from stamp duty in the case of certain company reconstructions and amalgamations.

The relief applies where one company either—

- acquires the undertaking, or part of the undertaking, of another company, or
- acquires at least 90% of the issued share capital of another company,

in exchange for the issue of new shares in the acquiring company.

Instruments in respect of which relief is sought under this section must be submitted to the Revenue Commissioners for adjudication (see *section 20*). A statutory declaration by a solicitor setting out the details of the transaction must accompany the application for adjudication. For instruments executed on or after 1 June 2005, an “acquiring company” or a “target company” shall be construed as including a society registered under the Industrial and Provident Societies Act 1893.

Details

“shares” is self-explanatory. Rules of construction for references to “undertaking” and “acquiring company” are also laid down. (1)

Instruments to which the section applies are not liable to stamp duty under or by reference to the following heads of charge in *Schedule 1*: (2)

- “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”, or

- “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”.

The conditions which must be satisfied before relief from stamp duty will be granted are as follows:

- there must exist a scheme for reconstruction or for amalgamation; **(2)**
- the reconstruction or amalgamation must be bona fide; **(2)**
- the reconstruction or amalgamation must be undertaken for genuine commercial reasons and not for tax avoidance purposes; **(4)**
- the acquiring company must be limited; **(1)(b)**
- the acquiring company must be— **(2)(a)**
 - incorporated¹⁹, or
 - established by Act of the Oireachtas, or
 - a company the nominal share capital of which has been increased, with a view to the acquisition of the undertaking, or part of the undertaking, or issued share capital of the target company. A company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital will be treated as if it had increased its nominal share capital. **(2)(b), (5)**

Where the acquiring company is being formed then its Memorandum of Association, or the Act establishing it, must provide that one of the objects of the acquiring company is the acquisition of the undertaking of, or shares in, the target company. **(6)**

Where the acquiring company is already in existence it must be apparent (e.g. from the Resolution) that its capital is being increased for the same purpose; **(6)**

- at least 90% of the consideration for the acquisition (except such part of that consideration as consists in the transfer to or discharge by the acquiring company of liabilities of the target company) must consist of the issue of shares in the acquiring company to— **(2)(c)**
 - either the target company or the shareholders in the target company, in cases where the undertaking or part of the undertaking is being acquired, or
 - to the shareholders in the target company in exchange for their shares, in cases where shares are being acquired.

The balance of 10% may be paid in cash or other consideration;

- where shares are being acquired at least 90% of the issued share capital of the target company must be acquired; **(2)(b)**

¹⁹ While the legislation refers to “registration” this is taken to mean “incorporation”.

- the target company must have obtained a conveyance of any property comprised in the undertaking, prior to the date of execution of the instrument in respect of which relief under this section is claimed. This condition is an anti-avoidance measure and applies to instruments executed on or after 20 February 2004. (2A)

Where the undertaking of a target company comprises a leasehold interest in property, the target company will be treated by the Revenue Commissioners, for the purposes of this subsection, as having obtained a conveyance of the property where the leasehold interest has been directly acquired by the target company by virtue of the grant of a lease from the lessor and such lease has been duly stamped. In addition, relief under this section will not be denied in circumstances where an undertaking of a target company comprises goodwill which has been acquired by the target company by trading over a long number of years. This treatment will only be granted where the Revenue Commissioners are satisfied with the bona fides of the claim for relief under this section and that the reconstruction or amalgamation does not involve the avoidance of stamp duty or any other tax or duty.

- instruments relating to the transfer of the undertaking of or the shares in the target company— (3)(b)
 - must be executed within one year from the date—
 - of the incorporation (see footnote 19) of the acquiring company, or
 - date of the resolution for the increase of the nominal share capital of the acquiring company, or
 - must be made for the purpose of effecting a conveyance or transfer in pursuance of an agreement which has been (or particulars of which have been) filed with the Registrar of Companies within one year from the above dates;
- the instrument must be adjudicated (see *section 20*). (3)(a)

The Revenue Commissioners may request a statutory declaration, or such further evidence as is necessary, in order to satisfy themselves that the claim is a valid one. In practice, a claim for relief should always be accompanied by a statutory declaration by a solicitor setting out the details of the transaction. (7)

The relief will be clawed back if— (8)

- any statutory declaration or evidence given in support of the claim is untrue in any material particular,
 - the conditions specified in *subsection (2)* are not actually satisfied,
 - the target company ceases to be the beneficial owner of the shares issued to it within 2 years from the date of—
 - the incorporation (see footnote 19) or establishment of the acquiring company, or
 - the authority for the increase of the capital,
- otherwise than in consequence of reconstruction, amalgamation or liquidation;

- the acquiring company ceases to be the beneficial owner of the shares acquired in the target company within 2 years of the above dates otherwise than in consequence of reconstruction, amalgamation or liquidation.

Where the relief is clawed back because it was granted on the basis of false information interest at the rate of 0.0273 per cent per day (see *section 159D*) is chargeable from the date of the relevant instruments until the stamp duty is paid. In all other circumstances interest is payable from the date of the event giving rise to the clawback to the date the stamp duty is paid.

The Revenue Commissioners may refund stamp duty already paid where the following conditions are satisfied: **(9)**

- all the conditions for granting the relief were satisfied other than the condition that not less than 90% of the issued share capital of the target company would be acquired by the acquiring company, and
- 90% was in fact acquired within 6 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.

The claim for a refund should be accompanied by the original stamped instruments (where stock transfer forms were used). While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by *section 159A* from the date the instrument is stamped, in respect of a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*.

The relief from stamp duty on the transfer of shares or an undertaking in connection with a scheme of reconstruction or amalgamation contained in *subsection (2)* is extended by enabling the acquiring company to acquire the shares or undertaking of a company incorporated outside the State without incurring a liability to stamp duty. To qualify for the relief, however, the acquiring company must be incorporated in another Member State of the European Union. The Isle of Man, Channel Islands and Gibraltar do not come within the definition of Member State. **(10)**

80A Demutualisation of assurance companies

Summary

This section 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 the exemption from stamp duty is sought must be submitted to the Revenue Commissioners for adjudication. The exemption applies to instruments executed on or after 31 March 2006.

Details

“assurance business”, “assurance company”, “EEA agreement”, “EEA State”, “employee”, “member”, “pensioner” and “shares” are self-explanatory. **(1)**

“acquiring company” is a limited company which is incorporated in the State, in another Member State of the European Union, or in an EEA State.

“demutualisation” is an arrangement between an assurance company, which carries on a mutual life business, and its members under which—

- the assurance business or part of the business carried on by the assurance company is transferred to an acquiring company, and
- shares or the right to shares in the issuing company are issued, or as the case may be, granted to the members.

“issuing company” is an acquiring company or a parent company of an acquiring company and includes a company which becomes a parent company of an acquiring company as part of the demutualisation.

“parent company” is a limited company incorporated in the State, in another Member State of the European Union, or in an EEA State which, directly or indirectly, owns 100% of the ordinary share capital of the acquiring company.

Stamp duty shall not be chargeable on any instrument made for the purpose of or in connection with a demutualisation where the following conditions are satisfied: (2)

- the shares in the issuing company must be offered to at least 90 per cent of the persons who immediately prior to the demutualisation are members of the assurance company, (3)(a)
- all the shares in the issuing company which will be in issue immediately after the demutualisation, other than shares which are to be or have been issued pursuant to an offer to the public, must be offered to persons, who at the time of the offer, are: (3)(b)
 - members of the assurance company,
 - persons who are entitled to become members of the assurance company, or
 - employees, former employees or pensioners of the assurance company or of a company which is wholly-owned subsidiary of the assurance company.

A company is a wholly-owned subsidiary of another company if it has no members other than the parent and the wholly-owned subsidiaries of the parent, or persons acting on behalf of the parent or its wholly-owned subsidiaries. (4)

For the exemption to apply, the instrument must be adjudicated by the Revenue Commissioners in accordance with *section 20*. (5)

The exemption will not apply unless the demutualisation is carried out for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose is avoidance of liability to stamp duty, income tax, corporation tax, capital gains tax or capital acquisitions tax. (6)

Where a claim for exemption is made under this section, the Commissioners may request a statement, or such further evidence as may be necessary, in order to satisfy themselves that the claim is a valid one. (7)

Where a claim for exemption has been granted on the basis of false information, or the conditions set out above are not fulfilled in the demutualisation as actually carried out, a clawback of the stamp duty which would have been charged on the instrument, in the first instance, had the exemption not applied, together with interest on the duty, by means of penalty, calculated in accordance with *section 159D*, from the date of the instrument to the date on which the duty is paid, will apply. (8)

81 Young trained farmers

Summary

This section provides for full relief (two-thirds relief for transfers executed on or before 31 December 1999) from stamp duty on the transfer of land to young trained farmers who meet certain conditions. The relief applies to transfers by sale or by gift (i.e. it does not extend to leases). A power to revoke the transfer, whether it be contained in the instrument conveying or transferring the land itself or otherwise, will disqualify the young trained farmer from the relief. Instruments in respect of which relief is sought must be adjudicated (see *section 20*). Leaflet SD 2 contains details of the relief. This section only applies to instruments executed before 25 March 2004. See *section 81A* for instruments executed on or after 25 March 2004 and before 2 April 2007. See also *section 81AA* for instruments executed on or after 2 April 2007 and on or before 31 December 2008.

Details

“land”, “an interest in land” and “young trained farmer” are self-explanatory. The definition of “an interest in land” does not exclude the retention by the transferor of rights such as rights of residence, support and maintenance (see *section 18*). (1)

No stamp duty is payable on the transfer of land to young trained farmers who comply with certain conditions. (2)

To qualify for the relief—

- the transferee must, at the date of the transfer, be under 35 years of age and hold one of the specified qualifications - but see *subsection (5)*. Where the specified qualification provides that the transferee be the holder of a certificate issued by Teagasc that certificate must be available on the date of the transfer; (3)
- the transfer must be by way of sale or gift; (3)
- the transfer must be irrevocable; (3)
- the instrument must contain a certificate stating that the provisions of this section apply. The wording of this certificate is: (3)(a)

“It is hereby certified that section 81 (young trained farmers) of the Stamp Duties Consolidation Act, 1999, applies to this instrument.”;
- the young trained farmer must furnish a written declaration to the Revenue Commissioners confirming that, for a period of 5 years from the date of execution of the instrument, s/he intends to spend not less than 50% of his or her normal working time farming the land and that s/he will retain ownership of the land - see application form contained in leaflet SD 2; (3)(b)
- the young trained farmer must furnish his or her Personal Public Service (PPS) Number to the Revenue Commissioners - see application form contained in leaflet SD 2; and (3)(c)
- the instrument must be adjudicated (see *section 20*). (6)

The following should be submitted to the Revenue Commissioners to enable them to decide whether the relief should be granted:

- a completed adjudication warrant together with—
 - the executed instrument, and
 - a photocopy of that instrument, and
- a completed application form (leaflet SD 2 contains a copy of the application form).

The stamp duty relief may apply where the land is conveyed or transferred into joint ownership (e.g. as joint tenants or as tenants-in-common) where all the joint owners are young trained farmers and where all of them furnish the written declaration and their respective PPS numbers. However, in cases where 2 of the joint owners are married to each other, only one of them must be a young trained farmer. (4)

Example

A transfers land to his son and daughter-in-law as joint tenants. Although only the son qualifies as a young trained farmer relief will be granted if the son meets all the conditions laid down in this section.

Where the land is held jointly (e.g. as joint tenants or tenants in common) and the interest held by one joint owner is transferred to a young trained farmer who satisfies the conditions the relief will apply.

A transferee who would meet all the requirements on the date the instrument is executed including the age requirement and who has completed at least the first academic year— (5)

- of one of the courses leading to one of the qualifications specified in **Schedule 2**, or
- in the case of a person attending full-time a course in any discipline at a third-level institution, of that course,

may seek a refund of the stamp duty paid of an amount equal to the relief which would have been granted had all the conditions been met at the date the instrument was executed if—

- the transferee becomes the holder of the relevant qualification or s/he satisfactorily attends the relevant course full-time for a period of not less than 2 years' duration within 3 years of the date of execution of the instrument,
- the stamped instrument is received by the Revenue Commissioners within 6 months after the date the transferee becomes the holder of the qualification or completes the period of satisfactory attendance at the relevant course,
- satisfactory evidence that the transferee was under 35 years of age and had completed the first academic year of the appropriate course at the date of execution of the instrument is produced,

- the transferee furnishes a written declaration confirming that for the period of X years (i.e. 5 years *less* the period of time which has elapsed between the date of the instrument and the date on which s/he became the holder of the qualification or completed the period of satisfactory attendance at the relevant course) from the date the declaration is made s/he intends to spend not less than 50% of his or her normal working time farming the land and that s/he will retain ownership of the land, and
- the transferee furnishes his or her PPS number.

The Revenue Commissioners will accept the date of the award of the qualification as the date the person became the holder of that qualification.

Interest may arise on the refund – see **section 159B**.

There is no provision to enable refunds to be made where a certificate is issued by Teagasc certifying satisfactory attendance at a course of training which exceeded 80/180 hours *after* the date of transfer.

The relief may be clawed back, by way of imposition of a penalty, where there is a disposal or part disposal of land, to which relief applied, within 5 years from the date of execution of the instrument and any proceeds from the disposal are not re-invested in other land within one year from such disposal. The penalty is the amount determined by the following formula— (7)(a)

$$S \times \frac{N}{V}$$

where—

- S is the amount of stamp duty which would have been charged on the instrument, in the first instance, had the relief not applied to the instrument,
- V is the market value of all the land, in respect of which relief applied, immediately before the disposal or part disposal of the land, and
- N is the amount of proceeds from the disposal, or part disposal, of the land which was not reinvested in acquiring other land.

Interest at the rate of 0.0273 per cent per day (see **section 159D**) is chargeable on the penalty from the date of disposal, or part disposal, of the land to the date the penalty is paid. (7)(aa)

Where a disposal of land is by way of a gift, the market value of the land disposed of, at the date of the disposal, is deemed to be the proceeds from the disposal. (7)(ab)(i)

Where property is received in exchange for a disposal of land, the market value of such property, at the date of the disposal, is deemed to be proceeds from such disposal. In a case where that property is land or includes land, the market value of that land, at the date of the disposal, is deemed to have been re-invested in acquiring other land. (7)(ab)(ii),(iii)

Where there are several part disposals of land, the aggregate of any penalties imposed cannot exceed the stamp duty which would have been charged, in the first instance, on the instrument, had relief not applied. (7)(ac)

In a case where the instrument conveyed or transferred land to joint owners the relief will not be clawed back if the land is being disposed of by one joint owner to another or a joint tenancy between the young trained farmer and his or her spouse is being created. (8)(a)

In the event that one joint owner disposes to another joint owner or a young trained farmer creates a joint tenancy with his or her spouse then the disposal will be deemed to have taken place under the deed of conveyance or transfer which first conveyed or transferred the lands into the names of the joint owners or the young trained farmer. This is an anti-avoidance measure to ensure that the clawback provisions will continue to apply in the event that further disposals take place. **(8)(a)**

The relief may be clawed back if it was granted on the basis of false information. Any person who furnishes a false declaration or who includes a false certificate in the instrument is liable to a penalty and to interest at the rate of 0.0273 per cent per day (see **section 159D**) from the date the instrument was executed to the date the duty is paid. The amount of the penalty is the difference between 125% of the stamp duty which would have been payable had no relief been granted and the amount of stamp duty actually paid for transfers executed on or before 31 December 1999. For transfers executed on or after 1 January 2000, the amount of the penalty is 125% of the stamp duty which would have been payable had no relief been granted. **(7)(b)**

Because the relief is clawed back in the guise of a penalty there is no need to return the original instrument for re-stamping.

In a clawback situation each joint owner is held jointly and severally liable for payment of the penalty. However, the number of penalties and/or the amount of the penalties to which an individual may be liable is limited as follows: **(7)(a)**

- a person will not be liable to more than one penalty under **subsection (7)(b)**, **(8)(b)**
- if a person has paid a penalty under **subsection (7)(b)** then any penalty payable under **subsection (7)(a)** will be limited to the extent of the penalty paid under **subsection (7)(b)** and vice versa. **(8)(c), (d)**

The relief only applies to instruments which are executed before 25 March 2004. See **section 81A** for instruments executed on or after 25 March 2004 and before 2 April 2007. See also **section 81AA** for instruments executed on or after 2 April 2007 and on or before 31 December 2008. **(9)**

81A Further relief from stamp duty in respect of transfers to young trained farmers

Summary

This section provides for full relief from stamp duty on the transfer of land to young trained farmers who meet certain conditions and where the instrument is executed on or after 25 March 2004 and before 2 April 2007. For instruments executed before 25 March 2004, see **section 81** and for instruments executed on or after 2 April 2007, see **section 81AA**. The relief applies to transfers by sale or by gift (i.e. it does not extend to leases). A power to revoke the transfer, whether it be contained in the instrument conveying or transferring the land itself or otherwise, will disqualify the young trained farmer from the relief. **Section 81A** also contains transitional arrangements (see **subsection (13)**) which enable the educational qualifications held before 25 March 2004, for the purposes of **section 81**, to be treated as educational qualifications for the purposes of **section 81A**. Instruments in respect of which relief is sought must be adjudicated (see **section 20**). Leaflet SD 2A contains details of the relief.

Details

“interest in land”, “land”, “Schedule 2A qualification” and “young trained farmer” are self-explanatory. The definition of “interest in land” does not exclude the retention by the transferor of rights such as rights of residence, support and maintenance (see **section 18**). **(1)**

The relief given under the section is full relief from the stamp duty that would otherwise be chargeable on the instrument of transfer. (6)

To qualify for the relief the transferee must, on the date of execution of the instrument, be under 35 years of age and hold one of the qualifications which are set out in *subsections (2), (3) and (4)* below: (1)

Subsection (2) requires that the transferee be the holder of a qualification set out in *Schedule 2A* (see *Schedule 2A*) and— (2)

- where that qualification is set out in *paragraph 1(f) or paragraph 2(h)* of *Schedule 2A*, the transferee must also be the holder of a certificate awarded by the Further Education and Training Awards Council (FETAC) for achieving the minimum stipulated standard in assessments completed in a Teagasc approved training course in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours and in farm management, the aggregate duration of which exceeded 80 hours, or
- where that qualification is set out in *paragraph 3(b), 3(c) or 3(d)* of *Schedule 2A*, the transferee must also be the holder of a certificate awarded by the Further Education and Training Awards Council (FETAC) for achieving the minimum stipulated standard in assessments completed in a Teagasc approved training course in farm management, the aggregate duration of which exceeded 80 hours.

Subsection (3)(a) requires that the transferee has achieved the required standard for entry into the third year of a full-time course, in any discipline, of 3 or more years' duration at a third-level institution as confirmed by the institution and *subsection (3)(b)* requires that the person is also the holder of a certificate awarded by the Further Education and Training Awards Council (FETAC) for achieving the minimum stipulated standard in assessments completed in a Teagasc approved training course in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours and in farm management, the aggregate duration of which exceeded 80 hours. (3)

Subsection (4) requires that a transferee is the holder of a letter of confirmation from Teagasc confirming satisfactory completion of a course of training approved by Teagasc for persons who, in the opinion of Teagasc, are restricted in their learning capacity due to physical, sensory, mental health or intellectual disability. (4)

Where Teagasc certifies that any other qualification corresponds to a qualification which is set out in *Schedule 2A* and also certifies that such qualification is deemed by the National Qualifications Authority of Ireland (NQAI) to be at least at a standard equivalent to that of the *Schedule 2A* qualification, that qualification will be treated as a qualifying one under *Schedule 2A* by the Revenue Commissioners. (5)

In addition to the educational qualifications required, the following conditions must also be satisfied:

- the transfer must be by way of sale or gift and must be irrevocable; (7)
- the instrument must contain a certificate stating that *section 81A* applies to the instrument. The wording of this certificate is: (7)(a)
- "It is hereby certified that section 81A (young trained farmers) of the Stamp Duties Consolidation Act 1999, applies to this instrument.";

- the young trained farmer, or each of them if there is more than one, must furnish a written declaration to the Revenue Commissioners confirming that, for a period of 5 years from the date of execution of the instrument, s/he intends to spend not less than 50 per cent of his or her normal working time farming the land and that s/he will retain ownership of the land; (7)(b)
- the young trained farmer must furnish his or her Personal Public Service (PPS) Number to the Revenue Commissioners - see application form contained in leaflet SD 2A; and
- the instrument must be adjudicated (see *section 20*). (10)

The following should be submitted to the Revenue Commissioners to enable them to decide whether relief should be granted:

- a completed adjudication warrant with—
 - the executed instrument, and
 - a photocopy of that instrument, and
- a completed application form (leaflet SD 2A contains a copy of the application form).

The stamp duty relief may apply where the land is conveyed or transferred into joint ownership (e.g. as joint tenants or as tenants-in-common) where all the joint owners are young trained framers and where all of them furnish the written declaration and their respective PPS numbers. However, in cases where 2 of the joint owners are married to each other, only one of them must be a young trained farmer. (8)

Example

A transfers land to his son and daughter-in-law as joint tenants. Although only the son qualifies as a young trained farmer, relief will be granted if the son meets all the conditions laid down in this section.

Where the land is held jointly (e.g. as joint tenants or tenants-in-common) and the interest held by one joint owner is transferred to a young trained farmer who satisfies the conditions the relief will apply.

A transferee who meets all the requirements of the relief, on the date the instrument is executed, including the age requirement and— (9)

- is not the holder of one of the qualifications as specified in *paragraphs 1, 2 or 3 of Schedule 2A* or an equivalent qualification,
- has not achieved the required standard for entry into the third year of a full-time course, in any discipline, of 3 or more years' duration at a third-level institution which is referred to in *subsection (3)(a)*, or
- is not the holder of a letter of confirmation from Teagasc confirming satisfactory completion of a course referred to in *subsection (4)*,

but has completed not less than one academic year of any such course mentioned above, may obtain a refund of the stamp duty paid of an amount equal to the relief which would have been granted had all the conditions been met at the date the instrument was executed provided that—

- the transferee becomes the holder of a qualification specified in *paragraph 1, 2 or 3 of Schedule 2A* or an equivalent qualification, achieves the required standard to proceed to the third year of a course referred to in *subsection (3)(a)* or becomes the holder of a letter of confirmation from Teagasc confirming satisfactory completion of the training course referred to in *subsection (4)* within 3 years of the date of execution of the instrument,
- the stamped instrument is received by the Revenue Commissioners within 6 months after the date the transferee becomes the holder of a qualification specified in *paragraph 1, 2 or 3 of Schedule 2A* or an equivalent qualification, achieves the required standard to proceed to the third year of a course referred to in *subsection (3)(a)* or becomes the holder of a letter of confirmation from Teagasc confirming satisfactory completion of the training course referred to in *subsection (4)*,
- satisfactory evidence that the transferee was under 35 years of age and had completed the first year of the relevant course at the date of execution of the instrument is produced,
- the transferee furnishes a written declaration confirming that for the period of X years (i.e. 5 years *less* the period of time which has elapsed between the date of the instrument and the date on which s/he became the holder of the relevant qualification (see above)) from the date the declaration is made s/he intends to spend not less than 50% of his or her normal working time farming the land and s/he will retain ownership of the land, and
- the transferee furnishes his or her PPS number.

Interest may arise on the refund – see *section 159B*

The Revenue Commissioners will accept the date of the award of the qualification as the date the person became holder of that qualification.

There is no provision to enable refunds to be made where a certificate is awarded by FETAC for achieving the minimum stipulated standard in assessments completed in a Teagasc approved training course which exceed 80/180 hours *after* the date of transfer.

The relief may be clawed back, by way of imposition of a penalty, where there is a disposal or part disposal of land, to which relief applied, within 5 years from the date of execution of the instrument and any proceeds from the disposal are not re-invested in other land within one year from such disposal. The penalty is the amount determined by the following formula— *(11)(a)*

$$S \times \frac{N}{V}$$

where—

- S is the amount of stamp duty which would have been charged on the instrument, in the first instance, had the relief not applied to the instrument,
- V is the market value of all the land, in respect of which relief applied, immediately before the disposal or part disposal of the land, and
- N is the amount of proceeds from the disposal, or part disposal, of the land which was not re-invested in acquiring other land.

Interest at the rate of 0.0273 per cent per day (see **section 159D**) is chargeable on the penalty from the date of disposal, or part disposal, of the land to the date the penalty is paid. (11)(aa)

Where a disposal of land is by way of a gift, the market value of the land disposed of, at the date of the disposal, is deemed to be the proceeds from the disposal. (11)(ab)(i)

Where property is received in exchange for a disposal of land, the market value of such property, at the date of the disposal, is deemed to be proceeds from such disposal. In a case where that property is land or includes land, the market value of that land, at the date of the disposal, is deemed to have been invested in acquiring other land. (11)(ab)(ii),(iii)

Where there are several part disposals of land, the aggregate of any penalties imposed cannot exceed the stamp duty which would have been charged, in the first instance, on the instrument, had relief not applied. (11)(ac)

Example

100 acres of land worth €200,000 are transferred to A who is a young trained farmer in April 2004 and relief is granted on the instrument. In February 2005, A sells 50 acres of land to B for €110,000 when the 100 acres are valued at €210,000. In December 2005, A purchases 60 acres of land for €70,000 and does not re-invest the balance of €40,000. A will be liable to a penalty of €3,428.57 calculated as follows:

$$S (\text{€}18,000^*) \times \frac{N (\text{€}40,000)}{V (\text{€}210,000)}$$

$$*S \text{ is } \text{€}200,000 \times 9\% = \text{€}18,000$$

The relief may be clawed back if it was granted on the basis of false information. Any person who furnishes a false declaration or who includes a false certificate in the instrument will be liable to a penalty of an amount equal to 125% of the duty which would have been charged on the instrument in the first instance had all the facts been truthfully declared and certified together with interest at the rate of 0.0273 per cent per day (see **section 159D**) from the date the instrument was executed to the date the penalty is paid. (11)(b)

In a case where the instrument conveyed or transferred land to joint owners the relief will not be clawed back if the land is being disposed of by one joint owner to another or a joint tenancy between the young trained farmer and his or her spouse is being created. (12)(a)

In the event that one joint owner disposed to another joint owner or a young trained farmer creates a joint tenancy with his or her spouse then the disposal will be deemed to have taken place under the deed of conveyance or transfer which first conveyed or transferred the lands into the names of the joint owners or the young trained farmer. This is an anti-avoidance measure to ensure that the claw back provisions will continue to apply in the event that further disposals take place. (12)(a)

Because the relief is clawed back in the guise of a penalty there is no need to return the original instrument for re-stamping.

In a clawback situation each joint owner is held jointly and severally liable for payment of the penalty. However, the number of penalties and/or the amount of the penalties to which an individual may be liable is limited as follows: (11)(a)

- a person will not be liable to more than one penalty under **subsection (11)(b)**. (12)(b)

- if a person has paid a penalty under **subsection (11)(b)** then any penalty payable under **subsection (11)(a)** will be limited to the extent of the penalty paid under **subsection (11)(b)** and vice versa. (12)(c), (d)

Where a transferee, before 25 March 2004 and for the purposes of **section 81**— (13)

- is the holder of a qualification set out in **Schedule 2**, or an equivalent qualification as certified by Teagasc, and
 - where the qualification is of the type that requires satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, then that transferee will be deemed, for the purposes of **section 81A**, to be the holder of a qualification corresponding to one in **paragraph 3(b)** of **Schedule 2A**, or
 - where the qualification is of the type that does not require a course of training (with Teagasc) that transferee will be deemed, for the purposes of **section 81A**, to be the holder of a qualification corresponding to one in **paragraph 2(a)** of **Schedule 2A**,
- has satisfactorily attended full-time a course at a third-level institution in any discipline for a period of not less than 2 years' duration, as confirmed by the institution, will be deemed, for the purposes of this section, to have achieved the required standard for entry into the third year of a full-time course of 3 or more years' duration at a third-level institution in any discipline, and
- is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, or a course of training in either or both agriculture or horticulture, the aggregate duration of which exceeded 180 hours, will be deemed, for the purposes of **section 81A**, to be the holder of a certificate awarded by the Further Education and Training Awards Council (FETAC) for achieving the minimum stipulated standard in assessments completed, in a course of training approved by Teagasc in farm management, the aggregate duration of which exceeded 80 hours, in the former case and, in a course of training approved by Teagasc in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours and in farm management, the aggregate duration of which exceeded 80 hours, in the latter case.

The relief applies to instruments executed on or after 25 March 2004 and before 2 April 2007. See **section 81AA** for instruments executed on or after 2 April 2007 and on or before 31 December 2008. (14)

81AA Transfers to young trained farmers

Summary

This section provides for full relief from stamp duty on the transfer of land to young trained farmers who meet certain conditions and where the instrument is executed on or after 2 April 2007 and on or before 31 December 2008. For instruments executed on or after 25 March 2004 and before 2 April 2007 (see **section 81A**). The relief applies to transfers by sale or by gift (i.e. it does not extend to leases). A power to revoke the transfer, whether it be contained in the instrument conveying or transferring the land itself or otherwise, will disqualify the young trained farmer from the relief. Under the section, the Further Education and Training Awards Council (FETAC) Level 6 Advanced Certificate in Agriculture (see **Schedule 2B**) is the new minimum education requirement from 31 March 2008.

Section 81AA also contains transitional arrangements (see **subsections (14)** and **(15)**) which enable the educational qualifications attained before 25 March 2004, for the purposes of **section 81**, and on or after 25 March 2004 and before 2 April 2007, for the purposes of **section 81A**, to be treated as educational qualifications for the purposes of **section 81AA**. Instruments in respect of which relief is sought must be adjudicated (see **section 20**). Leaflet SD2B contains details of the relief.

Details

“interest in land”, “land”, “PPS Number”, “Schedule 2 qualification”, “Schedule 2A qualification”, “Schedule 2B qualification” “young trained farmer”, are self-explanatory. The definition of “an interest in land” does not exclude the retention by the transferor of rights such as rights of residence, support and maintenance (see **section 18**). (1)

“80 hours certificate” is a certificate awarded by FETAC for achieving the minimum stipulated standard in assessments completed for an 80 hours Teagasc approved training programme in farm management.

“180 hours certificate” is a certificate awarded by FETAC for achieving the minimum stipulated standard in assessments completed for a 180 hours Teagasc approved training programme which comprises 100 hours in either or both agriculture and horticulture and 80 hours in farm management.

The relief given under the section is full relief from the stamp duty that would otherwise be chargeable on the instrument of transfer. (7)

To qualify for the relief the transferee must, on the date of execution of the instrument of transfer, be under 35 years of age and hold one of the qualifications which are set out in **subsections (2), (3), (4)** and **(5)** below. (1)

Subsection (2) requires that the transferee is the holder of a qualification set out in **Schedule 2B** (see **Schedule 2B**). (2)

Subsection (3) requires that the transferee is the holder of a letter from Teagasc confirming satisfactory completion of a course of training approved by Teagasc for persons who, in the opinion of Teagasc, are restricted in their learning capacity due to physical, sensory, intellectual disability or to mental health. (3)

Subsection (4) requires that the transferee is the holder, before 31 March 2008, of — (4)

- a qualification from paragraph 1(f) or paragraph 2(h) of **Schedule 2A** and also the holder of a 180 hours certificate, or
- a qualification from paragraph 3(b), (c), or (d) of **Schedule 2A** and also the holder of an 80 hours certificate. (4)(b)(i)

Subsection (5) requires that the transferee has, before 31 March 2008, achieved the required standard for entry into the third year of a full-time course, in any discipline of 3 or more years’ duration at a third-level institution, as confirmed by the institution, and also is the holder of a 180 hours certificate. (5)

Where Teagasc certifies that any other qualification corresponds to a qualification set out in **Schedule 2B** and also certifies that such qualification is deemed by the National Qualifications Authority of Ireland (NQAI) to be at least at a level equivalent to that of the Schedule 2B qualification, then that qualification will be treated as a qualifying one under **Schedule 2B** by the Revenue Commissioners. (6)

In addition to the educational qualifications required the following conditions must also be satisfied:

- the transfer must be by way of sale or gift and must be irrevocable; (8)
- the instrument must contain a certificate stating that *section 81AA* applies to the instrument. The wording of this certificate is: (8)(a)

“It is hereby certified that section 81AA (young trained farmers) of the Stamp Duties Consolidation Act 1999, applies to this instrument.”;
- the young trained farmer, or each of them if there is more than one, must furnish a written declaration to the Revenue Commissioners confirming that, for a period of 5 years from the date of execution of the instrument, s/he intends to spend not less than 50 per cent of his or her normal working time farming the land and that s/he will retain ownership of the land - see application form contained in leaflet SD 2B; (8)(b)
- the young trained farmer, or each of them if there is more than one, must furnish his or her Personal Public Service (PPS) Number to the Revenue Commissioners; and (8)(c)
- the instrument must be adjudicated (see *section 20*). (10)

The stamp duty relief may apply where the land is conveyed or transferred into joint ownership (e.g. as joint tenants or as tenants-in-common) where all the joint owners are young trained farmers and where all of them furnish the written declaration and their respective PPS numbers. However, in cases where 2 of the joint owners are married to each other, only one of them must be a young trained farmer. (9)

Example

A transfers land to his son and daughter-in-law as joint tenants. Although only the son qualifies as a young trained farmer, relief will be granted if the son meets all the conditions laid down in this section.

Where the land is held jointly (e.g. as joint tenants or tenants-in-common) and the interest held by one joint owner is transferred to a young trained farmer who satisfies the conditions the relief will apply.

Subsection (11) provides for the refund procedures. (11)

A transferee, who meets all the conditions for the granting of the relief, on the date the instrument is executed, *including the age requirement*, but is not the holder of one of the qualifications set out in *subsection (2), (3), (4) or (5)*, or a qualification which is certified by Teagasc to be an equivalent qualification under *subsection (6)*, will have to pay the duty chargeable but may obtain a refund of the duty paid provided the conditions set out below are complied with. (11)(a) & (b)

The Revenue Commissioners will repay the duty paid by the transferee where the educational qualification is obtained within 4 years of the date of execution of the instrument of transfer and where the farmer submits the following to the Revenue Commissioners in support of his or her claim for repayment: (11)(c)

- the stamped instrument;

- a written declaration by the farmer, or each of them if there is more than one, confirming that, for a period of 5 years from the date on which the claim for repayment is made to the Revenue Commissioners, s/he intends to spend not less than 50 per cent of his or her normal working time farming the land and that s/he will retain ownership of the land; and
- the PPS Number of each person making the claim for repayment.

The Revenue Commissioners will accept the date of the award of the qualification as the date the person became holder of that qualification.

The relief may be clawed back, by way of imposition of a penalty, where there is a disposal or part disposal of land, to which relief applied, within 5 years from the date of execution of the instrument or, as the case may be, from the date the claim for repayment is made to the Revenue Commissioners, and any proceeds from the disposal are not re-invested in other land within one year from the date of such disposal. The penalty is the amount determined by the following formula— **(12)(a)**

$$\frac{S \times N}{V}$$

where—

- S is the amount of stamp duty which would have been charged on the instrument, in the first instance, had relief not applied to the instrument or, as the case may be, the amount of stamp duty that was charged on the instrument and later repaid,
- V is the market value of all the land, in respect of which relief applied, immediately before the disposal or part disposal of the land, and
- N is the amount of proceeds from the disposal, or part disposal, of the land that was not re-invested in acquiring other land.

Interest is payable on the penalty at the rate of 0.0273 per cent for each day (see **section 159D**) from the date of disposal, or part disposal, of the land to the date the penalty is paid. **(12)(b)**

Where a disposal of land is by way of gift, that the market value of the land disposed of, at the date of the disposal, is deemed to be the proceeds from the disposal. Where property is received in exchange for a disposal of land, the market value of such property, at the date of the disposal, is deemed to be proceeds from such disposal. In a case where that property is land or includes land, the market value of that land, at the date of the disposal, is deemed to have been invested in acquiring other land. **(12)(c)**

Where there are several part disposals of land, the aggregate of any penalties imposed cannot exceed the stamp duty that would have been charged, in the first instance, on the instrument, had the relief not applied or, as the case may be, that was charged on the instrument and later repaid where a claim for repayment was made to the Revenue Commissioners. **(12)(d)**

Example

100 acres of land worth €200,000 are transferred to A who is a young trained farmer in April 2007 and relief is granted on the instrument. In February 2008, A sells 50 acres of land to B for €110,000 when the 100 acres are valued at €210,000. In December 2008, A purchases 60 acres of land for €70,000 and does not re-invest the balance of €40,000. A will be liable to a penalty of €3,428.57 calculated as follows:

$$\frac{S (\text{€}18,000^*) \times N (\text{€}40,000)}{V (\text{€}210,000)}$$

$$* S \text{ is } \text{€}200,000 \times 9\% = \text{€}18,000$$

The relief may be clawed back if it was granted on the basis of false information. (12)(e)
Any person who furnishes a false declaration or who includes a false certificate in the instrument will be liable to a penalty of an amount equal to 125% of the duty that would have been charged on the instrument, in the first instance, had all the facts been truthfully declared and certified together with interest at the rate of 0.0273 per cent for each day (see **section 159D**) from the date the instrument was executed to the date the penalty is paid.

Where a claim for repayment has been made to the Revenue Commissioners, any person who furnishes a false declaration will be liable to a penalty of an amount equal to 125% of the duty that was charged on the instrument, in the first instance, (but later repaid), together with interest at the rate of 0.0273 per cent for each day (see **section 159D**) from the date the claim for repayment was made to the Revenue Commissioners to the date the penalty is paid. (12)(f)

In the event that one joint owner disposed to another joint owner or a young trained farmer creates a joint tenancy with his or her spouse then the disposal will be deemed to have taken place under the deed of conveyance or transfer which first conveyed or transferred the lands into the names of the joint owners or the young trained farmer. This is an anti-avoidance measure to ensure that the clawback provisions will continue to apply in the event that further disposals take place. (13)(a)

Because the relief is claimed back in the guise of a penalty, there is no need to return the instrument for re-stamping.

In a clawback situation each joint owner is held jointly and severally liable for payment of the penalty. However the number of penalties and/or the amount of the penalties to which an individual may be liable is limited as follows:

- a person will not be liable to more than one penalty under **subsection (12)(e)**. (13)(b)
- if a person has paid a penalty under **subsection (12)(e)** or **(f)** then any penalty payable under **subsection (12)(a)** will be limited to the extent of the penalty paid under **subsection (12)(e)** or **(f)** and vice versa. (13)(c) & (d)

The **transitional arrangements** for qualifications attained under **section 81** before 25 March 2004 are the following: (14)

- Where the person is the holder of a qualification from **Schedule 2**, or an equivalent qualification as certified by Teagasc, and (14)(a) & (b)
 - where the qualification is one that requires satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, that person will be deemed to be the holder, for the purposes of **section 81AA**, of a qualification corresponding to one set out in **subsection (4)(b)(i)**,

- where the qualification is one that does not require a course of training, approved by Teagasc, that person will be deemed to be the holder, for the purposes of **section 81AA**, of a qualification corresponding to a FETAC Level 6 Advanced Certificate in Agriculture in **Schedule 2B**.
- Where the person has satisfactorily attended full-time a course at a third-level institution in any discipline for a period of not less than 2 years' duration, as provided for in **section 81(1)(b)(ii)(I)**, that person will be deemed, for the purposes of **section 81AA**, to have achieved the required standard for entry into the third year of a full-time course of 3 or more years' duration at a third-level institution in any discipline, as confirmed by that institution – see **subsection (5)(a)**. (14)(c)
- Where the person is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, that person will be deemed, for the purposes of **section 81AA**, to be the holder of a certificate awarded by FETAC for achieving a minimum stipulated standard in assessments completed, in a course of training approved by Teagasc in farm management, the aggregate duration of which exceeded 80 hours. (14)(d)
- Where the person is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in either or both agriculture and horticulture, the aggregate duration of which exceeded 180 hours, that person will be deemed, for the purposes of **section 81AA**, to be the holder a certificate awarded by FETAC for achieving a minimum stipulated standard in assessments completed in a course of training approved by Teagasc in either or both agriculture and horticulture, the aggregate duration of which exceeded 180 hours. (14)(e)

The following **transitional arrangements** for qualifications obtained under **section 81A** on or after 25 March 2004 and before 2 April 2007 apply. Where a person holds a **Schedule 2A** qualification or a qualification certified by Teagasc as corresponding to a **Schedule 2A** qualification, and an 80 hours or, as the case may be, an 180 hours certificate is not required in respect of that qualification, that person will be deemed, for the purposes of **section 81AA**, to be the holder of a qualification corresponding to a FETAC Level 6 Advanced Certificate in Agriculture in **Schedule 2B**. (15)

The relief applies to instruments executed on or after 2 April 2007 and on or before 31 December 2008. (16)

81B Farm consolidation relief

Summary

This section provides for stamp duty relief for an exchange of farm land between two farmers for the purposes of consolidating each farmer's holding. The section provides that stamp duty will not be charged on an exchange of land where the lands exchanged are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will be charged on the amount of the difference in the values of the land concerned. Where consideration is paid for the difference (or part of the difference) in those values, it must be payable in cash. Instruments in respect of which relief is sought must be adjudicated (see **section 20**). This section applies to instruments executed on or after 1 July 2005 and on or before 30 June 2007. Leaflet SD 81B contains details of the relief and includes an application form for claiming the relief.

Details

“exchange of relevant land”, “farming”, “guidelines”, “interest in relevant land”, “PPS number” and “valid consolidation certificate” are self-explanatory. (1)(a)

“consolidation certificate” means a certificate, issued by Teagasc to each farmer concerned in the exchange of relevant land, which identifies the lands involved, the owners of such lands, and certifies that Teagasc is satisfied that an exchange of relevant land complies or will comply with the conditions of consolidation.

“farmer” means a person who spends not less than 50 per cent of that person’s normal working time farming.

“relevant land” means agricultural land including land suitable for occupation as woodlands on a commercial basis, in the State and farm buildings on that land. Houses or the lands occupied with such houses are not included unless such houses are derelict and unfit for human habitation.

The Minister for Agriculture and Food with the consent of the Minister for Finance, has published guidelines setting out— **(1)(b)**

- how an application (to Teagasc) for a consolidation certificate is to be made,
- the documentation required to accompany the application,
- the conditions of consolidation, and
- any other information required to be submitted in relation to an application.

Where an application is made, Teagasc will issue a consolidation certificate in respect of an exchange of land once they are satisfied that the exchange of land complies or will comply with the conditions of consolidation. Teagasc may, by notice in writing, withdraw any consolidation certificate already issued.

The following conditions must be satisfied before relief will be granted by the Revenue Commissioners:

- the deed of transfer must contain a certificate stating that **section 81B** applies. **(2)(a)**
The wording of this certificate is:

“It is hereby certified that section 81B (farm consolidation relief) of the Stamp Duties Consolidation Act 1999, applies to this instrument.”;

- the following documentation/information (including a completed application form contained in leaflet SD 81B) must be submitted to the Revenue Commissioners with the deed of transfer when it is presented for adjudication:
 - a consolidation certificate which is valid on the date of execution of the deed effecting the exchange – a consolidation certificate is valid for one year from the date it is issued, **(2)(b)**
 - a declaration in writing signed by each **farmer** who is a party to the deed of transfer to the effect that he/she will, for a period of 5 years from the date of execution of the deed of transfer, retain ownership of his or her interest in the exchanged land and that the land will be used for farming (see application form in leaflet SD 81B for appropriate declaration), **(2)(c)**
 - a declaration in writing signed by each **person** who is a party to the deed of transfer to the effect that such person will, for a period of 5 years from the date of execution of the deed of transfer, retain ownership of his or her interest in the exchanged land and that the land will be used for farming (see application form in leaflet SD 81B for appropriate declaration), **(2)(d)**
 - the PPS number of each person who is a party to the deed of transfer. **(2)(e)**

- the deed of transfer must be adjudicated (see **section 20**). Where there is more than one deed of transfer effecting the exchange of lands, each deed must be presented for adjudication at the same time. (7), (8)

No stamp duty will be charged on an exchange of lands where the lands exchanged are of equal value. Where the lands exchanged are not of equal value, stamp duty is charged on the amount of the difference in the values of the land concerned. (4)(a), (b)

Where the lands exchanged are not of equal value and consideration is paid in respect of the difference (or part of the difference) in those values, it must be payable in cash. (5)

Where there are several instruments for completing a title to the relevant land, only the principal instrument is chargeable to stamp duty and the other instruments are not chargeable with any duty. (6)

The relief may be clawed back, by way of a penalty, if the land or part of the land is disposed of within 5 years from the date of the execution of the deed of transfer. The amount of the penalty is the difference between the duty which would have been charged, by virtue of **section 37**, on the value of all the lands transferred to that person, under the exchange of lands, had the relief not applied, and the duty (if any) which was charged under this section. (9)(a)

Interest is also charged on the penalty, calculated in accordance with **section 159D**, at the rate of 0.0273 per cent per day from the date of disposal, or part disposal, of the land to the date the penalty is paid.

The clawback of the relief will not occur where the land is being compulsorily acquired or is the subject of another exchange of lands which qualify for relief under this section. (9)(b)

The relief may also be clawed back if it was granted on the basis of false information. Any person who furnishes a false declaration will be liable to a penalty of an amount equal to 125% of the duty which would have been charged on all the lands transferred to that person, by virtue of **section 37**, had relief not applied and the amount of duty (if any) which was charged under this section. Interest is also charged on the penalty, calculated in accordance with **159D**, at the rate of 0.0273 per cent per day from the date the instrument was executed to the date the penalty is paid. (9)(c)

A similar penalty is payable, together with appropriate interest, where an invalid consolidation certificate is used to obtain the relief. (9)(d)

A clawback of the relief will not occur where a farmer or other joint owner disposes of part of the land to a spouse for the purpose of creating a joint tenancy or where one joint owner disposes of any part of the land to another joint owner, who is a farmer. Such a disposal will be deemed to have taken place under the deed of transfer which first transferred the land into the name of the spouse or other joint owners. This is an anti-avoidance measure to ensure that the clawback provisions will continue to apply in the event that further disposals take place. (10)(a)

A person will not be liable to more than one penalty under **subsection (9)(a), (9)(c) or (9)(d)**. (10)(b)

Any penalty payable under **subsection (9)(a)** will be limited to the extent of a penalty already paid under **subsection (9)(c) or (9)(d)**. Similarly, any penalty payable under **subsection (9)(c)** will be limited to the extent of a penalty already paid under **subsection (9)(a) or (9)(d)**, and in the case of a penalty payable under **subsection (9)(d)**, it will be limited to the extent of any penalty paid under **subsection (9)(a) or (9)(c)**. (10)(c),(d) and (e)

This relief does not apply to a deed of transfer effecting an exchange of lands where any of the parties to the deed of transfer is a company. (11)

This section applies to instruments executed on or after 1 July 2005 and on or before 30 June 2007. (12)

81C Further farm consolidation relief

Summary

This section replaces the farm consolidation relief in *section 81B* from 1 July 2007 as that farm consolidation relief expired on 30 June 2007. *Section 81C* allows a farmer to claim relief from stamp duty where he or she sells land and purchases land, in order to consolidate his or her holding, where both the sale and purchase occur within 18 months of each other. The relief applies provided Teagasc has issued the farmer with a consolidation certificate in respect of the sale and purchase. The relief applies to instruments executed on or after 1 July 2007 and on or before 30 June 2009.

The way the relief operates is that where there is a sale and purchase of land within 18 months of each other that satisfy the conditions of consolidation, stamp duty will only be paid on the purchase to the extent that the value of the land that is purchased exceeds the value of the land that is sold. If the sale takes place before the purchase, relief will be given at the time of purchase. However, if the purchase takes place first, stamp duty will have to be paid but on the subsequent sale a claim for repayment can be made to the Revenue Commissioners.

To qualify for relief under this section, whether a claim for relief arises on a purchase of land where a sale of land has already taken place or where relief is claimed in relation to a purchase where the sale of land occurs after the purchase, the following main conditions must be satisfied:

- The farmer, or each of them if there is more than one, involved in the purchase of the land must each sign a declaration, for submission to the Revenue Commissioners, to the effect that each of them will spend not less than 50% of his/her normal working time farming and will farm the land purchased for at least 5 years from the date on which the first claim for relief in respect of the purchase of land is made to the Revenue Commissioners.
- All the joint owners of the land purchased, including the farmers, must make a declaration, for submission to the Revenue Commissioners, to the effect that it is the intention of each of them to retain ownership of the land and that the land will be used for farming, for at least 5 years from the date the first claim for relief in respect of the purchase of land is made to the Revenue Commissioners.
- The instrument giving effect to the purchase of the land must be submitted to the Revenue Commissioners for adjudication (see *section 20*).

Details

“farming”, “guidelines”, “interest in qualifying land”, “PPS number”, “relevant period” and “valid consolidation certificate” are self-explanatory. (1)(a)

“conditions of consolidation” means the conditions of consolidation set out in guidelines published by the Minister for Agriculture and Food with the consent of the Minister for Finance.

“consolidation certificate” means a certificate, issued for the purposes of this section by Teagasc to a farmer in relation to a sale and purchase of qualifying land, both of which occur in the relevant period (i.e. 1 July 2007 to 30 June 2009) and within 18 months of each other, which identifies the lands concerned, the owners of such lands and certifies that Teagasc is satisfied, that the sale and purchase of qualifying land complies or will comply, with the conditions of consolidation.

“farmer” means a person who spends not less than 50 per cent of that person’s normal working time farming.

“purchase of qualifying land” means a conveyance or transfer (whether on sale or by way of gift) of an interest in qualifying land to a farmer and includes a conveyance or transfer where the qualifying land is conveyed or transferred to joint owners where not all the joint owners are farmers. The date of the purchase of qualifying land is the date on which the conveyance or transfer is executed.

“qualifying land” means relevant land in respect of which a consolidation certificate has been issued by Teagasc.

“relevant land” means agricultural land, including lands suitable for occupation as woodlands on a commercial basis, in the State and such farm buildings together with the lands occupied with such farm buildings as are of a character appropriate to the relevant land but not including farm houses or mansion houses or the lands occupied with such farm houses and mansion houses unless such farm houses or mansion houses are derelict and unfit for human habitation.

“sale of qualifying land” means a conveyance or transfer (whether on sale or by way of gift) of an interest in qualifying land by a farmer and includes a conveyance or transfer where the qualifying land is conveyed or transferred by joint owners where not all the joint owners are farmers. The date of the sale of qualifying land is the date on which the conveyance or transfer is executed.

The Minister for Agriculture and Food with the consent of the Minister for Finance has published guidelines setting out— **(1)(b)(i)**

- how an application (to Teagasc) for a consolidation certificate is to be made,
- the documentation required to accompany the application,
- the conditions of consolidation, and
- any other information required to be submitted in relation to the application.

Where an application is made to Teagasc, it will issue a consolidation certificate in respect of the sale and purchase of qualifying land where Teagasc is satisfied that the sale and purchase of such lands complies or will comply with the conditions of consolidation. Teagasc may, by notice in writing, withdraw any consolidation certificate already issued. **(1)(b)(ii) & (iii)**

Relief under the section applies to a purchase of qualifying land by a farmer in the period commencing on 1 July 2007 and ending on 30 June 2009. The date of purchase of the qualifying land, in respect of which relief is claimed, is referred to as the “calculation day” for the purposes of the formula in **subsection (3)**. **(2)**

The relief is calculated by reference to the formula below. Subject to the application of **subsections (4) and (5)**, stamp duty will be chargeable on a purchase of qualifying land as if it were a purchase of qualifying land made in consideration of a sum determined by the formula— **(3)**

$$(P - S)$$

where—

P is the aggregate of—

- (a) the value of the qualifying land being purchased, and
- (b) the value of all other qualifying land purchased by the farmer in the relevant period where the date of the purchase falls in the period of 18 months ending on the calculation day and where any such purchase was already treated (by **subsection (3)**) as having been made in consideration of a lesser amount as a result of a sale of qualifying land made before the commencement of that 18 month period, that lesser amount is to be treated as the value of that purchase,

and

S is the aggregate of the value of all the qualifying land sold by the farmer in the relevant period where the date of the sale falls in the period of 18 months ending on the calculation day, to the extent that it has not already given rise to a repayment of duty (under **subsection (5)**) in relation to a purchase of qualifying land made before the commencement of that 18 month period.

Where duty has been paid on a purchase of qualifying land, in accordance with **subsection (3)**, and there is a further purchase of qualifying land within 18 months of the first purchase, the duty chargeable on the later purchase will be reduced by the duty paid on the first purchase less any duty repayable on that first purchase. **(4)**

Where a purchase of qualifying land takes place before the sale of qualifying land, the duty paid on the purchase of qualifying land will be recomputed in accordance with the formula in **subsection (3)** to take account of the value of the qualifying land sold and any excess duty paid on the purchase will be repaid by the Revenue Commissioners where a claim for repayment is made to them. **(5)**

Example 1

Farmer A sells lands for €100,000 in September 2007. 6 months later, in March 2008, he purchases lands for €120,000 and obtains a consolidation certificate from Teagasc in relation to the sale and purchase. The Deed of Transfer giving effect to the purchase of lands will be chargeable to stamp duty on €20,000 ((€20,000 @ 1% = €200) which is the amount by which the value of the lands purchased exceeds the value of the lands sold.

Example 2

Farmer B sells lands for €150,000 in October 2007 and purchases lands for €100,000 in December 2007. A consolidation certificate is issued by Teagasc in relation to the sale and purchase. The Deed of Transfer giving effect to the purchase of lands will be exempt from stamp duty as the value of the lands purchased is less than the value of the lands sold.

Example 3

Farmer C purchases lands for €90,000 in November 2007 and stamp duty of €5,400 (€90,000 @ 6%) is paid. In April 2008 he sells lands for €120,000 and obtains a consolidation certificate from Teagasc in relation to the purchase and

sale. The stamp duty liability on the purchase is recomputed on the basis of the difference between the value of the lands purchased and the value of the lands sold. As the value of the lands purchased is less than the value of the lands sold the recomputation gives rise to a nil liability. Farmer C can apply to Revenue for a refund of the stamp duty of €5,400 already paid.

Example 4

Farmer D sells lands for €170,000 in August 2007 and purchases lands for €160,000 in March 2009. Relief under **section 81C** is not applicable as the purchase occurred outside a period of 18 months from the date of the sale. Accordingly, stamp duty of €14,400 (€160,000 @ 9%) is chargeable on the purchase.

A claim for relief under **subsection (3)** or a claim for relief by way of repayment under **subsection (5)** will be allowed by the Revenue Commissioners where the following are presented to them in support of such claim — **(6)**

- (a) the instrument effecting the purchase of qualifying land,
- (b) a certified copy of the instrument effecting the sale of qualifying land,
- (c) a valid consolidation certificate pertaining to the purchase and sale of qualifying land,
- (d) a written declaration of the kind referred to in **subsection (7)**, by each farmer who is involved in the purchase of the land concerned,
- (e) a written declaration by each person involved in the purchase of the land concerned, confirming that it is the intention of each person to retain ownership of the land and that the land will be used for farming, for a period of 5 years from the date on which the first claim for relief is made in respect of that purchase of land, and
- (f) the PPS number of each of the purchasers of the land concerned.

The declaration referred to above in **subsection (6)(d)** is a declaration in writing made by a farmer which is signed by the farmer, and declares that the farmer will remain a farmer and farm the lands purchased for a period of 5 years from the date the first claim for relief is made in respect of that purchase of land. **(7)**

Relief will only apply to a purchase of land where the instrument giving effect to that purchase has been adjudicated by the Revenue Commissioners in accordance with **section 20**. **(8)**

The relief may be clawed back, by way of a penalty, if the land or part of the land is disposed of within 5 years from the date on which the first claim for relief in respect of the purchase of qualifying land was allowed. The amount of the penalty is the difference between the duty that would have been charged had the section not applied and the duty, if any, which was paid and is not repayable on the purchase concerned, together with interest charged on that amount, calculated in accordance with **section 159D** from the date of disposal, or part disposal to the date the penalty is remitted. The rate of interest under **section 159D** is 0.0273 per cent for each day or part of a day. **(9)(a)**

A claw back of the relief does not apply to a disposal of qualifying land which is being compulsorily acquired. In that instance, no further relief will be allowed on the purchase of qualifying land arising out of any sale occurring after such acquisition. **(9)(b)**

Any person, who furnishes a false declaration will be liable to a penalty of an amount equal to the difference between 125% of the duty which would have been charged on the purchase of qualifying land had this section not applied due to all the facts not having been truthfully declared and the amount of duty, if any, that was charged and is not repayable, together with interest charged on that amount, calculated in accordance with **section 159D** from the date when the claim for relief is made to the Revenue Commissioners to the date the penalty is remitted. The rate of interest under **section 159D** is 0.0273 per cent for each day or part of a day. (9)(c)

A similar penalty is payable, together with appropriate interest, where an invalid consolidation certificate is used to obtain the relief. (9)(d)

A clawback of the relief will not occur where a farmer or other joint owner disposes of part of the land purchased to a spouse or where one joint owner disposes of any part of the land purchased to another joint owner, who is a farmer. Such a disposal will be deemed to have taken place under the instrument in respect of which relief from duty was allowed. This is an anti-avoidance measure to ensure that the claw back provisions will continue to apply in the event that further disposals take place. (10)(a)

A person shall not be liable to more than one penalty under subsection (9)(a), (9)(c) or (9)(d). (10)(b)

Any penalty payable under subsection (9)(a) will be limited to the extent of the penalty paid under subsection (9)(c) or (9)(d). Similarly, any penalty payable under subsection (9)(c) will be limited to the extent of the penalty paid under subsection (9)(a) or (9)(d), and in the case of a penalty payable under subsection (9)(d), it will be limited to the extent of the penalty paid under subsection (9)(a) or (9)(c). (10)(c), (d) & (e)

The section will not apply to a purchase of qualifying land where any of the purchasers is a company. (11)

The section will apply to instruments executed on or after 1 July 2007 and on or before 30 June 2009. (12)

82 Charities

This section exempts certain charitable dispositions from the charge to stamp duty. The exemption is confined to conveyances or transfers (whether on sale or by way of gift) or leases— (1)

- of land,
- to bodies of persons, or trustees of a trust, established solely for charitable purposes, and
- which will be used for charitable purposes in the State or Northern Ireland.

Conveyances, transfers or leases in respect of which relief under this section is sought must be submitted to the Revenue Commissioners for adjudication (see **section 20**). When claiming the relief the charity (CHY) number should be quoted. CHY numbers are assigned by the Revenue Commissioners, Charities Section, Government Buildings, Nenagh. Information on how to apply for charitable status together with an application form are contained in leaflet CHY 1, which is available at www.revenue.ie or from the Nenagh Office (phone 067-63400 or Locall 1890 666333). (2)

This exemption does not apply to deeds of enlargement - see **section 35**.

82A Approved bodies

This section exempts from stamp duty donations of publicly quoted securities to approved bodies who 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 from stamp duty is sought must be submitted to the Commissioners for adjudication – see *section 20*. The exemption applies to instruments, transferring such securities, executed on or after 31 March 2006.

82B Approved sports bodies

Summary

This section provides for an exemption from stamp duty on the acquisition of land by a sporting body approved under section 235 of the Taxes Consolidation Act 1997 where the land acquired will be used for the sole purpose of promoting athletic or amateur games or sports. The exemption applies to instruments executed on or after 7 December 2006.

Details

The definition of “approved sports body” takes its meaning from “an approved body of persons” with the meaning of section 235(1) of the Taxes Consolidation Act 1997. (1)

The section provides for an exemption from stamp duty on a conveyance, transfer or lease of land to an approved sports body. (2)

The exemption only applies where the land conveyed, transferred or leased to the approved sports body will be used for the sole purpose of promoting athletic or amateur games or sports. Where the exemption is claimed, the instrument must be presented to the Revenue Commissioners for adjudication (see *section 20*) and must also contain the following certificate: (3)

“It is hereby certified that section 82B (approved sports bodies) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”.

A clawback of the relief or a proportionate amount of the relief granted to the approved sports body will arise, where the approved sports body disposes of the land or part of the land conveyed, transferred or leased to it by the exempt instrument and does not apply the proceeds from the disposal to the sole purpose of promoting athletic or amateur games or sports. (4)

A clawback of the relief granted will also arise where the approved sports body ceases to use the land it acquired for the sole purpose of promoting athletic or amateur games or sports. (5)

Interest will be payable on any penalty incurred, calculated in accordance with *section 159D*, from the date of any disposal or cessation, to the date the penalty is remitted. (6)

The maximum penalty payable on any instrument will not exceed the amount of duty that would have been payable on the instrument, in the first instance, had relief under the section not applied. (7)

83 Instruments given by means of security to company by subsidiary

Section deleted in respect of instruments executed on or after 7 December 2006.

83A Transfer of site to child

Summary

This section provides that the transfer of a site from a parent to a child, on or after 6 December 2000, is exempt from stamp duty if it is for the construction of the child's principal private residence and the market value of the site does not exceed €500,000 (€254,000 for instruments executed on or after 1 January 2002 and before 5 December 2007) (£200,000 prior to 1 January 2002). For transfers executed on or after 1 February 2007, the size of the site is limited to 0.4047 hectare (i.e. one acre) exclusive of the area of land on which the child's principal private residence is to be constructed.

The exemption has been extended to a foster child. A foster child is a person, being a transferee or lessee, who, prior to the date of execution of the instrument in respect of which an exemption from duty is claimed, has resided with, was under the care of and was maintained at the expense of the transferor or, as the case may be, the lessor throughout—

- a period of 5 years, or
- periods which together comprised at least 5 years,

prior to that person reaching 18 years of age but only if the claim for exemption is not based on the uncorroborated testimony of one witness. This extension of the exemption to a foster child applies to instruments executed on or after 31 March 2006 (see definition of "child" in *section 1*).

An instrument in respect of which an exemption is sought under this section must be submitted to the Revenue Commissioners for adjudication (see *section 20*) and must be confined to the transfer of the site. A child may only benefit from the exemption once. If the site value exceeds €500,000 the exemption will not apply and stamp duty is charged on the entire consideration.

Details

Definitions

"site" means land comprising both the area of land on which the child's principal private residence is to be constructed and an area of land for occupation and enjoyment with the residence which does not exceed 0.4047 hectare (i.e. one acre). It does not include an area of land on which there is a building which, at the date of the instrument of conveyance, transfer or lease –

- (a) was used or was suitable for use as a dwelling or for other purposes, or
- (b) was in the course of being constructed or adapted for use as a dwelling or for other purposes.

Instruments of conveyance, transfer or lease to which this section applies are exempt from stamp duty. (2)

The Revenue Commissioners may specify the form of the certificates that must appear in the instrument if a person is availing of the exemption. The person must certify: (3)

- that he or she is a child of the person(s) who owns the property at the date of the conveyance, transfer or lease,

- that the value of the site at the date of the conveyance, transfer or lease does not exceed €500,000 and that the transaction thereby effected does not form part of a larger transaction or of a series of transaction whereby property with a value in excess of €500,000 is conveyed, transferred or leased to that child.
- that the purpose of the conveyance, transfer or lease is to enable the child to construct a house on that site which will be occupied by that child as his or her only or main residence, and
- that the transaction being effected is the first and only conveyance, transfer or lease of a site for the benefit of that child from either or both of the parents of that child which contains the certificate specified in this section.

The wording of the certificate to be endorsed on the instrument is set out at Certificate No. 9 in **Appendix 3**. In addition, Certificate No. 3A or No. 3B, whichever is applicable, should also be endorsed on the instrument.

The instrument must be presented to the Revenue Commissioners for adjudication (4) (see *section 20*).

The insertion of an incorrect statement in the instrument will constitute an offence (5) within the meaning of section 1078 of the Taxes Consolidation Act, 1997.

83B Certain family farm transfers

This section provides for an exemption from stamp duty on certain 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 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. The exemption applies to instruments executed on or after 2 April 2007. Where the exemption is claimed, the instrument must be presented to the Revenue Commissioners for adjudication (see *section 20*) and must contain the following certificate:

“It is hereby certified that section 83B (certain family farm transfers) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”.

CHAPTER 2

Other instruments

84 Repayment of stamp duty on certain transfers of shares

Summary

The purpose of the section is to provide for the repayment of the stamp duty paid on a transfer on sale of shares which have been sold by a member (or technically “a participant”) of a profit sharing scheme who acquired the shares under the scheme and has held them for the requisite number of years.

Details

“approved scheme”, “participant”, “the release date” and “shares” are defined in (1) section 509 of the Taxes Consolidation Act 1997.

The Revenue Commissioners will refund the stamp duty paid on a transfer on sale of shares where they are satisfied that the shares were sold, after the release date, by, or on behalf of, a person (i.e. a participant) who acquired them under an approved scheme. While this section does not specify a time limit for submitting claims for refund, a 4 year time limit is provided for by *section 159A* from the date the transfer is stamped, in respect of a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*. Claims for a refund should be accompanied by the original stamped instruments. (2)

85 Certain loan capital and securities

This section contains a number of exemptions from stamp duty.

Subsection (2)(a)(ii) grants an exemption from stamp duty on the *issue* of loan capital. Both the exemption in *subsection (2)(a)(i)* and *(ii)* apply regardless of the form - bearer and non-bearer - in which the loan capital or loans are issued.

The *transfer* of loan capital of a company or other body corporate which—

- is not convertible to Irish registered shares;
- is not convertible to other loan capital having a right of conversion to Irish-registered shares;
- is redeemable within 30 years of issue and not thereafter – only applies to transfers of loan capital made before 13 March 2008;
- is issued for a price which is not less than 90% of its nominal value, and
- is not linked, wholly or partly, and directly or indirectly, to an equity index or equity indices. For transfers of loan capital made before 13 March 2008 the condition was that it was not linked to stock exchange or inflation indices (e.g. the ISEQ index, the Consumer Price Index: however, benchmarks used to set interest rates such as DIBOR - the Dublin inter-bank offer rate - were not, in the Revenue Commissioner's view, indices within the meaning of this section),

is exempt.

Where the loan capital comprises securities issued by a qualifying company (as defined in section 110 of the Taxes Consolidation Act, 1997) as part of certain schemes of securitisation *subsection (2)(c)* provides that the *issue or transfer* of these securities is exempt from stamp duty and exemption is not subject to the conditions set out in *subsection (2)(b)*. Securitisation of mortgages operates typically by a bank or building society transferring its portfolio of mortgages to another company for cash. The transferee company raises this cash by issuing bonds to the public who receive a stream of interest payments over time and have a readily marketable security. The bank benefits by having more funds to lend for further mortgages.

86 Certain loan stock

This section provides for the exemption from stamp duty of transfers of the loan stock of certain State bodies. Due to their respective privatisations, the reference to Bord Telecom Éireann and Irish Telecommunications Investment p.l.c. and ICC Bank public limited company have been deleted as they are no longer entitled to the exemption. However, the exemption will continue to apply to transfers of loan stock issued prior to each of these privatisations.

See also section 16 of the Housing Finance Agency Act, 1981, the text of which is set out in **Appendix 5**, which extends the benefit of this exemption to bonds, debentures or other securities issued by that Agency. This exemption is wider than that contained in *section 85(2)(b)*.

87 Stock borrowing

Summary

Trades involving the sale of stocks and shares sometimes settle late or are only partly settled or do not settle at all because, for example, the seller fails to deliver some or all of the share certificates to his or her broker in time for the broker to complete the trade.

One option to enable the sale to be completed would be for the broker or dealer (the “stock borrower”) to obtain the stock required from a third party (the “lender”): the lender would transfer the stock to the stock borrower and the stock borrower would then use it to complete the trade. As part of the stock borrower’s contract with the lender s/he would agree to return to the lender an equivalent amount of stock within the period agreed between the stock borrower and the lender. As further security for the lender the stock borrower would transfer other stock to the lender as collateral. A stock borrowing operation, therefore, typically involves 5 transfers i.e.

- (a) transfer of stock from the lender to stock borrower;
- (b) transfer on of that stock by the stock borrower to complete the sale;
- (c) transfer of collateral stock from the stock borrower to the lender;
- (d) return of equivalent stock to the lender, and
- (e) return of the collateral stock from the lender to the stock borrower.

The purpose of this section is to exempt transfers (a), (c) and (d) from stamp duty. (e) is not within the current charge to stamp duty.

Details

The definition of “stock borrower” and “lender” covers bodies/entities such as companies and other corporate bodies, building societies, pension funds, charities, unit trusts, investment limited partnerships, collective investment funds, member firms of any recognised stock exchange, market makers recognised as such by any recognised stock exchange, authorised investment business firms within the meaning of the Investment Intermediaries Act, 1995 and persons acting in a nominee or trustee capacity for any of the above bodies/entities. (1)

“collateral stock”, “equivalent stock”, and “stock return” are self-explanatory.

The following are exempt from stamp duty: (2)

- a stock borrowing,
- a stock return, or
- the transfer of collateral stock to the lender.

If equivalent stock is not returned to the lender within 12 months (applies to stock borrowing transactions entered into on or after 25 March 2005 – previously it was 6 months) from the date of the stock borrowing then— (3)

- the stock borrower will become liable to pay full ad valorem stamp duty on the stock transferred to the stock borrower by the lender;
- the stock borrower will have to pay the duty within 14 days after the end of that 12 month period. If the duty is not paid within that time interest, at the rate of 0.0273 per cent per day (see *section 159D*) from the first day after the expiration of the 12 month period to the date the duty is paid, is payable. In addition, a penalty of 1% of the duty for each day the duty remains unpaid after the expiry of the 14 day period of grace is payable.

The stock borrower is regarded as having obtained the borrowed stock on the date the stock is transferred to the borrower on foot of the stock borrowing contract entered into with the lender of the stock. Where the transaction is effected in CREST, the relevant date would be the settlement date. In the case of a non-CREST transaction the date would be the date of the execution of the Stock Transfer Form.

The stock borrower must maintain for a period of 3 years from the date of the stock borrowing, separate records of each stock borrowing and any stock return(s) made in respect of that stock borrowing. (4)

87A Stock repo

Summary

Stock repo transactions are similar in nature to stock borrowing transactions referred to in *Section 87* above. A stock repo transaction is one in which a repo seller agrees to sell stock to a repo buyer for a cash price on the basis that at the end of the fixed financing period the repo seller will buy back equivalent stock at a price equal to the original price plus interest.

The purpose of this section is to exempt from stamp duty the stock transfer from the repo seller to the repo buyer in pursuance of a repurchase agreement and the stock return from the repo buyer to the repo seller.

Details

“repo seller” and “repo buyer” covers bodies/entities such as companies and other corporate bodies, building societies, pension funds, charities, unit trusts, investment limited partnerships, collective investment funds, member firms of any recognised stock exchange, market makers recognised as such by any recognised stock exchange, authorised investment business firms within the meaning of the Investment Intermediaries Act, 1995 and persons acting in a nominee or trustee capacity for any of the above bodies/entities. (1)

“equivalent stock” and “stock return” are self-explanatory. (2)

The following are exempt from stamp duty:

- stock transfer to repo buyer from repo seller, and
- stock return to repo seller from repo buyer.

If equivalent stock is not repurchased by the repo seller within 12 months (applies to stock transfers executed on or after 25 March 2005 – previously it was 6 months) from the date of the stock transfer then— (3), (4)

- the repo buyer will become liable to pay full ad valorem stamp duty on the stock transferred to the repo buyer by the repo seller;

- the repo buyer will have to pay the duty within 14 days after the end of that 12 month period. If the duty is not paid within that time interest, at the rate of 0.0273 per cent per day (see **section 159D**) from the first day after the expiration of the 12 month period to the date the duty is paid, is payable. In addition, a penalty of 1% of the duty for each day the duty remains unpaid after the 14 day period of grace is payable.

The repo buyer must maintain, for a period of 3 years from the date of the stock transfer, separate records of each stock transfer and any stock return(s) made in respect of that stock transfer. (5)

88 Certain stocks and marketable securities

This section exempts transfers of the following from stamp duty:

- units in an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997, i.e.
 - units in unit trust schemes which are authorised by the Central Bank of Ireland under the terms of the Unit Trust Act 1990, provided that that authorisation has not been revoked;
 - units in authorised collective investment undertakings within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989, provided that that authorisation has not been revoked;
 - units in an investment limited partnership within the meaning of the Investment Limited Partnerships Act 1994; and
 - units in certain investment companies within the meaning of Part XIII of the Companies Act 1990, which are authorised by the Central Bank of Ireland provided that that authorisation has not been revoked;
 - units in a common contractual fund within the meaning of section 739I of the Taxes Consolidation Act 1997;
 - units in certain foreign collective investment schemes. However, if the transfer relates to Irish immovable property, or to the stocks or marketable securities of an Irish-incorporated²⁰ company other than an Irish collective investment undertaking, the exemption does not apply;
- units of a unit trust to which section 731(6) of the Taxes Consolidation Act 1997, relates - a unit trust which is covered by section 731(6) must be administered by a licensed life assurance company and must require a policy of life assurance to be effected for participation in the trust;
- stocks or marketable securities of companies which are not incorporated (see footnote 20) in the State. However, if the transfer relates to Irish immovable property, or to the stocks or marketable securities of an Irish-incorporated (see footnote 20) company other than an Irish collective investment undertaking, the exemption does not apply.

²⁰ While the legislation refers to Irish-registered companies in practice the exemption is available in all cases where the transfer does not relate to Irish-incorporated companies.

88A Reorganisation of undertakings for collective investment

This section exempts from stamp duty transfers of assets by a domestic collective fund to another such fund in exchange for the issue of units by that other fund. The exemption applies where the transfer of assets effects a disposal not chargeable to capital gains tax under section 739A of the Taxes Consolidation Act, 1997. The exemption applies to instruments executed on or after 23 March 2000.

88B Funds: reorganisation

This section provides for an exemption from stamp duty on any instrument made for the purposes of a scheme of reconstruction or amalgamation under which a foreign fund transfers its assets to a domestic fund in return for the domestic fund issuing units in the domestic fund to the holders of units in the foreign fund. A domestic fund is an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997 other than a Common Contractual Fund referred to in section 739I(1)(a)(ii) of that Act. The exemption applies to instruments executed on or after 31 March 2006.

88C Reconstructions or amalgamation of certain common contractual funds

This section provides for an exemption from stamp duty on any instrument made for the purposes of a scheme of reconstruction or amalgamation under which a Common Contractual Fund (CCF), set up pursuant to the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and to which section 739H(3) of the Taxes Consolidation Act 1997 applies, transfers its assets to another CCF of the same kind. The exemption applies to instruments executed on or after 31 March 2006.

88D Reconstructions or amalgamations of certain investment undertakings

This section extends a stamp duty exemption that already applies to certain schemes of reconstruction or amalgamation between an Irish and a non-Irish fund (see *section 88B*) to similar reconstructions or amalgamations between two Irish funds. The exemption also extends to similar schemes between sub-funds in different Irish funds. The exemption applies to instruments executed on or after 13 March 2008.

89 Foreign Government securities

This section exempts transfers of stocks or other securities of foreign national governments, foreign local governments and foreign local authorities from stamp duty.

90 Certain financial services instruments

This section exempts a range of instruments from stamp duty - the instruments concerned are used primarily in the financial services industry. The exemption will not apply if the instruments concerned (except in the case of American depository receipts, as defined) relate to Irish immovable property or to Irish stocks or marketable securities.

Although an instrument may be exempt under this section in respect of a particular transaction carried out by it, it may still be liable if it also carries out another transaction. The charge in this case would apply only in respect of that other transaction under the head of charge appropriate to it.

90A Greenhouse gas emissions allowance

Summary

This section provides for an exemption from stamp duty on the sale, transfer or other disposition of a “greenhouse gas emissions allowance” as defined in the section. 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.

Details

The definitions of “Directive” and “greenhouse gas emissions allowance” are self-explanatory. (1)

Subject to *subsection (2)*, stamp duty is not chargeable on an instrument for the sale, transfer or other disposition of a greenhouse gas emissions allowance. (2)

Where the property, the subject of the instrument, consists of both a greenhouse gas emissions allowance and other chargeable property, the consideration is to be apportioned on a just and reasonable basis as between the greenhouse gas emissions allowance and the other property contained in the instrument. In addition, only that part of the consideration which relates to property, which is not a greenhouse gas emissions allowance, will be chargeable to stamp duty. (3)

The amount or value of the consideration, attributable to a greenhouse gas emissions allowance will be disregarded for the purposes of the statement provided for in paragraphs 7 to 14A, relating to non-residential property, under the heading “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” in Schedule 1 to the Stamp Duties Consolidation Act 1999. (4)

Where the property is contracted to be sold for one consideration and the property is conveyed to the purchaser in separate parts or parcels by different instruments, the apportionment of the consideration under *section 45(1)*, is to be on a just and reasonable basis where part of the property consists of a greenhouse gas emissions allowance. (5)

Where a greenhouse gas emissions allowance is included in property contracted to be purchased jointly by two or more persons, who are relevant persons connected with one another, for one consideration but conveyed in parts or parcels by separate instruments, a similar apportionment under *section 45(3)*, as that contained in *subsection (5)*, is provided for. (6)

A “relevant person” for the purposes of *subsection (6)* is defined as a person by or for whom the property is contracted to be purchased and the question of whether persons are connected with one another is to be construed in accordance with section 10 of the Taxes Consolidation Act 1997. (7)

Where *subsection (5)* or *subsection (6)* applies and the consideration is apportioned other than in a just and reasonable manner, stamp duty is to apply as if the value of the property transferred was substituted for the consideration set out in the relevant instrument. (8)

91 New dwellinghouses and apartments with floor area certificate

This section exempts from stamp duty an instrument giving effect to the first purchase of a new house or apartment with a floor area certificate when purchased by, or on behalf of, a person who will occupy the house or apartment as his or her only or main place of residence for the specified period. The house or apartment (1)

must not have been occupied prior to purchase and it must have been purchased within a reasonable time after it had been built. While “reasonable time” is not defined the Revenue Commissioners will consider each case on its merits. ***The relief only applies to instruments which are executed before 1 April 2004 – but see section 91A for instruments executed on or after 1 April 2004.***

To qualify for the exemption the instrument must contain a statement, in such form as the Revenue Commissioners may specify, certifying that— **(2)(b)**

- the instrument gives effect to the purchase of a house or apartment on the erection thereof,
- a floor area certificate in respect of that house or apartment valid on the date of execution of the instrument was in existence. “Floor area certificate” is defined in ***subsection (2)(a)***. The floor area must not exceed 125 sq.m., and **(2)(a)**
- the purchaser (or if there is more than one purchaser, one or more of the purchasers) or some person in right of the purchaser (or if there is more than one purchaser, some person in right of one or more of the purchasers) intends to occupy the house or apartment as his or her principal place of residence for the specified period. The specified period is 5 years or, if shorter, until the house or apartment is sold in a bona fide sale to an unconnected party.

The wording of the certificate (delete as appropriate) is:

“It is hereby certified that—

- (a) this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment,
- (b) on the date of execution of this instrument, there exists a valid floor area certificate (within the meaning of section 4(2)(b) of the Housing (Miscellaneous Provisions) Act, 1979) in respect of the said dwellinghouse/apartment, and
- (c) the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 91(2)(b)(ii) (new dwellinghouse/apartment with floor area certificate) of the Stamp Duties Consolidation Act, 1999, and that no person (other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 6 April 2001, of furnished residential accommodation in part of the dwellinghouse/apartment concerned or other than by virtue of a title prior to that of the purchaser) will derive any rent or payment in the nature of rent for the use of the dwellinghouse/apartment or any part of it during that period.”

For ease of reference the wording of all the various certificates which must be inserted into a conveyance/lease of a new house or apartment to which this section applies is set out in leaflet SD 10 which can be accessed at www.revenue.ie.

Instruments which contain the above certificate do not need to be presented to the Revenue Commissioners for stamp duty purposes but have to be presented for impression of a particulars delivered stamp (see ***section 12***).

The furnishing of an incorrect certificate is deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997, and is, therefore, a revenue offence. **(2)(d)**

If any person derives rent (other than under the rent-a-room scheme) from the use of the house or apartment within the specified period the relief will be clawed back. Because the relief is clawed back in the guise of a penalty there is no need to return the original instrument for re-stamping. A clawback of the relief will not arise where the rent received for any year in respect of the provision of furnished accommodation in part of the house or apartment (i.e. the rent-a-room scheme) is in excess of the annual threshold (€10,000 for year of assessment 2008 and subsequent years) which applies for income tax purposes under the “rent-a-room relief” in section 216A of the Taxes Consolidation Act 1997. (2)(c)

Any person who receives rent or payment in the nature of rent (other than under the rent-a-room scheme) must inform the Revenue Commissioners, in the format set out in **Appendix 6**, within 6 months after receipt.

For instruments executed before 5 December 2007, to the extent that a dwellinghouse 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. (2A)

The relief only applies to instruments which are executed before 1 April 2004 (but see *section 91A*). (3)

91A New dwellinghouses and apartments with floor area compliance certificate

Summary

This section exempts from stamp duty an instrument giving effect to the first purchase of a new house or apartment with a floor area compliance certificate when purchased by, or on behalf of, a person who will occupy the house or apartment as his or her only or main place of residence for the specified period. The house or apartment must not have been occupied prior to purchase and it must have been purchased within a reasonable time after it had been built. While “reasonable time” is not defined the Revenue Commissioners will consider each case on its merits.

For the exemption to apply, there must be in existence, at the date of execution of the instrument, a valid floor area compliance certificate issued by the Minister for the Environment, Heritage and Local Government. The certificate must certify that the total floor area of the house or apartment is not greater than 125 square metres and not less than 38 square metres and that the house or apartment complies with certain conditions in relation to standards of construction of houses or apartments and the provision of water, sewerage and other services in such houses or apartments. The Minister for the Environment, Heritage and Local Government has made regulations in relation to how such houses and apartments are to be measured and also in relation to the conditions in respect of the standards referred to above (see S.I. No. 128 of 2004 entitled Housing (Floor Area Compliance Certificate Inspection) Regulations 2004).

An applicant for a floor area compliance certificate must be registered for VAT and must be the holder of a current C2 certificate or a current tax clearance certificate (see *subsection (1)(b)(ii)*). **This section applies to instruments executed on or after 1 April 2004.**

This section also contains transitional arrangements which allow valid floor area certificates held before 1 April 2004, by reference to *section 91* to be treated as valid floor area compliance certificates for the purposes of this section.

Details

“floor area compliance certificate” in respect of a house or apartment means a certificate issued by the Minister for the Environment, Heritage and Local Government certifying that that Minister is satisfied, on the basis of the information (1)

available to him/her at the time of so certifying, that—

- the total floor area of the house or apartment does not, or will not, exceed 125 square metres, and is not, or will not, be less than 38 square metres, and
- the house or apartment complies or will comply with such conditions, if any, as may be set down in regulations by the Minister for the Environment, Heritage and Local Government from time to time for the purposes of this section.

“valid floor area compliance certificate” means a floor area compliance certificate which has not been withdrawn.

To qualify for the exemption the instrument must contain a statement, in such form as (3), (4), (5) the Revenue Commissioners may specify, certifying that—

- the instrument gives effect to the purchase of a house or apartment on the erection thereof,
- the purchaser (or if there is more than one purchaser, one or more of the purchasers) or some person in right of the purchaser (or if there is more than one purchaser, some person in right of one or more of the purchasers) will occupy the house or apartment as a principal place of residence for a period of 2 years from the date of execution of the instrument (5 years for instruments executed before 5 December 2007 – but see *subsection (6A)* below) or until the house or apartment is sold by way of a bona fide sale to an unconnected party if that period is shorter than 2 years. The statement must also certify that no person, other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 1 April 2004, of furnished accommodation in part of the house or apartment or other than by virtue of a title prior to that of the purchaser, will derive rent or payment in the nature of rent for the use of the house or apartment during the period referred to above, and
- a valid floor area compliance certificate in respect of that house or apartment was in existence on the date of execution of the instrument. “Floor area compliance certificate” is defined in *subsection (1)*.

For ease of reference, the wording of all the various certificates which must be inserted into a conveyance/lease of a new house or apartment is set out in **Appendix 3**. (See also leaflet SD 10(A)).

Instruments which contain the appropriate certificate for this exemption do not need to be presented to the Revenue Commissioners for stamp duty purposes but have to be presented for impression of a particulars delivered stamp (see *section 12*).

Where a person (other than under the rent-a-room scheme) receives rent or payment (6) in the nature of rent from the use of the house or apartment within the specified period referred to in *subsection (4)*, that person is liable to a penalty equal to the amount of duty which would have been charged had this section not applied, together with interest on that amount at the rate of 0.0273 per cent per day (see *section 159D*) from the date when rent or payment in the nature of rent is first received to the date the penalty is remitted. A clawback of the relief will not arise where the rent received for any year in respect of the provision of furnished accommodation in part of the house or apartment (i.e. the rent-a-room scheme) is in excess of the annual threshold (€10,000 for years of assessment 2008 and subsequent years) which applies for income tax purposes under the “rent-a-room relief” in section 216A of the Taxes Consolidation Act 1997.

Any person who receives rent or payment in the nature of rent (other than under the rent-a-room scheme) must inform the Revenue Commissioners, in the format set out in **Appendix 6**, within 6 months after receipt.

For instruments executed before 5 December 2007, to the extent that a dwellinghouse (6A) 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.

Where a valid floor area certificate, within the meaning of **section 91** has issued, that (7) certificate is deemed to be a valid floor area compliance certificate, within the meaning of this section for the purposes of claiming the stamp duty exemption under this section.

The furnishing of an incorrect certificate is deemed to constitute the delivery of an (8) incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act 1997, and is therefore a revenue offence.

92 New dwellinghouses and apartments with no floor area certificate

Summary

This section provides for a reduction in the amount chargeable to stamp duty in the case of new houses and apartments purchased by, or on behalf of, a person who will occupy the house or apartment as his or her only or main place of residence for the specified period.

For instruments executed **on or after 1 July 2004** (other than those instruments executed solely in pursuance of binding contracts entered into **before 1 April 2004**) the relief will only apply where the instrument contains, inter alia, a certificate to the effect that on the date of execution of the instrument there is in existence a certificate signed by a person or a class of persons described in regulations made by the Minister for the Environment, Heritage and Local Government stating that the total floor area of the house or apartment exceeds 125 sq. metres. Article 7 of S.I. No 128 of 2004 entitled Housing (Floor Area Compliance Certificate Inspection) Regulations 2004 states that the person who may sign the certificate must be a qualified architect, engineer or surveyor.

Where a liability to stamp duty does not arise under this section, the instrument is only required to be presented to the Revenue Commissioners for impression of a particulars delivered stamp (see **section 12**).

Details

The amount of the consideration on which stamp duty is chargeable is reduced in the case of new houses and apartments purchased by, or on behalf of, person(s) who will occupy the house or apartment as his or her only or principal place of residence and who, while in such occupation, will not derive any rent or payment in the nature of rent (other than rent or payment in the nature of rent in consideration for the provision, on or after 6 April 2001, of furnished residential accommodation in part of the house or apartment concerned) from the house or apartment for a specified period. The specified period is 2 years (5 years for instruments executed before 5 December 2007 – but see **subsection (2A)** below) or, if shorter, until the house or apartment is sold in a bona fide sale to an unconnected party.

The relief amounts to a reduction in the amount or value of the consideration chargeable to stamp duty. In the case of—

- a conveyance or lease giving effect to the purchase of a site plus building (1)(a)(i), (ii) contract the consideration chargeable to stamp duty is the greater of—

- the total cost (excluding rent) of the site, and
- 25% of the aggregate cost (excluding rent) of the site plus building costs;
- a conveyance or lease of a completed new house or apartment the consideration (other than rent) is reduced by 75%. This exemption is for an instrument giving effect to the first purchase of a new house or apartment. The house or apartment must not have been occupied prior to purchase and it must have been purchased within a reasonable time after it had been built. While “reasonable time” is not defined the Revenue Commissioners will consider each case on its merits. **(1)(a)(iii)**

The stamp duty payable is the duty applicable to the element of the consideration on which stamp duty is chargeable. **(1)(a)**

Example 1

	Consideration
Site	€225,000
Building contract	<u>€575,000</u>
	€800,000

The element of the consideration on which duty is chargeable is €225,000 (i.e. the cost of the site). The duty payable is €7,000 (€100,000 (i.e. €225,000 - €125,000) x 7%).

Example 2

	Consideration
Site	€100,000
Building contract	<u>€360,000</u>
	€460,000

No stamp duty is payable provided the appropriate certificate (see summary) is inserted in the instrument as the element of the consideration on which duty is chargeable (i.e. €115,000) is below the exempt threshold of €127,000 (see head of charge in **Schedule 1**).

In order to qualify for the relief the transfer or lease must contain a certificate, the wording of which (delete as appropriate) is— **(1)(b)(ii)**

“It is hereby certified that the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 92(1)(b)(ii) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act 1999, and that no person (other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 6 April 2001, of furnished residential accommodation in part of the dwellinghouse/apartment concerned or other than by virtue of a title prior to that of the purchaser) will derive any rent or payment in the nature of rent for the use of the dwellinghouse/apartment or any part of it during that period.”.

In addition, if the conveyance/lease gives effect to— **(1)(b)(i), (ia)**

- contract(s) for site plus building works the conveyance/lease must contain the following certificate (delete as appropriate):

“It is hereby certified that—

- (a) section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment)/53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999, applies to this instrument, and
 - (b) on the date of the execution of this instrument there exists a certificate which complies with section 92(1)(b)(ia) of the Stamp Duties Consolidation Act 1999.”;
- a contract for a completed house or apartment the conveyance/lease must contain the following certificate (delete as appropriate):

“It is hereby certified that—

- (a) this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment,
- (b) section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment)/53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999, does not apply to this instrument, and
- (c) on the date of execution of this instrument there exists a certificate which complies with section 92(1)(b)(ia) of the Stamp Duties Consolidation Act 1999.”.

For ease of reference the wording of all the various certificates which must be inserted into a conveyance/lease of a new house or apartment is set out in **Appendix 3**. (See also leaflet SD 10(A))

There is no requirement that the instrument has to be adjudicated (see *section 20*).

The relief will be clawed back if any person derives rent or payment in the nature of rent (other than under the rent-a-room scheme) from the use of the house or apartment within the specified period. Because the relief is clawed back in the guise of a penalty there is no need to return the original instrument for re-stamping. A clawback of the relief will not arise where the rent received for any year in respect of the provision of furnished accommodation in part of the house or apartment (i.e. the rent-a-room scheme) is in excess of the annual threshold (€10,000 for year of assessment 2008 and subsequent years) which applies for income tax purposes under the “rent-a-room relief” in section 216A of the Taxes Consolidation Act 1997. (2)

Any person who receives rent or payment in the nature of rent must inform the Revenue Commissioners within 6 months after receipt. The format to be used is set out in **Appendix 6**.

For instruments executed before 5 December 2007, to the extent that a dwellinghouse 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. (2A)

The furnishing of an incorrect statement constitutes the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act 1997. (3)

The Minister for the Environment, Heritage and Local Government may make regulations from time to time specifying the manner in which the total floor area of the house or apartment is to be measured and specifying the person or class of persons who may sign the certificate referred to in *subsection (1)(b)(ia)* in relation to the floor area of the house or apartment (see summary). (4)

Any regulations made under this section must be laid before Dáil Éireann. (5)

92A Residential property owner occupier relief

Summary

This section was enacted by the Finance (No. 2) Act 2000 to give relief to owner occupiers (other than first time purchasers – see *section 92B*) purchasing secondhand and large new houses/apartments from the 9% stamp duty rate (introduced by the Finance (No. 2) Act 2000 but abolished by the Finance Act 2002). The owner occupier relief applied to instruments executed on or after 15 June 2000 and before 6 December 2001. The clawback provisions now only apply to instruments executed before 6 December 2001 where the event giving rise to the clawback also occurred before 6 December 2001 (see explanation below).

Details

For the rates of duty applicable to this relief see **Appendix 4**. (1)

The relief applies to a new house/apartment (to which *section 92* applies) and a secondhand house/apartment which is purchased by, or on behalf of, a person who will occupy the house/apartment as his or her only or principal place of residence and while in such occupation, will derive no rent or payment in the nature of rent before 6 December 2001, other than in consideration for the provision, on or after 6 April 2001 of furnished residential accommodation in part of the house/apartment, for a specified period. The specified period runs from the date of the execution of the instrument until 5 December 2001, or if shorter, until the house/apartment is sold in a bona fide sale to an unconnected party. (2), (7)

The stamp duty relief granted will be clawed back if any person derives rent (other than under the rent-a-room scheme) from the use of the house/apartment within the specified period referred to above. Any person receiving such rent must inform the Revenue Commissioners within 6 months after receipt. The format to be used is set out in **Appendix 6**. (3)

Where the relief in this section and *section 92* (i.e. relief for large new houses/apartments by way of duty being charged on 25% of the consideration) has applied and is being clawed back then (4)

- (a) the amount of the penalty under this section is the amount that would be payable had the relief under *section 92* still applied, and
- (b) the amount of the penalty under *subsection (2)(a)* of *section 92* is the amount that would be payable had the relief under this section been denied,

and the penalty applied under this section will be in addition to the penalty under *section 92*.

Where a penalty arises under this section and under *section 92* the total of the 2 penalties will not exceed the amount of duty that would have been paid had no reliefs applied less the amount of duty already paid.

The relief under this section does not apply where the consideration for the sale or lease concerned, attributable to residential property, covers any residential property which would not be entitled to relief under this section or where the sale or lease concerned is part of a larger transaction or of a series of transactions where the aggregate consideration, attributable to residential property for that larger transaction or series of transactions covers any residential property not entitled to relief under this section. (5)

A purchaser is precluded from relief under this section where that purchaser, being a first time purchaser claims relief under *section 92B*. (6)

The relief under this section does not apply to an instrument executed on or after 6 December 2001. (8)

92B Residential property first time purchaser relief

Summary

This section was enacted by the Finance (No. 2) Act 2000 to give relief by way of reduced stamp duty rates to first time purchasers purchasing secondhand and large new houses/apartments. The section applies to instruments executed on or after 15 June 2000 subject to compliance with certain conditions. Rates of duty for first time purchasers were further reduced by section 126 of the Finance Act 2005 for instruments executed on or after 2 December 2004 and were all reduced to “NIL” by the Finance (No. 2) Act 2007 for instruments executed on or after 31 March 2007. (See **Appendix 3**)

Details

“first time purchaser” means— (1)

- (a) a person, or
- (b) as respects instruments executed on or after 27 June 2000, a person, being an individual (companies are excluded from the relief),

who, at the time of execution of the instrument, has not, either individually or jointly with any other person or persons, previously purchased (other than the purchase of a leasehold interest by way of grant or assignment for any term not exceeding one year), or previously built—

- (i) directly or indirectly on his or her own behalf, or
- (ii) as respects instruments executed on or after 27 June 2000, in a fiduciary capacity,

another house or apartment or part of another house or apartment (in Ireland or abroad). A person who acquired property in a fiduciary capacity in the past cannot avail of this relief as respects a subsequent purchase notwithstanding the fact that the prior purchase was not for that person’s benefit.

A person is regarded as a purchaser where a gift of a house or apartment is taken on or after 22 June 2000 (or part of a house or apartment is taken on or after 27 June 2000) and that person will be precluded from qualifying for first time purchaser relief in respect of a subsequent purchase or gift whether or not first time purchaser relief was obtained in respect of the earlier gift.

For instruments executed on or after 31 January 2008, a “purchaser” is an individual who purchases a house or apartment or an interest in same, where the consideration for the purchase is derived from the individual’s own means which can be, or can include, an unconditional gift or a bona fide loan evidenced in writing made to the individual concerned.

For instruments executed on or after 31 January 2008, a gift is deemed not to be unconditional and a loan not to be bona fide where the donor/lender is not a party to the deed of transfer and intends to, or does occupy the house or apartment with the purchaser as the only or principal place of residence of each of them or there is an understanding or agreement that the house or apartment, or an interest in same can be transferred to the donor or lender at any time following the purchase. (1A)

The deeming provisions of *subsection (1A)* apply to cases other than where the donor or the lender is a parent of the purchaser. (1B)

In the case of a parent and child relationship, the status of the child, for the purpose of claiming the relief, will flow from the definition of “purchaser” and whether the child purchased the house or apartment from his or her own means. Where a child receives a gift or loan from a parent, the child will be precluded from availing of the relief, where the effect of the gift or loan is that the parent obtains a beneficial interest in the house or apartment, whether or not the parent moves in to live with the child.

“decree of divorce” means a divorce under section 5 of the Family Law (Divorce) Act, 1996, or any decree to like effect that was granted under the law of a country or jurisdiction other than the State and is recognised in the State; (8)(b)

“decree of judicial separation” means a decree under section 3 of the Judicial Separation and Family Law Reform Act, 1989, or any decree to like effect that was granted under the law of a country or jurisdiction other than the State and is recognised in the State;

“decree of nullity” means a decree granted by the High Court declaring a marriage to be null and void or any decree to like effect that was granted under the law of a country or jurisdiction other than the State and is recognised in that State;

“deed of separation” means a deed of separation executed by both spouses to a marriage and the date of that deed is the date it is executed by such spouses.

The relief, which is a full exemption from stamp duty for instruments executed on or after 31 March 2007, applies to new houses or apartments (to which *section 92* applies) and secondhand houses or apartments which are purchased by, or on behalf of, a person who certifies that he/she or where there is more than one purchaser, each and everyone of those purchasers, is a first time purchaser. It must also be certified that the purchaser (or if there is more than one purchaser, one or more of the purchasers) or some person in right of the purchaser (or if there is more than one purchaser, some person in right of one or more of the purchasers) will occupy the house or apartment as his or her only or principal place of residence and derive no rent or payment in the nature of rent, while in such occupation, other than in consideration for the provision, on or after 6 April 2001 of furnished residential accommodation in part of the house or apartment for a specified period. The specified period is 2 years (5 years for instruments executed before 5 December 2007 – but see *subsection (4A)* below) or, if shorter, until the house or apartment is sold in a bona fide sale to an unconnected party. **Appendix 3** or leaflet SD 10(A) contain the wording of the appropriate certificates. (2) & (3)

The relief does not apply to instruments (executed on or after 1 March 2005) which give effect to— (3A)

- a purchase of a newly completed house or apartment, or
- a purchase effected by way of a conveyance on sale or lease of land combined with a building agreement for the house or apartment,

where the total floor area of the house or apartment does not exceed 125 square metres. First time purchasers who are owner occupiers will continue to be exempt from stamp duty on the purchase of such houses under *section 91A* where a Floor Area Compliance Certificate has been issued by the Minister for the Environment, Heritage and Local Government.

The stamp duty relief granted will be clawed back if any person derives rent (other than under the rent-a-room scheme) from the use of the house/apartment within the specified period. Any person receiving such rent must inform the Revenue Commissioners within 6 months after receipt. The format to be used is set out in **Appendix 6**. (4)

For instruments executed before 5 December 2007, to the extent that a dwellinghouse 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. (4A)

Where the relief in this section and *section 92* (i.e. relief for large new houses/apartments by way of duty being charged on 25% of the consideration) has applied and is being clawed back then (5)

- (a) the amount of the penalty under this section will be the amount that would be payable had the relief under *section 92* still applied, and
- (b) the amount of the penalty under *subsection (2)(a)* of *section 92* will be the amount that would be payable had the relief under this section been denied,

and the penalty applied under this section will be in addition to the penalty under *section 92*.

It should be noted where a penalty arises under this section and under *section 92* that the total of the 2 penalties will not exceed the amount of the duty that would have been paid, had no reliefs applied, less the amount of duty already paid.

A person can only qualify once for the relief under this section and in respect of only one unit of residential property and therefore the section will not apply to an instrument giving effect to a sale or lease where there is more than one unit of residential property or where the sale or lease forms part of a larger transaction or of a series of transactions comprising more than one unit of residential property. (6)

The trustees of a trust (to which section 189A of the Taxes Consolidation Act 1997 applies), whose trust funds are established out of public subscriptions for the benefit of permanently incapacitated persons, will be entitled to first time purchaser relief in respect of the first house bought or gifted, following the establishment of the trust, for occupation by the beneficiary. Where there is more than one beneficiary, relief may be claimed for each of the beneficiaries. (7)

A person who has left the former marital home due to the marriage having become the subject of a decree of divorce, a decree of judicial separation, a decree of nullity or a deed of separation and who buys another house to live in, is entitled to claim first time purchaser relief on that house provided that, at the time of the new purchase, he or she does not retain an interest in the former marital home and the other spouse occupies the former marital home following the decree or the deed of separation (but not necessarily at the time of the new purchase). For instruments executed *prior* to 1 February 2007, the spouse had still to be occupying the former marital home as his or her only or main residence at the time the person made the new purchase. In addition, (8)(a)

for instruments executed *on or after* 1 February 2007, the person who leaves the former marital home, will not be entitled to claim first time purchaser relief where, at the time of the decree or deed of separation, the person has an interest in another house (or apartment) apart from the former marital home. See **subsection (8)(b)** above for definitions.

In a case where the person, leaving the former marital home, would be denied first time purchaser relief on the purchase of a new home, for the sole reason, that he or she goes ahead and purchases a new home in anticipation of the grant of the decree or the making of the deed of separation, provision has been made for that person to be deemed to be a first time purchaser and to be able to make a claim for repayment to the Revenue Commissioners in respect of the duty paid on the purchase of the new home. The claim for repayment can be made, where, subject to complying with certain conditions, the purchase is made by virtue of or in connection with, and within 6 months of, the granting of the decree or the making of the deed of separation. This paragraph applies to instruments giving effect to the purchase of a new home executed *on or after* 1 February 2007. The person making the claim for repayment must furnish the following to the Revenue Commissioners in support of the claim for repayment: **(8)(aa)**

- the stamped instrument in respect of which relief is claimed and a copy of the decree or the deed of separation.
- a declaration in writing by the person claiming the relief confirming to the satisfaction of the Revenue Commissioners that—
 - (a) the purchase of the new home was made in connection with the decree or the deed of separation,
 - (b) immediately before the date of the decree or the date the deed of separation was made, the person buying the new home was not beneficially entitled to an interest in any house (or apartment) other than the newly purchased home and the former marital home,
 - (c) the spouse of that person has occupied the former marital home, as his or her only or main residence, after the date of the decree or the date the deed of separation was made and was beneficially entitled to an interest in that home at the date of the decree or the date the deed of separation was made or acquired such an interest after that date in consequence of the decree or the deed of separation,
 - (d) at the time of making the claim for repayment, the claimant was not beneficially entitled to an interest in the former marital home,
 - (e) since the date of the purchase of the new home, the person has complied with the conditions in relation to the receipt of rent in **subsection (3)(b)(ii)** or, as the case may be, **section 92(1)(b)(ii)** and that these conditions will be complied with for the remainder of the 2 year period referred to in the subsection or section,
 - (f) the new home purchased is not one to which **section 91A** applies i.e. is not a new house with a floor area not exceeding 125 sq metres, and
 - (g) where the new home was purchased by the person along with another individual that the other individual was a first time purchaser within the meaning of **subsection (1)**, immediately prior to the date of the purchase concerned,

- the PPS Number of the person making the claim for repayment and any co-purchaser, and any other evidence that the Revenue Commissioners may require.

92C Residential property investor relief

This section was enacted by the Finance Act 2001 to give relief to investors in new houses from the 9% new and secondhand house investor stamp duty rate introduced the previous year by the Finance (No. 2) Act 2000. The reduced rates applied to instruments executed on or after 27 February 2001. As the rate for investors both in new and secondhand houses was aligned with the owner occupier rate i.e. the full rate, by the Finance Act 2002 for instruments executed on or after 6 December 2001, this section only applied to instruments executed before 6 December 2001. See **Appendix 4** for the rates of duty applicable to this relief.

93 Houses acquired from industrial and provident societies

This section exempts from stamp duty conveyances, transfers or leases of a house by a registered industrial and provident society to a member of the society or to a member and his or her spouse provided that the conveyance, transfer or lease is made in accordance with a scheme for the provision of houses for members of the society.

93A Approved voluntary body

This section exempts from stamp duty conveyances, transfers or leases of land to a voluntary body approved by the Minister for the Environment, Heritage and Local Government under section 6 of the Housing (Miscellaneous Provisions) Act, 1992, for the purpose of the Housing Acts, 1966 to 1998. The exemption applies to instruments executed on or after 15 February 2001.

94 Purchase of land from Land Commission

This section provides that certain purchases of land from the Land Commission are exempt from stamp duty.

95 Commercial woodlands

This section provides partial relief from stamp duty in respect of certain instruments relating to the sale or lease of land on which “trees” are growing. The partial relief is given by providing that the value of any trees growing on the land at the time the land is sold or leased will not be taken into account if—

- the trees are being managed on a commercial basis with a view to making a profit,
- the trees are growing on a substantial part of the land, and
- the instrument contains a certificate to such effect. The wording of the certificate is—

“It is hereby certified for the purposes of section 95 (commercial woodlands) of the Stamp Duties Consolidation Act, 1999, that trees (within the meaning of that section) are growing on a substantial part of the land the subject of this instrument.”.

This exemption does not apply to gifts. While “substantial” is not defined the Revenue Commissioners will consider each case on its merits.

To enable the Revenue Commissioners to decide whether relief should be granted in any particular case—

- a completed adjudication warrant (see *section 20*), and
- an apportionment of the consideration on form ADJN 120,

should be submitted to them together with the original and a copy of the executed instrument.

96 Transfers between spouses

This section exempts from stamp duty all transfers/leases of property between spouses unless the transfer is a transfer referred to in *section 46(1) to (4)* or *section 73(1)(b)*. If any other person is a party to the instrument the exemption does not apply. However, consanguinity relief may be available (see paragraph (15) of the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge in *Schedule 1*). (1), (2)

The instrument of transfer does not have to be adjudicated (see *section 20*) by the Revenue Commissioners in order to obtain the benefit of the exemption. (3)

97 Certain transfers following the dissolution of a marriage

Summary

This section exempts from stamp duty certain transfers of property between former spouses.

Details

All transfers of property from one spouse to the other where those spouses have divorced and the transfer is made pursuant to a court order referred to in *subsection (2)* are exempt from stamp duty. (1)

Transfers on foot of the following court orders are exempt: (2)(a)

- a relief order within the meaning of section 23 of the Family Law Act, 1995,
- an order under Part III of the Family Law (Divorce) Act, 1996, or
- a foreign court order or other determination to like effect, made on or after 10 February 2000, under or in consequence of the dissolution of a marriage where the dissolution is entitled to be recognised as valid in the State.

The instrument of transfer does not have to be adjudicated (see *section 20*) by the Revenue Commissioners in order to obtain the benefit of the exemption. (3)

The exemption only applies to transfers between spouses who have divorced each other. If any other person is a party to the instrument the exemption does not apply. (2)(b)

98 Foreign immovable property

This section exempts instruments relating to foreign immovable property from stamp duty. However, if the instrument relates to Irish immovable property or Irish stocks or marketable securities the exemption will not apply.

99 Dublin Docklands Development Authority

This section exempts from stamp duty acquisitions of land, etc., by the Dublin Docklands Development Authority or any of the Authority's 100% subsidiary companies.

99A Courts service

This section exempts from stamp duty any instrument under which any land, easement, way-leave, or certain other rights are acquired by the Courts Service. The exemption applies to instruments executed on or after 31 March 2006.

100 Temple Bar Properties Limited

If Temple Bar Properties Limited or any of its subsidiaries acquires or leases property the transfer or lease is exempt from stamp duty provided the property in question is located within the Temple Bar area as defined in the Temple Bar Area Renewal and Development Act, 1991.

101 Intellectual property

Summary

This section provides for an exemption from stamp duty on the sale, transfer or other disposition of intellectual property as defined. Intellectual property includes any patent, trademark, copyright, registered design, design right, invention, domain name, supplementary protection certificate or plant breeders' rights. Any contract or agreement for sale, any licence or mortgage, of such intellectual property, is covered by the exemption. A Commencement Order (S.I. No. 140 of 2004) confirms 1 April 2004 as the date on which this section came into operation.

(Section 101 previously provided for a limited stamp duty exemption for certain international trademarks).

Details

"intellectual property" is defined as:

(1)

- (a) any patent, trademark, registered design, design right, invention or domain name,
- (b) any copyright or related right within the meaning of the Copyright and Related Rights Act 2000,
- (c) any supplementary protection certificate provided for under Council Regulation (EEC) No. 1768/92 of 18 June 1992²¹,
- (d) any supplementary protection certificate provided for under Regulation (EC) No. 1610/96 of the European Parliament and the Council of 23 July 1996²²,
- (e) any plant breeders' rights within the meaning of section 4 of the Plant Varieties (Proprietary Rights) Act 1980, as amended by the Plant Varieties (Proprietary Rights) (Amendment) Act 1998,
- (f) any application for the grant or registration of anything within paragraph (a), (b), (c), (d) or (e),

²¹ OJ No. L 198, 8.8.1996, p.30

²² OJ No. L 182, 2.7.1992, P.1

- (g) any licence or other right in respect of anything within paragraph (a), (b), (c), (d), (e), or (f),
- (h) any rights granted under the law of any country, territory, state or area, other than the State, or under any international treaty, convention or agreement to which the State is a party, that correspond to or are similar to those within paragraph (a), (b), (c), (d), (e), (f) or (g),
- (i) goodwill to the extent that it is directly attributable to anything within paragraph (a), (b), (c), (d), (e), (f), (g) or (h).

Subject to **subsection (3)**, stamp duty is not chargeable on an instrument for the sale, transfer or other disposition of intellectual property as defined. **(2)**

Where an instrument consists of both intellectual property and other chargeable property the consideration is to be apportioned on a just and reasonable basis between intellectual property and the other property contained in the instrument, and in addition, only that part of the consideration which relates to property, which is not intellectual property, will be chargeable to stamp duty. **(3)**

The amount or value of the consideration attributable to intellectual property will be disregarded for the purposes of the statement provided for in **paragraphs 7 to 14A**, relating to non-residential property, under the heading “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” in **Schedule 1** of the Stamp Duties Consolidation Act 1999. **(4)**

Where property is conveyed in separate parts by different instruments, the apportionment of consideration under **section 45(1)**, is to be on a just and reasonable basis where part of the property consists of intellectual property. **(5)**

Where intellectual property is included in property contracted to be purchased by two or more persons who are relevant persons connected with one another, a similar apportionment under **section 45(3)**, as that contained in **subsection (5)** is provided for. **(6)**

A “relevant person”, for the purposes of **subsection (6)**, is defined as a person by or for whom the property is contracted to be purchased and the question of whether persons are connected with one another is to be construed in accordance with section 10 of the Taxes Consolidation Act 1997 and as if the reference to the Capital Gains Tax Acts in the definition of “relative” in that section was replaced by a reference to the Stamp Duties Consolidation Act 1999. **(7)**

Where **subsection (5)** or **subsection (6)** apply and the consideration is apportioned other than on a just and reasonable basis, stamp duty is to apply as if the value of the property transferred was substituted for the consideration set out in the relevant instrument. **(8)**

101A Single farm payment entitlement

Summary

This section provides for an exemption from stamp duty on the sale, transfer or other disposition of an EU Single Farm Payment Entitlement. Any contract or agreement for sale, or a mortgage, of such EU Single Farm Payment Entitlement, is covered by the exemption. The exemption applies to instruments executed on or after 1 January 2005.

Details

“payment entitlement” has the same meaning as it has for the purposes of Council Regulation (EC) No. 1782/2003 of 29 September 2003²³ (1)

Subject to **subsection (3)**, stamp duty is not chargeable on an instrument for the sale, transfer or other disposition of a payment entitlement. (2)

Where an instrument consists of both a payment entitlement and other chargeable property, the consideration is to be apportioned on a just and reasonable basis as between the payment entitlement and the other property contained in the instrument, and in addition, only that part of the consideration which relates to property, which is not a payment entitlement, will be chargeable to stamp duty. (3)(a),(b)

The amount or value of the consideration, attributable to a payment entitlement will be disregarded for the purposes of the statement provided for in paragraphs 7 to 14A, relating to non-residential property, under the heading “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” in Schedule 1 of the Stamp Duties Consolidation Act 1999. (4)

Where property is conveyed in separate parts by different instruments, the apportionment of consideration under **section 45(1)**, is to be on a just and reasonable basis where part of the property consists of a payment entitlement. (5)

Where a payment entitlement is included in property contracted to be purchased by two or more persons who are relevant persons connected with one another, a similar apportionment under **section 45(3)**, as that contained in **subsection (5)**, is provided for. (6)

A “relevant person”, for the purposes of **subsection (6)**, is defined as a person by or for whom the property is contracted to be purchased and the question of whether persons are connected with one another is to be construed in accordance with section 10 of the Taxes Consolidation Act 1997 and as if the reference to the Capital Gains Tax Acts in the definition of “relative” in that section was replaced by a reference to the Stamp Duties Consolidation Act 1999. (7)

Where **subsection (5)** or **subsection (6)** applies and the consideration is apportioned other than in a just and reasonable manner, stamp duty is to apply as if the value of the property transferred was substituted for the consideration set out in the relevant instrument. (8)

102 The Alfred Beit Foundation

This section exempts from stamp duty any conveyances, transfers or lettings made by Alfred Lane Beit and Clementine Mabel Beit to The Alfred Beit Foundation.

103 Shared ownership leases

Summary

This section exempts from stamp duty certain documents executed in the context of a shared ownership lease.

A shared ownership lease is a concept in property tenure introduced by the Housing (Miscellaneous Provisions) Act, 1992. It applies to residential property only and is intended to assist those on low incomes to purchase their own homes. The lease must be granted by an appropriate person e.g. financial institutions, insurance companies, the National Building Agency, housing co-operatives.

²³ OJ No. L270 of 21.10.2003, p.1.

A shared ownership lease operates on the basis that the lessor buys the property. The lessee then buys a part share in the property from the lessor and enters into a lease arrangement with respect to the remainder. The lease will contain a provision enabling the lessee to acquire the remaining equity in the property over time as his or her financial circumstances permit.

Details

“appropriate person” and “shared ownership lease” are self-explanatory. Only an appropriate person may grant a shared ownership lease. An appropriate person is— (1)

- a licensed bank,
- a building society,
- an insurance company (life or non-life),
- a body approved by the Minister for the Environment and Local Government,
- the National Building Agency Ltd,
- a housing co-operative, or
- other self-help housing groups certified by the Minister for the Environment and Local Government.

Section 106B contains an exemption from stamp duty where the lessor is a local authority.

A shared ownership lease is one which is granted for a term of between 20 and 100 years on payment to the lessor of between 25% and 75% of the market value of the house and which gives to the lessee the right to buy out, in one or more transactions and on the terms specified in the lease, all the interest of the lessor in the house. The Minister for the Environment and Local Government controls by regulations the class of persons to whom property may be leased in this way.

A shared ownership lease or any instrument whereby the lessee acquires the remaining equity in a property subject to the lease is exempt from stamp duty. (2)

Relief will be granted where the Revenue Commissioners are satisfied that the lessor is an appropriate person. To enable the Revenue Commissioners to decide whether relief should be granted in any particular case a completed adjudication warrant should be submitted to them together with the original and a copy of the executed instrument and evidence of the status of the lessor. (3)

104 Licences and leases granted under Petroleum and Other Minerals Development Act, 1960, etc.

This section exempts from stamp duty leases and licences entered into for the purposes of oil exploration. It also exempts the assignment of any such leases and licences from stamp duty.

The leases and licences which are exempted are:

- exploration licences. These give exclusive rights to the licensee to search for petroleum in the area to which the licence extends;
- prospecting licences. These allow the licensee to carry out testing and experiments on the land in the area to which the licence extends;

- petroleum leases. These allow for the exploitation of petroleum deposits which have been discovered;
- reserved area licences. These licences are granted to persons who hold petroleum leases in respect of the area surrounding the land to which the lease refers.

105 Securitisation agreements

The Securitisation (Proceeds of Certain Mortgages) Act, 1995, was enacted in order to raise the moneys needed to pay to women the arrears owed to them arising from a High Court ruling in relation to the EU Directive dealing with equality of treatment in social security payments. The moneys were raised by securitising a portfolio of mortgages held by local authorities.

This section exempts the transfer of securities issued by the special purpose vehicle established under the Securitisation (Proceeds of Certain Mortgages) Act, 1995, from stamp duty.

106 Housing Finance Agency

This section exempts from stamp duty instruments which secure moneys advanced by the Housing Finance Agency to housing authorities.

106A National Building Agency Limited

This section exempts from stamp duty conveyances, transfers or leases of land to the National Building Agency Limited, for the purposes of the Housing Acts, 1966 to 1998. The exemption applies to instruments executed on or after 26 January 2001.

106B Housing authorities and Affordable Homes Partnership

This section provides for an exemption from stamp duty on a conveyance, transfer or lease of a house, building or land by or to—

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

The section applies to instruments executed on or after 13 March 2008. *For instruments executed prior to 13 March 2008, the exemption referred to at (a) above is contained in section 8 of the Housing (Miscellaneous Provisions) Act 1992.*

107 Certain mortgages of stock

Section deleted in respect of instruments executed on or after 7 December 2006.

108 National Treasury Management Agency, etc.

This section exempts from stamp duty a range of documents which are executed in the course of the management of the national debt.

108A National Development Finance Agency, etc.

Summary

This section exempts from stamp duty all instruments executed on or after 1 January 2003 by or on behalf of the National Development Finance Agency in respect of any property being acquired by the Agency. In addition, subject to certain conditions, any instrument executed by a company set up by the Agency under section 5 of the National Development Finance Agency Act 2002 is also exempt from stamp duty where land is acquired from the Agency, from another company set up under section 5 of the Act or from a State authority referred to in section 1 of that Act.

Details

- “land” and “the Agency” are self-explanatory. (1)
- Stamp duty is not chargeable on any instrument executed by or on behalf of the National Development Finance Agency in respect of property being acquired by the Agency. (2)(a)
- Acquisitions of land by a company, set up by the Agency under section 5 of the National Development Finance Agency Act 2002, from the Agency, from a company set up under section 5 of the National Development Finance Agency Act 2002 or from a State Authority referred to in section 1 of that Act are also exempt from stamp duty. (2)(b)
- The exemption under *subsection (2)(b)* will not apply to a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002 unless, on the date the instrument is executed, the company is 100% beneficially owned, either directly or indirectly, by the State. In addition, the Minister for Finance must have received confirmation in writing from the Agency, on or before the date of execution of the instrument, that such company will remain indefinitely 100% beneficially owned by the State. (3)
- A clawback of the relief, granted to a company under *subsection (2)(b)*, will arise where the company subsequently disposes of the land or part of the land included in the exempt instrument, other than to a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002 or where the company ceases to be 100% beneficially owned, either directly or indirectly, by the State. By way of penalty, the duty payable to the Revenue Commissioners is the amount of duty payable had the relief not applied (in the case of part disposal of land, the appropriate amount of duty relating to that part of the land), together with interest at a rate of 0.0273 per cent per day (see *section 159D*) from the date of the disposal or cessation to the date the penalty is remitted. (4)
- Notwithstanding *subsection (4)*, the maximum penalty (exclusive of interest) payable on any instrument will not exceed the amount of duty which would have been payable on the instrument had the exemption not applied in the first instance. (5)

109 Certain instruments made in anticipation of a formal insurance policy

This section exempts documents such as cover notes which are made in anticipation of the issue of a formal policy of non-life insurance, or instruments amending the terms of such policies, from stamp duties.

110 Certain health insurance contracts

This section exempts certain health insurance policies from the €1 stamp duty on non-life insurance policies.

110A Certain policies of insurance

This section exempts Permanent Health Insurance policies and Critical Illness policies issued by the life assurance industry, from the €1 per policy stamp duty charge. The exemption applies to policies issued on or after 1 January 2001.

111 Oireachtas funds

If the stamp duty chargeable on an instrument would be payable solely out of Oireachtas funds (i.e. voted moneys) then this section exempts that instrument from stamp duty. Where a body is funded partly from Oireachtas funds and partly from other funds the exemption applies provided the duty chargeable would but for this section be payable solely out of the moneys provided by the Oireachtas.

112 Certificates of indebtedness, etc.

This section exempts certificates of indebtedness from stamp duty. A certificate of indebtedness is a document showing the amount due by the State to persons from whom the State has borrowed money or securities.

113 Miscellaneous instruments

This section exempts the following instruments from duty:

- transfers of shares in the stocks or funds of the Government or the Oireachtas or of the Government or Parliament of the late United Kingdom of Great Britain and Ireland which are registered in the books of 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 Taxes Consolidation Act, 1997, applies,
- transfer of any ship, vessel or aircraft or any part, interest, share or property of or in any ship, vessel or aircraft,
- wills and codicils,
- instruments made by, to or with the Commissioners for Public Works.

PART 8 COMPANIES CAPITAL DUTY

Overview

This Part concerns stamp duty which is imposed on certain transactions (see *section 116*) of capital companies (see *section 114*). The duty is generally known as companies capital duty and is referred to as such in this book. Imposition of the duty is provided for in Council Directive 69/355/EEC of 17 July, 1969 (OJ No L249, 3/10/1969), as amended by Council Directives 73/79/EEC and 73/80/EEC of 9 April, 1973 (OJ No L103, 18/4/1973), 74/553/EEC of 7 November, 1974 (OJ No L303, 13/11/1974) and 85/303/EEC of 10 June, 1985 (OJ No L156, 15/6/1985). **Companies capital duty has been abolished in respect of transactions taking place on or after 7 December 2005.**

General information on companies capital duty is contained in leaflet CCD 1.

114 Interpretation (*Part 8*)

“capital company”, “Member State”, “registrar”, “stamp duty”, “statement”, “third country” and “transaction” are self-explanatory. The Isle of Man, Channel Islands and Gibraltar do not come within the definition of “Member State”.

115 Restriction of application (*Part 8*)

Certain capital companies are exempt from the charge to companies capital duty i.e.

- collective investment undertakings to which Council Directive 85/611/EEC of 20 December, 1985, and any Directive amending that Directive²⁴ apply,
- investment companies to which Part XIII of the Companies Act, 1990, relates, and
- investment limited partnerships within the meaning of section 3 of the Investment Limited Partnerships Act, 1994.

If a company loses its status as a collective investment undertaking or as an investment company or as an investment limited partnership, within the above meanings, then companies capital duty is chargeable on any chargeable transactions which take place after the status is lost. If the company loses its status with retrospective effect companies capital duty is chargeable on all chargeable transactions which took place after the date on which it lost its status (i.e. the retrospective date).

116 Charge of stamp duty

The transactions which are liable to companies capital duty fall into 3 main groups i.e. **(1)**

- the formation of a capital company including the conversion into a capital company of a non-capital company (e.g. unlimited company, building society),
- increasing the issued share capital²⁵ or assets²⁶ of a capital company, and

²⁴ Council Directive 86/611/EEC (OJ No L375 of 31 December, 1985) has been amended by Council Directive 88/220/EEC of 22 March, 1988 (OJ No L100, 19/4/1988) and European Parliament and Council Directive 95/26/EEC of 29 June, 1995 (OJ No L168, 18/7/1995).

²⁵ The issued share capital must be increased by the contribution of assets e.g. cash, shares, land.

²⁶ The assets must be in return for rights similar to those normally attaching to shares e.g. voting rights, rights to dividends.

- transferring to the State either the effective centre of management or the registered office of a capital company. **Subsections (1)(e)** and **(f)** deal with companies whose effective centre of management and registered office are both outside the European Community. If either is transferred to the State the transfer is a transaction giving rise to companies capital duty. **Subsections (1)(g)** and **(h)** deal with transfers to the State from another Member State of the effective centre of management or registered office of a capital company which is not considered to be a capital company in that other Member State. If either is transferred to the State the transfer is a transaction giving rise to companies capital duty.

Only the chargeable transactions of a capital company²⁷— (2)

- with or resulting with an effective centre of management in the State, or
- with or resulting with a registered office in the State where the effective centre of management is in a third country,

are liable to companies capital duty.

“Effective centre of management” is not defined but essentially it means the location of the day to day running of the company. The registered office is the address of the company as listed on the register of companies in the Companies Registration Office.

The charge to companies capital duty does not extend to—

- unlimited companies (**section 114** (“capital company”)) and contributions by unlimited partners (**section 118(2)(b)**),
- the companies listed in **sections 115** and **120** (relief may also be available under **section 119**),
- shares allotted by a capital company where the effective centre of management of that company is in another Member State (**subsection (2)**),
- a capitalisation of profits or reserves i.e. a bonus or scrip issue (**subsection (1)(c)**),
- shares issued following a redemption of shares (see section 64(4)²⁸ and (5) and section 65(6) and (7) of the Companies Act, 1963, and section 208(c) and (d) of the Companies Act, 1990),
- the issue of treasury shares (section 209(5) of the Companies Act, 1990),
- the issue of loan or debenture stock²⁹ (**subsection (1)(c)**),
- a gift of cash with no strings attached (**subsections (1)(c)** and **(d)**).

²⁷ A company limited by guarantee (with or without share capital) is a capital company. If the only undertaking by the members of the company is an undertaking to contribute assets on a winding-up no chargeable transaction takes place until the winding-up of the company. If, however, assets are contributed during the lifetime of the company in return for shares or rights, companies capital duty is chargeable in accordance with **section 117**.

²⁸ Section 64 (as amended by section 119 of the Finance Act, 1990), though repealed by section 220 of the Companies Act, 1990, continues to apply to redeemable preference shares issued by a limited company prior to 1 July, 1991.

²⁹ If the stock is convertible into shares then companies capital duty is chargeable on conversion (**section 116(c)**).

Furthermore, it is the practice of the Revenue Commissioners not to charge companies capital duty when a private unlimited company is being converted into a public unlimited company. Under Irish company law such a conversion must be effected in 2 stages i.e. from private unlimited to public limited and from public limited to public unlimited. The technicality of having to become, albeit for an instant, a limited company is ignored in such cases provided the public limited company registers as a public unlimited company on the same day as the public limited company is registered and that the public limited company conducts no activities - commercial, legal or otherwise - other than those necessary for registration as a public unlimited company.

117 Statement to be charged with stamp duty

Summary

This section sets out the charge to companies capital duty and the manner in which particulars are to be supplied to enable the amount of duty to be determined.

Details

When a chargeable transaction (see *section 116*) takes place prior to 7 December (1) 2005, a statement of the assets, liabilities and expenses referred to in *section 118* is to be delivered to the Registrar of Companies.

When a statement is required to be delivered the forms³⁰ to be used are—

- A1, when a capital company is being formed,
- B5, when shares are being allotted in a capital company *or* assets are being contributed as a result of a share conversion *or* assets are being contributed in return for rights (e.g. voting rights) *or* when a loan is being capitalised (i.e. when shares are issued in repayment of a loan),
- 25B, when a company which is not a capital company is being converted into a capital company e.g. when a company is being converted from unlimited to limited status,
- LP1 and LP3, when a limited partnership is being formed,
- LP2 and LP4, when there is an increase in the capital contribution of a limited partnership.

Forms A1 (together with the Memorandum and Articles of Association), LP1 and LP3 and LP2 and LP4 are submitted direct to the Companies Registration Office (CRO), together with any companies capital duty payable - the CRO, subsequently, remit the companies capital duty payment to the Revenue Commissioners. Forms B5 and 25B are submitted direct to the Revenue Commissioners together with any companies capital duty payable and, in the case of the form B5, the CRO filing fee of €12³¹ - the Revenue Commissioners subsequently forward pages 1 and 2 of the form B5 together with the fee to the CRO. The original form 25B is returned after stamping to the company for forwarding by the company to the CRO.

Additional requirements have to be satisfied when the consideration for shares being allotted is not cash viz.

³⁰ Forms A1, LP1, LP2, LP3 and LP4 are all Company Registration Office (CRO) forms. Form B5 is a joint CRO/Revenue form. Form 25B is a Revenue form.

³¹ This fee does not apply to companies registered on the External Register in the CRO.

- the contract for sale or, where the contract has not been reduced to writing, form 52 (a CRO form), must be lodged with the Revenue Commissioners³², and
- if the non-cash consideration comprises—
 - shares in an unquoted company,
 - the adjudication reference number in a case where a completed form SD 4 was submitted (*section 20*), or
 - a completed form CCD 4 together with a copy of the company's latest audited accounts,

must be submitted in addition to form B5 or form 25B,
 - land and buildings, a valuation of the property must be submitted in addition to form B5 or form 25B.

Where relief from companies capital duty is sought on the basis that the shares being issued are in replacement for shares previously redeemed (see commentary on *section 116*) a copy of form 28 must be submitted to the Revenue Commissioners in addition to the form B5. Form 28 is a CRO form on which details of the redemption are filed.

Where the chargeable transaction is the formation of a capital company the statement must be delivered before—

- incorporation, in the case of a capital company to be incorporated under the Companies Act, 1963, and **(1)(a)**
- registration, in the case of a capital company to be formed under the Limited Partnerships Act, 1907.

In every other case the statement must be delivered to the Registrar within 30 days after the date of the chargeable transaction. **(1)(b)**

The statement is chargeable with duty at the rate of 0.5% for transactions effected prior to 7 December 2005, (1% for transactions effected prior to 2 December 2004) subject to a minimum charge of €1. **(1)**

The amount chargeable is determined in accordance with *section 118*.

When substantial assets are being transferred on the formation of a capital company it may take some time to arrive at a valuation of those assets. In such circumstances a provisional assessment may be made by the Revenue Commissioners. This enables the statement to be stamped and incorporation or registration of the capital company to proceed. Provision is made for a refund of any excess duty paid - but see also *section 159A* as regards the time limit for making a refund claim and *section 159B* as regards interest that may be payable on such refunds. **(2)(b)**

³² Section 58 of the Companies Act, 1963, provides that in the case of shares allotted as fully or partly paid up shares in a limited company otherwise than in cash, a return of the allotments (form B5) together with a duly stamped contract of sale or for services or other consideration in respect of which that allotment was made or, if that contract has not been reduced to writing, particulars of the contract (form 52) must be delivered to the registrar. Under section 58(2) form 52 is deemed to be an instrument for stamp duty purposes and is stampable as if it were a contract. Most contracts for sale or forms 52 do not attract stamp duty under *section 31* because the assets comprising the consideration (e.g. non-bearer shares, land and buildings) are specifically excluded from the charge to duty under that section. However, contracts or forms 52 relating to other assets such as book debts, goodwill, etc., are chargeable to duty under that section.

If too little is paid then the additional duty due is payable and treated as duty in arrear. The rate of interest chargeable on any additional duty which arises in connection with the formation of a capital company by virtue of the fact that the initial assessment (*subsection (2)(b)(i)*) was only a provisional one is 0.0273 per cent per day (see *section 159D*). (4)

In the case of a chargeable transaction other than the formation of a capital company interest is payable at the rate of 0.0273 per cent for each day (see *section 159D*) for which the duty remains unpaid after the expiration of the period of one month from the date of the chargeable transaction. (3)

The interest is chargeable and recoverable in the same manner as if it were part of the duty. Section 1089 of the Taxes Consolidation Act, 1997, provides that interest payable under this subsection is payable without deduction of income tax and not allowable in computing any income, profits or losses for any of the purposes of the Income Tax Acts and the Corporation Tax Acts.

The Registrar of Companies may not incorporate or register a capital company until the statement is duly stamped or in the case of a capital company to which *section 120* applies the statement has been adjudicated (see *section 20*). (5)

118 Amount on which stamp duty chargeable

Summary

Companies capital duty is charged on the net value of the assets contributed to the capital company on its formation or on an increase in its issued share capital or on an increase in its assets. In the less usual transactions which are, in effect, situations where an existing company, whether Irish or foreign, or a building society becomes a capital company the value for companies capital duty is the value of the assets of such company or society.

However, there is a floor below which the value for duty may *not* fall, namely, the nominal value of the shares in question.

Details

The amount which is chargeable to companies capital duty where the chargeable transaction is— (1)(a)

- the formation of a capital company,
- an increase in the issued share capital of a capital company by the contribution of assets of any kind other than an increase in capital through capitalisation of profits or of reserves, whether temporary or permanent reserves, but including the conversion of loan stock of a capital company into share capital, or
- an increase in the assets of a capital company by the contribution of assets of any kind in consideration, not of shares in the capital or assets of the company, but of rights of the same kind as those of members of the company such as voting rights, a share in the profits or a share in the surplus on liquidation,

is the actual value at the date of the transaction of the assets of any kind contributed or to be contributed in connection with the chargeable transaction by the members of the capital company after deducting—

- the liabilities attaching to such assets and assumed by the capital company (for example, a mortgage charged on the premises), and

- the expenses incurred by the capital company in connection with such contribution.

Example 1

A decides to form a company. €2 is contributed to the company in return for the issue of 2 x €1 shares. Companies capital duty of €1 is payable.

Example 2

B Ltd allots 100,000 x €1 shares at a premium of 50 cent per share. As the consideration for the shares is €150,000 companies capital duty of €750 is payable.

Example 3

C is a limited partner who contributed €10,000 on the formation of the limited partnership. Companies capital duty was paid at the time. C subsequently contributed a further €20,000 to the partnership. Companies capital duty of €100 is also payable on that further contribution.

In every other case the duty is charged on the value at the date of the transaction of the assets of any kind of the capital company less its liabilities on that date and the expenses incurred by the company in connection with the transaction. **(1)(b)**

Example

Company A converts from unlimited status to limited status. The value of the assets of the company on the date of conversion is €469,500. Companies capital duty of €2,347 is payable.

If, in this example, company A had incurred expenses (say) of €13,500 in relation to its conversion then companies capital duty would only have been chargeable on €456,000 (i.e. €469,500 - €13,500).

However, the minimum chargeable amount is the nominal value of the shares in question e.g. where shares are issued at less than par value by virtue of the payment of an authorised commission companies capital duty is chargeable on the par value. **(2)(a)**

The application of the duty for all practical purposes is restricted to limited companies (see definition of a “capital company” in **section 114**) and in the case of a partnership only those assets which were contributed by limited partners are within the charge. **(2)(b)**

119 Reconstructions or amalgamations of capital companies

Summary

Companies capital duty is not payable in the case of certain reconstructions and amalgamations³³. **(1)**

Details

A reduced rate of zero per cent applies to transactions whereby an existing company or a company which is in the process of being formed (the acquiring company) acquires either—

- the whole or part of the undertaking of another capital company (the target company), or

³³ The terms of the relief, which were originally set out in Council Directive 73/79/EEC, are continued by virtue of Article 1(2) of Council Directive 85/303/EEC.

- share capital of another company (the target company).

Where share capital is being acquired the acquiring company must own, after the transaction but not necessarily as a result of the transaction, at least 75% of the issued share capital of the target company. While the acquiring company may previously have acquired shares in the target company, it is only the transaction which brings the shareholding of the acquiring company to 75% or over of the issued share capital of the target company (and any subsequent qualifying transactions) which is entitled to the relief provided for in this section. (1), (2)

Example

A Ltd acquired 95% of the shares in B Ltd in 4 separate transactions as follows:

Transaction

- (1) On 1 February, 1999, A Ltd purchased 30% of the shares in B Ltd for cash.
- (2) On 15 March, 1999, it acquired a further 20% of the shares in consideration of the shares in A Ltd.
- (3) On 1 May, 1999, it acquired a further 30% also in consideration of shares in A Ltd.
- (4) On 10 May, 2001, it acquired 15% of the shares in B Ltd in consideration of shares in A Ltd.

Companies capital duty is chargeable on transactions (1) and (2). The zero rate of duty applies to transaction (3) because after transaction (3) A Ltd holds over 75% of the shares in B Ltd. The zero rate of duty will also apply to any transactions subsequent to transaction (3) where the consideration is the issue of shares.

The consideration for the acquisition must consist of— (3)

- the issue of shares in the acquiring company,
- the transfer to or discharge by the acquiring company of liabilities of the target company, or
- cash provided the cash element does not exceed 10% of the nominal value of the shares in the acquiring company which are comprised in the consideration.

Example

A Ltd (the acquiring company) holds 25% of the issued share capital of B Ltd (the target company). A Ltd acquires a further 60% of the issued share capital of B Ltd, the consideration being the issue of 100,000 x €1 shares in A Ltd and the payment of €5,000 in cash by A Ltd.

Following the acquisition A Ltd holds 85% of the issued share capital of B Ltd. As the cash payment amounts to 5% of the nominal value of the shares issued it does not prejudice the claim for relief.

Shares in the acquiring company must be issued— (3)

- where the whole or part of the undertaking of the target company is being acquired, either—
 - to the target company itself, or

- to the shareholders of the target company, and
- where shares in the target company are being acquired, to the shareholders of the target company in exchange for shares held by them in the target company.

The relief will be clawed back in 2 situations i.e. (4)

- if the acquiring company disposes of any of the shares within a period of 5 years from the date of the transaction in respect of which relief was granted, or
- if the acquiring company does not retain at least 75% of the issued share capital of the target company and all the shares which it held following that transaction for a period of 5 years from the date of the transaction in respect of which relief was granted.

Example

In the first example in the commentary on this section A Ltd held, after transaction (3), 80% of B Ltd's shares. If A Ltd disposes of any of these shares before 1 May, 2004, the full amount of duty will be payable in respect of the shares acquired in transaction (3). If it sells any of the shares it held after transaction (4) (i.e. any of the then total of 95%) before 10 May, 2006, it will be liable for the duty not paid on transaction (4). This is because the 5-year period runs from the date of the transaction which *last* benefited from the zero rate i.e. after transaction (4) the 5 year period starts afresh for all 95% from 2001.

The reduced rate will also cease to apply if, notwithstanding the retention of all the shares which the acquiring company acquired, it does not retain 75% of the issued share capital of the target company. This could come about if the issued share capital of the target company were increased, thus reducing the acquiring company's 75% stake.

However, the reduced rate will continue to apply in certain circumstances notwithstanding that the shares were not held for the requisite 5 years i.e. the reduced rate will continue to apply if the shares were transferred in the course of— (5)

- a transaction which took place prior to 7 December 2005 which would of itself qualify for a reduced rate, or a transaction which takes place on or after 7 December 2005 which would of itself qualify for a reduced rate had that transaction taken place prior to 7 December 2005 e.g. another merger whereby the acquiring company itself was taken over, or
- the liquidation of the acquiring company.

In a clawback situation the statement which was delivered in respect of the transaction to which the reduced rate applied will be charged with the stamp duty which would have been charged in the first instance if the relief had not applied to the transaction. The duty will become chargeable on the date the clawback event occurred. (6)

The relief will only apply if the target company has its effective centre of management or its registered office in a Member State. By definition, the acquiring company must have its effective centre of management or registered office in the State. The relief, therefore, applies only where an Irish capital company takes over another Irish capital company or a capital company which is in a Member State. (7)

The relief will also apply to transactions where the entity being acquired is regarded as a capital company in another Member State although it does not qualify as such under the definition of capital company in *section 114*. (8)

120 Exemption for certain companies

This section exempts transactions effected by capital companies whose—

- (a) exclusive business it is to supply public services (such as transport or port facilities or to supply water, gas or electricity) and at least 50% of the issued capital of which is owned by the State or a local authority, or
- (b) objects are exclusively cultural, charitable or educational.

Adjudication is required - see *section 117*.

To enable the Revenue Commissioners to decide whether relief should be granted companies at (a) above must submit details of the type of service provided by them and of the shareholding held by the State or local authority and companies at (b) above must submit details of their status (e.g. from the Revenue Commissioners, Charities Section, Government Buildings, Nenagh, if the company is a charity).

120A Relief in respect of certain payments of stamp duty

This section³⁴ provides relief from companies capital duty for companies that increase their issued share capital within 4 years of a reduction in that capital as a result of losses.

121 Appeals in certain cases

This section enables a person to appeal if dissatisfied with a decision of the Revenue Commissioners on a question relating to the value of assets charged to duty. In the case of land an aggrieved person may appeal to the Land Values Reference Committee. In all other cases the appeal is heard by the Appeal Commissioners.

In addition to this statutory right of appeal there is also a right to have any decision made by a Revenue officer reviewed by another officer in the Revenue Commissioners who had no previous involvement in the case. Details of the internal review procedures are contained in Statement of Practice SP-GEN/2/99 (Revised January 2005).

122 Recovery of stamp duty and furnishing of information

This section has a two-fold purpose viz.

- to set out who is accountable for the payment of companies capital duty and any interest due on that duty (i.e. it is the capital company itself but where the capital company is not a body corporate the members of the company are made jointly and severally liable for the duty), and
- to enable the Revenue Commissioners to obtain all the information they require for the purpose of the duty.

³⁴ Section 120A replicates section 71(6) of the Finance Act, 1973 which was inadvertently omitted from the Stamp Duties Consolidation Act, 1999 when it was enacted on 15 December 1999. The application of section 120A from 15 December 1999 ensures no time lapse arises in the application of the provision.

PART 9 LEVIES

Overview

This Part imposes a number of levies. The levies are imposed on cash cards, combined cards, debit cards, credit card accounts and charge cards, non-life insurance premiums, “section 84” loans and on certain financial institutions.

Additional Guidance Notes entitled “Stamp Duty on Financial Cards” in relation to the operation of sections 123, 123A, 123B and 124 are also available on the Revenue website www.revenue.ie.

123 Cash cards

Summary

This section imposes a stamp duty of €10 on a cash (ATM) card and €20 on a combined (ATM/Debit) card. The duty is payable by a bank or building society in respect of each cash card or combined card which is valid during the accounting period. Banks and building societies are required to submit statements with details of those cards to the Revenue Commissioners and to accompany the statement with payment of the duty. Banks and building societies may pass on the charge to their customers. *The section only applies to statements that are required to be delivered for accounting periods ending (or deemed to end) on or before 31 December 2005 - for later years see section 123B.*

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- *section 14(3)* which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- *section 126B* which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- *section 152* which enables the Revenue Commissioners to refund duty in certain circumstances - but also see *section 159A* as regards the time limit for making a refund claim and *section 159B* as regards interest that may be payable on such refunds.

Details

“bank”, “building society”, “card account”, “cash card”, “combined card” and “promoter” are self-explanatory. (1)

“accounting period” has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997 (i.e. the accounting period of the bank or building society), but where such accounting period commences after 31 December 2004 and ends after 31 December 2005, it shall be deemed, for the purposes of this section, to be an accounting period ending on 31 December 2005.

“due date”, in relation to an accounting period, means—

- (a) in the case of any year prior to the year 2005, the date of the end of the accounting period ending in that year, and
- (b) in the case of the year 2005, the date of the end of the accounting period, or each of them, if there is more than one, ending in that year.

Banks and building societies must deliver, in each year, a statement to the Revenue Commissioners showing the number of cards issued by them at any time and which are valid at any time during an accounting period. The statement must be delivered within one month of the due date in relation to each accounting period (see *subsection (1)*). (2), (3)

Cards which—

- are not used during the accounting period,
- are issued in respect of a deposit account, the average of the daily positive balance of which does not exceed €12.70, or
- are a replacement for cards of the same type which have already borne the duty,

are not liable to the duty³⁵.

A stamp duty of €10 is imposed in respect of each cash card and €20 in respect of each combined card included in the statement provided for under *subsection (2)*. Where the statement is for an accounting period deemed to end on 31 December 2005, the rate of stamp duty for each cash card is calculated by multiplying 1/12 of €10 by the number of months in the accounting period, and for combined cards, the rate of stamp duty is calculated by multiplying 1/12 of €20 by the number of months in the accounting period. (4)(a), (b)

Where there are 3 months in an accounting period, the minimum rate of duty is €2.50 for each cash card and where there are 9 months in an accounting period, the minimum rate of duty is €7.50 for each cash card. For combined cards these amounts are doubled. (4A)

The statement must be accompanied by the amount of duty payable. (5)

Banks and building societies must provide all necessary information to the Revenue Commissioners relating to the liability to duty. (6)

Interest at the rate of 0.0273% per day (see *section 159D*) is chargeable, in addition to the duty, if the statement is not delivered by the due date or if duty is paid late. In addition, if the duty is not paid within one month of the due date a penalty of €380 per day is also payable for each day the duty remains unpaid after the one month period. (7)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (8)

Banks and building societies may pass on the duty and any interest payable to the account-holder. (9)

If the card is liable to duty under *section 124* then it will not also be liable to duty under this section. (10)

If a bank or building society changes its accounting period and, as a result of the change, a charge to duty would be avoided in the calendar year in which the change occurred, then the duty will be charged in the year of the change (i.e. the year in which the charge would be avoided) as if the change had not taken place. Duty will thereafter be payable in the normal way one month after the end of the accounting period. (11)

³⁵ The exemption contained in the Diplomatic Relations and Immunities Act, 1967, applies to cash cards and combined cards (see **Appendix 5**).

This section only applies to statements that are required to be delivered for accounting periods ending on or before 31 December 2005. (12)

123A Debit cards

Summary

This section imposes a stamp duty of €10 on debit (e.g. laser) cards. The duty is payable by a bank or building society in respect of each debit card which is valid during the accounting period. Banks and building societies are required to submit details of those cards to the Revenue Commissioners and to accompany those details with the payment of the duty. They may pass on the charge to their customers. *The section only applies to statements that are required to be delivered for accounting periods ending (or deemed to end) on or before 31 December 2005 - for later years see section 123B.*

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- *section 14(3)* which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- *section 126B* which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- *section 152* which enables the Revenue Commissioners to refund duty in certain circumstances – but also see *section 159A* as regards the time limit for making a refund claim and *section 159B* as regards interest that may be payable on such refunds.

Details

“bank”, “building society”, “card account”, “debit card”, and “promoter” are self-explanatory. (1)

“accounting period” has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997 (i.e. the accounting period of the bank or building society), but where such accounting period commences after 31 December 2004 and ends after 31 December 2005, it shall be deemed, for the purposes of this section, to be an accounting period ending on 31 December 2005.

“due date” is the date on which the charge to duty is calculated. For the year 2002, the due date is the date of the end of the accounting period of the bank or building society ending in 2002 provided that date is on or after 5 December 2002. For the year 2003 and 2004, the due date is the date of the end of the accounting period of the bank or building society ending in the relevant year. For the year 2005, the due date is the end of the accounting period, or each of them, where there is more than one, ending in that year.

Banks and building societies must deliver a statement to the Revenue Commissioners showing, the number of cards issued by them at any time and which— (2)

- for the year 2002, are valid at any time during the period from 5 December 2002 to the due date (i.e. the date of the end of an accounting period ending in 2002 which falls on or after 5 December 2002);
- for the year 2003, are valid at any time during the accounting period ending in the year 2003, but not before 5 December 2002 where that date falls within that accounting period;

- for the year 2004, are valid at any time during the accounting period ending in that year;
- for the year 2005, are valid at any time during the accounting period, or each of them, where there is more than one, ending in that year.

The statement must be delivered for due dates falling in the year 2002 (i.e. on or after 5 December 2002), within two months of the due date and for due dates falling in the year 2003, 2004 and 2005 within one month of the due date.

Cards which — (3)

- are not used during the accounting period (see *subsection (2)*),
- are issued in respect of a deposit account, the average of the daily positive balance which does not exceed €12.70, or
- are a replacement for cards of the same type which have already borne the duty,

are not liable to duty³⁶.

A stamp duty of €10 is imposed in respect of each debit card included in the statement provided for under *subsection (2)*. Where the statement is for an accounting period deemed to end on 31 December 2005, the rate of duty for each debit card included in such statement is calculated by multiplying 1/12 of €10 by the number of months in the accounting period subject to a minimum duty of €2.50 for a 3 month accounting period and €7.50 for a 9 month accounting period. (4), (4A)

The statement must be accompanied by the amount of duty payable. (5)

Banks and building societies must provide all necessary information to the Revenue Commissioners relating to the liability to duty. (6)

Interest at the rate of 0.0273% per day (see *section 159D*) is chargeable, in addition to the duty, if the statement is not delivered by the due date or if duty is paid late. In addition, if the duty is not paid within two months of a due date falling in the year 2002 or within one month of a due date falling in the year 2003, 2004 and 2005, a penalty of €380 per day is also payable for each day the duty remains unpaid after the relevant two month period or one month period, as may be appropriate. (7)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (8)

Banks and building societies may pass on the duty and any interest payable to the account-holder. (9)

If the card is liable to duty under *section 124* then it will not also be liable to duty under this section. (10)

If a bank or building society changes its accounting period and, as a result of the change, a charge to duty would be avoided in the calendar year in which the change occurred, then the duty will be charged in the year of the change (i.e. the year in which the charge would be avoided) as if the change had not taken place. Duty will thereafter be payable in the normal way one month after the end of the accounting period. (11)

³⁶ The exemption contained in the Diplomatic Relations and Immunities Act 1967, applies to debit cards (see **Appendix 5**).

This section only applies to statements that are required to be delivered for accounting periods ending on or before 31 December 2005. (12)

123B Cash, combined and debit cards

Summary

This section, which imposes a stamp duty of €5 (for years ended 31 December 2007 and subsequent years – previously €10) on both cash (ATM) and debit (e.g. laser) cards, €5 (for years ended 31 December 2007 and subsequent years – previously €10) on combined (ATM/Debit) cards where only one of the functions of the card is used in the year and €10 (for years ended 31 December 2007 and subsequent years – previously €20) on combined (ATM/Debit) cards where the two functions of the combined card are used in the year, replaces *sections 123* and *123A* for “due dates” falling after 31 December 2005. The duty is payable by a bank or building society in respect of each cash, combined and debit card issued at any time and which is valid on 31 December in each year, *commencing with the year 2006*. Banks and building societies are required to submit details of those cards to the Revenue Commissioners and to accompany those details with the payment of the duty. They may pass on the charge to their customers.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- *section 14(3)* which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- *section 126B* which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- *section 152* which enables the Revenue Commissioners to refund duty in certain circumstances – but also see *section 159A* as regards the time limit for making a refund claim and *section 159B* as regards interest that may be payable on such refunds.

Details

“bank”, “building society”, “card account”, “cash card”, “combined card”, “debit card” and “promoter” are self-explanatory. (1)

A bank or building society must deliver a statement to the Revenue Commissioners within one month of the end of each year, *commencing with the year 2006*, showing the number of cash cards, combined cards and debit cards issued at any time by the bank or building society and which are valid on 31 December in that year. (2)

Cards which — (3)

- are not used during the year,
- are issued in respect of a deposit account, the average of the daily positive balance which does not exceed €12.70

are not liable to duty³⁷.

³⁷ The exemption contained in the Diplomatic Relations and Immunities Act 1967, applies to cash, combined and debit cards (see **Appendix 5**).

In relation to cards included in the statement provided for under **subsection (2)**, a stamp duty of €5 is imposed in respect of each cash card and debit card, €5 for each combined card where only one of the functions of the card is used in the year, and €10 for each combined card where the two functions of the combined card are used in the year. (4)

The statement must be accompanied by the amount of duty payable. (5)

Banks and building societies must provide all necessary information to the Revenue Commissioners relating to the liability to duty. (6)

Interest at the rate of 0.0273 per cent per day (see **section 159D**) is chargeable, in addition to the duty, on the unpaid duty from the date the duty was required to be paid to the date the duty is paid. A penalty of €380 per day is also payable for each day the duty remains unpaid after the relevant one month period. (7)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (8)

Banks and building societies may pass on the duty and any interest payable to the account holder. (9)

If the card is liable to duty under **section 124** then it is not liable to duty under this section. (10)

123C Preliminary duty: cash, combined and debit cards

Summary

This section caters for the preliminary payment of the stamp duty on cash, combined and debit cards to be made by financial institutions on 15 December of each year, commencing on 15 December 2008. This preliminary payment of stamp duty is based on 80% of the financial institution's stamp duty liability in relation to those cards for the previous year.

Details

The definitions of "accountable person", "base period", "chargeable period", "due date", "preliminary duty" and "specified statement" are self-explanatory. (1)

The section applies to an accountable person who is obliged to submit a statement under **section 123B** in respect of the preceding year (the first preceding year is the year 2007). (2)

An accountable person must submit a statement in respect of the preliminary duty not later than 15 December in the year, commencing with the year 2008. (3)

Where a business is taken over after the expiration of a preceding year and prior to a due date, the person who has taken over the business must make a return under this section in respect of the due date concerned. (4)

Preliminary duty is charged on the statement required to be delivered to the Revenue Commissioners. (5)

The statement must be accompanied by the stamp duty payable on the statement. (6)

An accountable person must provide all necessary information to the Revenue Commissioners relating to the liability to duty. (7)

In the case of failure by an accountable person to deliver a statement by the due date, interest is chargeable on the unpaid stamp duty in accordance with **section 159D** from the due date until the date of payment of the duty. A penalty of €380 for each day the duty remains unpaid is also payable. (8)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (9)

Any preliminary duty paid that becomes overpaid following the delivery of a statement under **section 123B** in respect of the chargeable period falling after the due date will be repaid by the Revenue Commissioners. (10)

Where a business is taken over in the period after a due date and before the end of the next chargeable period under **section 123B**, the person who takes over the business may deduct the preliminary duty from the statement to be submitted under **section 123B** for that chargeable period where the preliminary duty has been paid by the person who sold the business. (11)

An accountable person may not claim the stamp duty or any penalty imposed under the section as a deduction in the computation of any tax or duty payable by the accountable person. (12)

124 Credit cards and charge cards

Summary

This section imposes a stamp duty of €30 (for year ending 1 April 2008 and subsequent years – previously €40) on credit card accounts and charge cards.

The duty is payable by a bank in respect of each credit card account maintained by that bank at any time during the 12 month period ending on 1 April in a year. For the 12 month period ending on 1 April 2006 and each subsequent 12 month period, “replacement accounts” are excluded from this charge.

The duty is payable by a promoter (see **subsection (2)(a)**) in respect of every charge card issued or renewed by that promoter at any time during the 12 month period ending on 1 April in a year. For the 12 month period ending on 1 April 2006 and each subsequent 12 month period, *certain* “replacement cards” issued on “replacement accounts” are excluded from this charge (see **subsection (2)(d)**).

Banks and promoters are required to submit details of chargeable and non-chargeable credit card accounts and chargeable and non-chargeable charge cards to the Revenue Commissioners and to accompany those details with the payment of the duty in respect of the chargeable credit card accounts and charge cards. Banks and promoters may pass on the charge to their customers.

The section may be looked at as comprising 3 parts i.e.

- **subsection (1)** relating to the duty on accounts maintained by banks in respect of credit cards;
- **subsection (2)** relating to the duty on charge cards; and
- the remaining subsections dealing with matters common to both credit card accounts and charge cards.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- **section 14(3)** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- **section 126B** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- **section 152** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also **section 159A** as regards the time limit for making a refund claim and **section 159B** as regards interest that may be payable on such refunds.

Details

Subsection (1) deals with credit cards which are issued to individuals. **(1)**

“account”, “account holder”, “bank” and “credit card” are self-explanatory.

“letter of closure” means a letter, in such form as the Revenue Commissioners may specify, issued during a relevant period by a bank to an account holder in relation to an account which has been closed during that period confirming that the account holder has accounted for the amount of stamp duty—

- which the bank is required to pay in respect of the account for the relevant period, or
- which another bank (i.e. a different bank) is required to pay for the relevant period in respect of another account which has been closed during that period.

“relevant period” means a 12 month period ending on 1 April in any year commencing with the 12 month period ending on 1 April 2006.

“replacement account” means an account that is opened and maintained by a bank in the name of an account holder during a relevant period—

- where an account in the name of the account holder was, during the relevant period, closed by the bank (which can include a branch of the same bank), or
- where the account holder has, during the relevant period, furnished to the bank a letter of closure issued by another bank (i.e. a different bank) in relation to an account in the name of the account holder which was closed during that period.

To be within the charge the card must be issued to an individual who has an address in the State. A card issued by a foreign bank to such an individual comes within the charge while a card issued by any bank to a person outside the State does not. Cards issued to enable cash only to be obtained are outside the charge³⁸. **(1)(a)**

A bank must furnish a statement to the Revenue Commissioners within 3 months of 1 April each year showing the number of accounts maintained by the bank at any time during the 12 month period ending on 1 April in the relevant year. For the 12 month period ending 1 April 2006 and each subsequent 12 month period, details of chargeable accounts and non-chargeable “replacement accounts” should be shown on the statement. **(1)(b)**

Each account that is not a “replacement account” is chargeable with a stamp duty of €30. **(1)(c), (d)**

³⁸ The exemption contained in the Diplomatic and Immunities Act 1967 applies to credit cards – (see **Appendix 5**).

A bank may not issue a letter of closure to an account holder during a relevant period for an account that has been closed during that period unless the bank has received a stamp duty of €30 from the account holder for the account for that period or has received a letter of closure from the account holder in relation to another account closed with a different bank during the same period. A letter of closure may only be used once to treat an account as a replacement account. (1)(e), (f)

A bank may only issue one letter of closure in respect of an account and may only issue a duplicate letter to an account holder, to whom the original letter of closure issued, where the bank is satisfied that the original letter of closure has been lost or destroyed. Any duplicate must state that it is a duplicate of an original letter of closure. (1)(g)

Subsection (2) deals with charge cards which are issued to individuals having an address in the State. A charge card issued by a foreign bank to such an individual comes within the charge while a charge card issued by any promoter to a person outside the State does not³⁹. Cards issued to enable cash only to be obtained are within the charge. (2)

“account”, “account holder”, “charge card”, “company charge card” and “supplementary card” are self-explanatory. Because they are excluded from the definition of “charge card” in-house cards are not within the charge to duty. “In-house” means something which pertains to the internal affairs of a business as opposed to that business’s relations with persons external to itself. An “in-house” card may only be used to purchase goods and services of the person issuing the card. An example of a card which is not an “in-house” card is a card which may be used to buy petrol at a petrol station but which may also be used to buy goods from the shop on the forecourt even though that shop is not owned by the person who owns the petrol station. (2)(a)

“letter of closure” means a letter, in such form as the Revenue Commissioners may specify, issued during a relevant period by a promoter to an account holder in respect of an account which has been closed during the period—

- confirming that the account holder has accounted for stamp duty on the charge cards in respect of which the promoter is liable for the relevant period and stating the number of such charge cards, and
- confirming, where it is the case, that the account holder has, during the relevant period, accounted for stamp duty on the charge cards in respect of which another promoter (i.e. a different promoter) is liable for the relevant period and stating the number of such charge cards.

“relevant period” means a 12 month period ending on 1 April in any year commencing with the 12 month period ending on 1 April 2006.

“replacement account” means an account which is opened and maintained by a promoter in the name of an account holder during a relevant period—

- where an account in the name of the account holder was previously closed by the promoter (which can include a branch of the same promoter) during the same period, or
- where the account holder has furnished to the promoter, during the relevant period, a letter of closure issued by another promoter (i.e. a different promoter) in relation to an account in the name of the account holder which was closed in that period.

³⁹ The exemption contained in the Diplomatic and Immunities Act 1967 applies to charge cards – (see **Appendix 5**).

“replacement card” means a charge card in relation to a replacement account.

Subsection (2) also deals with company charge cards and supplementary cards which are issued to persons other than individuals or to employees of such persons. The persons concerned must have an address in the State. **(2)**

A promoter must within 3 months of 1 April in any year deliver a statement to the Revenue Commissioners showing the number of charge cards, company charge cards and supplementary cards issued or renewed by him or her and expressed to be valid at any time during the twelve month period ending on 1 April in the relevant year. For the 12 month period ending on 1 April 2006 and each subsequent 12 month period, details of chargeable cards and non-chargeable “replacement cards” should be shown on the statement. Each charge card and only *excess* replacement charge cards (see **subsection (2)(d)**) are chargeable with a stamp duty of €30. **(2)(b), (c)**

Where a replacement account replaces an account maintained by the same promoter, and where the number of charge cards issued on the replacement account exceeds the number of charge cards on the original account, only each *excess* replacement card is chargeable to stamp duty. Similarly, where a replacement account replaces an account maintained by another promoter, and where the number of charge cards issued on the replacement account exceeds the aggregate number of charge cards stated in the letter of closure in relation to that other account, only each *excess* replacement card is chargeable to stamp duty. **(2)(d)**

A promoter may only issue a letter of closure during a relevant period for an account that has been closed during that period, if the account holder has accounted for the amount of stamp duty which the promoter is required to pay, in respect of the charge cards to which the account relates, for that period. **(2)(e)**

A letter of closure may only be used once to treat an account as a replacement account. **(2)(f)**

A promoter may only issue one original letter of closure in respect of an account and may only issue a duplicate letter to an account holder to whom the original letter issued where the promoter is satisfied that the original letter of closure has been lost or destroyed. Any duplicate letter must state that it is a duplicate of the original letter of closure. **(2)(g)**

The remaining subsections are common to all cards, whether credit, charge or company or supplementary charge cards. **(3) – (7)**

The Revenue Commissioners may obtain from banks and promoters whatever information they need to ensure that the correct amount of duty is paid. **(3)**

The bank or promoter must pay the duty at the same time as the relevant statement is delivered. **(4)**

Interest at the rate of 0.0273% per day (see **section 159D**) is chargeable, in addition to the duty, if the statement is not delivered by the due date or if duty is paid late. In addition, if the duty is not paid within 3 months from the due date a penalty of €380 for each day the duty remains unpaid after the 3 month period will also be payable for each day the duty remains unpaid. **(5)**

A bank or promoter must retain the original letter of closure or any duplicate letter of closure received from a credit card account holder or charge card holder for a period of 4 years from the date of receipt of such letter. **(5A)**

In the case of an account which is maintained in the name of more than one person, a letter of closure may only be issued to one person named on that account. **(5B)**

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (6)

A bank or promoter may pass on the duty and any interest payable to its customers. (7)

124A Preliminary duty: credit and charge cards

Summary

This section caters for the preliminary payment of the stamp duty on credit card accounts and charge cards to be made by financial institutions on 15 December of each year, commencing on 15 December 2008. This preliminary payment of stamp duty is based on 80% of the financial institution's stamp duty liability in relation to those cards for the previous year.

Details

The definitions of "accountable person", "base period", "chargeable period", "due date", "preliminary duty" and "specified statement" are self-explanatory. (1)

The section applies to an accountable person who is obliged to submit a statement under **section 124** in respect of the preceding year (the first preceding year is the 12 months period ending 1 April 2008). (2)

An accountable person must submit a statement in respect of the preliminary duty not later than 15 December in the year, commencing with the year 2008. (3)

Where a business is taken over after the expiration of a preceding year and prior to a due date, the person who has taken over the business must make a return under this section in respect of the due date concerned. (4)

Preliminary duty is charged on the statement required to be delivered to the Revenue Commissioners. (5)

The statement must be accompanied by the stamp duty payable on the statement. (6)

An accountable person must provide all necessary information to the Revenue Commissioners relating to the liability to duty. (7)

In the case of failure by an accountable person to deliver a statement by the due date, interest is chargeable on the unpaid stamp duty in accordance with **section 159D** from the due date until the date of payment of the duty. A penalty of €380 for each day the duty remains unpaid is also payable. (8)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (9)

Any preliminary duty paid that becomes overpaid following the delivery of a statement under **section 124** in respect of the chargeable period falling after the due date will be repaid by the Revenue Commissioners. (10)

Where a business is taken over in the period after a due date and before the end of the next chargeable period under **section 124**, the person who takes over the business may deduct the preliminary duty from the statement to be submitted under **section 124** for that chargeable period where the preliminary duty has been paid by the person who sold the business. (11)

An accountable person may not claim the stamp duty or any penalty imposed under the section as a deduction in the computation of any tax or duty payable by the accountable person. (12)

125 Certain premiums of insurance

Summary

This section imposes a stamp duty of 2% 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.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- **section 14(3)** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- **section 126B** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- **section 152** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also **section 159A** as regards the time limit for making a refund claim and **section 159B** as regards interest that may be payable on such refunds.

Details

“assessable amount”, “excluded amount” and “quarter” are self-explanatory.

In determining the amount on which duty is payable (i.e. the assessable amount) no account is to be taken of excluded amounts. The definition of “excluded amount” includes— (1)

- an amount received in the course or by means of reinsurance;
- a premium received in respect of the various classes of business which are identified by reference to the classification which appears in the Annex to the First Council Directive 73/239/EEC of 24 July, 1973 (OJ No L228 of 16 August, 1973). Those classes of business are:
 - Class 4. Railway rolling stock – all damage to or loss of,
 - Class 5. Aircraft – all damage to or loss of,
 - Class 6. Ships – all damage to or loss of river, canal, lake or sea vessels,
 - Class 7. Goods in transit – all damage to or loss of goods in transit including merchandise, baggage and all other goods,
 - Class 11. Aircraft liability – all liability arising out of the use of aircraft including carrier’s liability,
 - Class 12. Liability for ships – all liability arising out of the use of vessels on sea, lakes, rivers or canals including carrier’s liability.
- the following classes, in so far as they relate to the insurance of passengers in marine and aviation vehicles and to carriers liability insurance respectively:

- Class 1. Accident, including industrial injury and occupational diseases,
- Class 10. Motor vehicle liability;
- Class 14. Credit, in so far as it relates to export credit;
- a premium received in respect of health insurance business (being health insurance business within the meaning of section 2 of the Health Insurance Act 1994);
- a premium received in respect of insurance contracts entered into on or after 25 March 2004, the sole purpose of which is the provision of dental services other than those involving surgical procedures carried out in a hospital by way of in-patient services within the meaning of section 2(1) of the Health Insurance Act 1994.

The definition of “insurer” covers authorisations granted under the Regulations implementing the First, Second and Third Non-Life Insurance Directives. Thus, foreign-based insurers may be within the charge to duty to the extent that they receive premiums in respect of risks located in the State.

“premium” is assigned the meaning it has in the Insurance Act 1936, i.e. “...any money or money’s worth payable or paid to any person who carries on an assurance business and who in consideration of such money or money’s worth undertakes any liability under any policy, bond or certificate”.

An insurer⁴⁰ must furnish to the Revenue Commissioners, within 30 days from the end of each quarter, a statement in writing showing the assessable amount for that quarter. (2)

Stamp duty at the rate of 2% is chargeable on the assessable amount shown in the statement. (3)

The statement must be accompanied by the amount of duty payable. (4)

The Revenue Commissioners may obtain whatever information they require to ensure that the correct amount of duty is paid. (5)

On failure to lodge the statement by the due date or to pay the duty within the time specified, interest is chargeable, in addition to the duty, at the rate of 0.0273 per cent per day (see *section 159D*) from the end of the relevant quarter. (6)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (7)

126 Certain statements of interest

Summary

This section imposes a levy on the amount of interest received by a company in respect of certain loans i.e. so-called “section 84” loans.

⁴⁰ In the case of co-insurance the leading insurer is responsible for the delivery of the statement and payment of the duty. However, if the leading insurer does not come within the definition set out in the European Communities (Co-Insurance) Regulations 1983, then each co-insurer is responsible for delivering a statement and paying the duty in respect of the portion of the gross premium received by that co-insurer.

The general scheme of the section is that a company which has made a loan to another company on a “section 84” basis must furnish statements of interest received to the Revenue Commissioners. A statement must be furnished within 30 days of the 31 January and 31 July in each year in respect of the relevant interest received by the lender during the 6 month period ending on each of those dates. Stamp duty is levied at the rate of 12% on the amount of the interest received. The duty is payable on the delivery of the statement, that is, within 30 days from the end of each 6 month period.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- **section 14(3)** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- **section 152** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also **section 159A** as regards the time limit for making a refund claim and **section 159B** as regards interest that may be payable on such refunds.

Details

The purpose of this section is to recoup some of the corporation tax which had been avoided through the use of “section 84” loans. Section 84 of the Corporation Tax Act, 1976 (now section 130 of the Taxes Consolidation Act, 1997), was introduced to combat an avoidance scheme whereby a company which received a loan from another company could obtain tax relief on its interest payments. Simply stated, section 84 deemed such interest payments to be distributions and, therefore, not tax deductible. However, another provision, in section 2 (now section 129 of the Taxes Consolidation Act, 1997) of the same Act, exempted from corporation tax dividends or other distributions received by one Irish resident company from another.

By exploiting the definition of “distributions” it was possible for a company to reduce its liability for corporation tax. Expressing the interest on a loan at a rate per cent plus a minuscule percentage of the company’s profits was sufficient to convert the interest into a distribution. The result was that one company could lend money to another and have the repayment of interest on the loan so structured that the interest received was not taxable in the hands of the lender. The attraction of structuring the loan in this way for the borrower lay in the fact that the lender passed on some of its profit on the loan to the borrower in the form of a lower interest rate. This benefit outweighed the cost to the borrower of having to pay corporation tax on the distribution because the typical “section 84” borrower is one who suffers little or no corporation tax.

“corporation tax”, “Corporation Tax Acts”, “relevant interest” and “relevant period” **(1)(a)** are self-explanatory. The definition of “relevant interest” refers to a number of subparagraphs in section 130(2)(d) of the Taxes Consolidation Act, 1997. The subparagraphs referred to are:

- subparagraph (ii) - this treats interest as a distribution where the security for the loan is convertible (or has a right of conversion) into shares,
- subparagraph (iii)(I) - this treats interest as a distribution where the rate or level of the interest is to any extent dependent on the results of the business of the borrower, and
- subparagraph (v) - this treats interest as a distribution where the security for the loan is connected with the holding by the lender of some shares in the borrower.

Where the account of the borrowing company is debited with an amount of relevant interest, the amount so debited is treated as received by the lender. This is to counter any arguments as to whether an amount so debited could be regarded as within the strict meaning of the word “received”. (1)(b)

The lender must deliver a statement of the relevant interest to the Revenue Commissioners within 30 days of the end of each 6 month period ending on 31 January and 31 July. (2)

Stamp duty at a rate of 12% is chargeable on the amount of the relevant interest shown in the statement. (3)

Where, however, the interest received on foot of the security (or loan) is less than 6% p.a. throughout the period for which the interest is payable (which will be normally be 6 months but may be less for an initial payment or for a final payment in respect of a loan), the rate of duty is 8%. (4)

The statement must be accompanied by the amount of duty payable. (5)

The Revenue Commissioners may obtain whatever information they need to ensure that the correct amount of duty is paid. (6)

On failure to deliver the statement by the due date or to pay the duty interest is chargeable, in addition to the duty, at the rate of 2.5% per month or part of a month from the expiration of the relevant period (7)

This subsection enables the Revenue Commissioners to enforce delivery of the statement. (8)

A lender may not claim the duty paid as a deduction in the computation of any other tax or duty which is payable by the lender. (9)

126A Levy on certain financial institutions

Summary

This section provides for an annual contribution from certain financial institutions in the years 2003, 2004 and 2005, which is payable in each of those years on 20 October.

The contribution by an institution is 50 per cent of the DIRT payable by the institution in 2001 subject to a “ceiling”. The “ceiling”, which is determined on a group basis means that the contribution from any group does not exceed 0.15% of the aggregate group amount of average deposits of Irish residents in 2001 (excluding Government deposits and inter-financial institutions deposits). Although the figure on which the ceiling is based is described in the legislation, it is notified to each institution by the Central Bank.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- **section 14(3)** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- **section 152** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also **section 159A** as regards the time limit for making a refund claim and **section 159B** as regards interest that may be payable on such refunds.

Details

“appropriate tax” is given the same meaning as in section 256 of the Taxes Consolidation Act 1997, i.e. deposit interest retention tax. **(1)(a)**

“assessable amount” is defined in relation to a person as the relevant retention tax for that person (see definition of “relevant retention tax” below).

“average relevant deposits” is defined in relation to a company and is relevant for the purposes of the ceiling on the contribution to be made by institutions. The amount for each institution is specified by the Central Bank in a notice given to each institution. It is defined as an amount equal to the average of end-month amounts of non-Government deposits of Irish residents for each of the calendar months in 2001.

“company” has the same meaning as in section 4 of the Taxes Consolidation Act 1997, i.e. any body corporate which includes a building society.

“non-Government deposits of Irish residents” is defined in relation to a company and is also relevant for the purposes of the ceiling on the contribution to be made by institutions. It means the amount specified as such in returns made before 4 December 2002 by the company concerned to the Central Bank in accordance with Central Bank legislation.

“due date” is the date for payment of the annual contribution by the financial institutions in each of the years 2003, 2004 and 2005. The payments are due in each year on 20 October.

“group assessable amount” is relevant to the ceiling on a group’s contribution. It is the aggregate of the assessable amount for each company that is a member of the group concerned on the due date in question.

“group relevant deposits” is also relevant to the ceiling on a group’s contribution. It is the aggregate of the average relevant deposits (see above) of companies that are members of the group concerned on the due date in question.

“group stamp duty” is the aggregate of the stamp duty payable under this section by companies that are members of the group concerned on the due date in question – apart from the ceiling.

“relevant person” is a person who is required to make the special contribution, i.e. a person who was obliged to pay deposit interest retention tax in 2001. Deposit interest retention tax is, under *paragraph (i)* of the definition, DIRT payable under section 258 of the Taxes Consolidation Act 1997 or, under *paragraph (ii)*, DIRT payable under section 259 of that Act on account of such tax.

“relevant retention tax” is the amount of DIRT payable in 2001 and is the basis of charge to the annual contribution. It consists of three elements and is described by way of the formula A+B-C. It is—

- **DIRT actually paid** in 2001 under section 258(3) of the Taxes Consolidation Act 1997, or under section 258(4) or 259(4) on account of DIRT (this is A in the formula),
- **Plus** DIRT that should have been paid in 2001 but which was paid after 2001 (this is B in the formula),
- **Less** DIRT paid in 2001 but which should have been paid before 2001. The fact that this DIRT is an arrear for earlier years must be confirmed by having been agreed as such by a Revenue officer at or before the time it was paid.

“year 2001” is defined as the 12 months to 31 December 2001.

Two companies will be regarded as members of a group if one is a 51% subsidiary of the other (i.e. more than 50% of the ordinary share capital of one company is owned directly or indirectly by the other company). (1)(b)

A company and all of its 51% subsidiaries are regarded as forming a group of companies. A sub-group is not regarded as a group for the purposes of the section but as part of the bigger group. Where a company is not a member of a group, it is to be regarded for the purposes of the ceiling on the contribution as being a group consisting of a single company. This ensures that the ceiling will apply to it.

A person is obliged to make a statement to the Revenue Commissioners showing the assessable amount for the person and any amount apportioned to the person under **subsection (7)**. Amounts apportioned to a person under **subsection (7)** reduce the amount required as an annual contribution so as to make the contribution subject to a ceiling. A statement must be made to Revenue by 20 October in each of the years 2003, 2004 and 2005. (2)

Where, between 1 January 2001 and a due date, a relevant person (i.e. a person who paid DIRT in 2001) ceases to carry on a business in the course of which DIRT was payable in 2001 **and** another person acquires the whole, or substantially the whole, of that business, the relevant person will not be obliged to make the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be made by the successor. If the successor is already obliged to make a statement, it must include the details in its return. Otherwise, it is obliged to make a statement in lieu of the relevant person. (3)

Where a further succession takes place before a due date, the person who succeeds to the business assumes the responsibility for the making of a statement to the Revenue Commissioners in place of the person from whom the business was acquired. Similar rules apply for a subsequent succession and for any further successions to a business. (4), (5)

A relevant person is obliged to pay to the Revenue Commissioners an amount equal to 50% of the assessable amount at the time at which the statement is to be made to the Revenue Commissioners. (6)

A ceiling on the contribution, given on a group basis, means that the amount of the contribution to be charged under **subsection (6)** can be reduced. The reduction for a group will be an amount equal to the excess of “group stamp duty” (defined in **subsection (1)(a)** as the aggregate of the contribution that would otherwise be paid by all companies who, at the due date for payment of the levy, are members of the group concerned) over 0.15% of the “group relevant deposits”. The excess is apportioned between the members of the group according to the amount of DIRT that each paid. However, the members of the group can jointly elect to apportion the amount on any basis that they specify. Once an amount has been apportioned to a company, the contribution requirement for that company is reduced by that amount. (7)

The contribution must be paid by a relevant person on delivery of the statement to the Revenue Commissioners. (8)

A relevant person must furnish to the Revenue Commissioners such information as they require for the purposes of the section. (9)

In the case of failure to deliver a statement by the due date, by way of penalty, interest is chargeable on the stamp duty at the rate of 0.0273 per cent per day (see **section 159D**) from the due date until the date of payment of the duty and by means of a further penalty, an amount equal to 1 per cent of the stamp duty for each day, from 20 October in the relevant year, for as long as the stamp duty remains unpaid. Each penalty is recoverable in the same manner as if it were part of the stamp duty. (10), (11)

Enforcement measures in relation to the delivery of a statement are also provided for.

A financial institution may not claim the stamp duty or any penalty imposed under the section as a deduction in the computation of any tax or duty payable by that institution. (12)

126B Assessment of duty charged on statements

Summary

This section allows the Revenue Commissioners to make assessments in relation to the duty due on ATM, debit, combined cards, on charge cards and credit card accounts, and on the 2 per cent insurance levy should the need arise.

Details

Section 126B contains definitions most of which are self-explanatory. (1)

“relevant person” means—

- (a) a bank or building society within the meaning of section 123, 123A or 123B of the Stamp Duties Consolidation Act 1999 (duty on ATM, debit and combined cards),
- (b) an accountable person within the meaning of section 123C or 124A of the Stamp Duties Consolidation Act 1999 (these sections were inserted into the stamp duty code by section 123 of the Finance Act 2008) (preliminary duty on ATM, debit, combined and charge cards and credit card accounts),
- (c) a bank or promoter within the meaning of section 124 of the Stamp Duties Consolidation Act 1999, (duty on credit card accounts and charge cards), or
- (d) an insurer within the meaning of section 125 of the Stamp Duties Consolidation Act 1999 (2% levy on insurance premiums).

The Revenue Commissioners have the power to make a written assessment where a statement that is required to be delivered by a relevant person is not delivered or is delivered but is not correct. (2) & (3)

Subject to an assessment being appealed, the duty assessed and any penalty in relation to the duty is recoverable by the Revenue Commissioners. In addition, where the required statement is submitted after an assessment has been raised, the Revenue Commissioners can substitute a revised assessment. (4)

A relevant person, who is dissatisfied with an assessment, may appeal the assessment to the Appeal Commissioners. An appeal may only be lodged following payment of the stamp duty in conformity with the assessment. A person intending to appeal must give notice in writing to the Revenue Commissioners of their intention to appeal within 30 days of the date of the assessment. (5)

Subject to the provisions of the section, the appeal provisions in Chapter 1 of Part 40 of the Taxes Consolidation Act 1997 apply to an appeal taken under this section. (6)

The Revenue Commissioners may make a correcting assessment where an assessment already made is incorrect or incomplete. (7)

The Revenue Commissioners may make an assessment of additional duty payable in circumstances where it comes to notice that the duty already paid on an assessment is insufficient. (8)

Where an assessment is appealed and becomes final and conclusive the date on which the duty should have been originally paid is the date from which any penalties are payable. (9)

The duty charged (and any penalty) on any statement delivered by a relevant person to the Revenue Commissioners is recoverable by them. (10)

PART 10 ENFORCEMENT

Overview

In addition to the fact that payment of stamp duties is compulsory (*section 2*) and that late payment will give rise to penalties (*section 14*) this Part contains a number of provisions which help to ensure that instruments which are chargeable to stamp duty are presented to the Revenue Commissioners for stamping.

Other legislation also contains enforcement provisions:

- sections 81(1) and 86(1) of the Companies Act, 1963, provide that a company registrar may not register a stock transfer form unless it is duly stamped and section 86(2) imposes penalties for non-compliance with that section,
- section 4 of the Stock Transfer Act, 1963, imposes penalties on persons who part with possession of transfers in blank or remove or allow them to be removed from the State,
- section 104 of the Registration of Title Act, 1964, provides that a Registrar may not register a deed of transfer unless it is duly stamped.

127 Terms on which instruments not duly stamped may be received in evidence

Summary

This section provides that an unstamped instrument may not be used in evidence⁴¹ or for any purpose except as evidence in criminal proceedings or in civil proceedings by the Revenue Commissioners to recover stamp duty. Without this latter provision the Courts could not admit an unstamped instrument as part of the evidence of underpayment of stamp duty. Under the provisions of this section a purchaser could refuse to complete if an instrument forming a link in his or her title is not correctly stamped.

Details

A judge, before whom any instrument is presented in evidence in civil proceedings, or an arbitrator or referee is obliged to investigate whether the instrument has been duly stamped. If it has not been duly stamped but the nature of the instrument is such that it may legally be stamped after execution then the instrument may be received in evidence on the payment to the appropriate court officer or the arbitrator or the referee of: **(1)**

- the unpaid duty, and
- any penalties (including surcharges) due on late payment.

Court officers, arbitrators and referees who receive moneys in accordance with *subsection (1)* must— **(2)**

- issue a receipt,
- keep a record of the payment,

⁴¹ Section 95(5) of the Companies Act, 1963, provides that any “person lending money on the security of a debenture re-issued under this section, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty”.

- advise the Revenue Commissioners of the payment, and
- hand over the moneys to such person as the Revenue Commissioners may appoint.

The Revenue Commissioners will stamp the instrument on production of the original instrument together with the receipt issued by the court officer, arbitrator or referee. (3)

Instruments which are chargeable to stamp duty but which have not been duly stamped may not be used in evidence or be available for any purpose except in— (4)

- criminal proceedings, or
- civil proceedings by the Revenue Commissioners to recover stamp duty.

128 Rolls, books, etc., to be open to inspection

Summary

This section provides that the Revenue Commissioners may oblige any person to supply information which is relevant to establishing a stamp duty liability or the commission of fraud, negligence or omission in relation to stamp duty. The provisions include powers of access to records by authorised officers of the Revenue Commissioners.

No person, however, is obliged to provide information s/he could by law refuse to provide. Such a situation would arise in the context of the privilege that exists between a solicitor and his or her client.

Details

“document” is self-explanatory. (1)

Any person who is a party to an instrument, or who has a document in his or her control or custody, the inspection of which might lead to the establishment of the existence and extent of a charge to stamp duty or the existence of fraud, negligence or omission in relation to stamp duty, may be asked to provide information in relation to that instrument or document to the Revenue Commissioners. The information sought must be given to the Revenue Commissioners within 14 days of receiving a written request from the Revenue Commissioners. (2)

The Revenue Commissioners may verify the information and take notes or copies for reference or future evidence.

Refusal to give the information sought or to allow the Revenue Commissioners to verify the information or to take notes or copies is an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

The Revenue Commissioners cannot require a person who was barred from doing so under the law to give information. This ensures that the privilege which exists between, say, a client and a solicitor would not be called into doubt. (3)

129 Penalty for enrolling, etc., instrument not duly stamped, etc.

This section imposes a penalty of €630 on any person who enrolls, enters or registers an instrument which is chargeable with stamp duty if that instrument has not been duly stamped. Persons who come within the scope of this section include— (1)

- company registrars (but see *section 71(e)*),
- Registrar in Land Registry or Registry of Deeds,

- Registrar of bills of sale,
- Registrar of patents, trade marks, etc.

This section also provides that the Registrar of bills of sale may not register a bill of sale which is chargeable to stamp duty unless it is duly stamped. (2)

130 Assignment of policy of life insurance to be stamped before payment of money assured

An assignment of a policy of life insurance, if the assignment is chargeable to stamp duty, is invalid unless it is duly stamped. Anyone who pays on such a policy is liable to pay the amount of stamp duty due on the assignment together with any penalty - see also *section 59*.

131 Conditions and agreements as to stamp duty void

This section provides that the following are void:

- any condition of sale the purpose of which is to preclude objection to the title to the property being sold on the grounds that the proper amount of stamp duty has not been paid.

Example

A sold his house to B but B did not pay the correct amount of duty on the conveyance. Subsequently, B agreed to sell the house to C. B included a condition of sale to the effect that C could not insist on the conveyance from A to B being correctly stamped. As this condition is void the effect is that B will have to pay the full amount of duty due before he can pass good title to C.

- any agreement to assume the stamp duty liability of another person or to indemnify another person against the non-payment of stamp duty.

Example

A asks B, the registrar of a company, to register a transfer of shares which has not been duly stamped. A agrees with B that A will compensate B for the stamp duty liability if it ever comes to light. B will not be able to enforce this indemnity because it is void.

132 Application of section 962 of Taxes Consolidation Act, 1997

This section extends to stamp duty the provisions of section 962 of the Taxes Consolidation Act, 1997, which relate to the recovery of outstanding tax by a sheriff or county registrar.

Under these provisions it is possible for the Revenue Commissioners to issue certificates for outstanding duty to a sheriff or county registrar for collection. Where payment is not forthcoming the sheriff is empowered to seize goods belonging to the defaulter to the value of the amount outstanding.

133 Application of certain provisions relating to penalties under Taxes Consolidation Act, 1997

This section extends to stamp duty the provisions of a number of sections of the Taxes Consolidation Act, 1997. All of the provisions in question relate to penalty proceedings. The incorporation of these provisions into stamp duty law enables the Revenue Commissioners to use these provisions for infringements of the stamp duty code on the same basis as they are used for infringements of the income tax code.

The provisions which are incorporated into the stamp duty code are:

- section 987(4) which provides that certain statements, signed by an officer of the Revenue Commissioners may be tendered in evidence in Court proceedings;
- section 1061 which provides that an authorised officer of the Revenue Commissioners may sue in a court of competent jurisdiction for recovery of a penalty;
- section 1062 which provides that where a penalty cannot be calculated because the tax on which it is based has not been finally ascertained proceedings may be initiated and adjourned until the amount of tax outstanding has been ascertained;
- section 1063 which provides that proceedings for the recovery of any fine or penalty may be begun at any time within 6 years of the date on which the fine or penalty was incurred;
- section 1064 which provides for the institution of proceedings in certain circumstances within 10 years of the date of the committing of an offence or incurring of a penalty;
- section 1065 which provides that the Revenue Commissioners may, at their discretion, mitigate any fine or penalty, either before or after judgement or stay any proceedings for the recovery of a fine or penalty. The Minister for Finance is also empowered to mitigate any fine or penalty, either before or after judgement;
- section 1066 which provides that any person who gives false evidence on oath or in any written statement, will be regarded as having committed perjury; and
- section 1068 which provides for an extension of the time allowed to an individual to comply with a request made by the Revenue Commissioners.

134 Evidence in proceedings for recovery of stamp duty, etc.

In any proceedings in the Circuit Court or the District Court relating to the recovery of stamp duty or penalties this section is to be applied. This section provides that, in any such proceedings:

- an affidavit made by an officer of the Revenue Commissioners in respect of an assessment of stamp duty is presumed to be correct until proved otherwise,
- where an affidavit is uncontested the officer need not give evidence in court, and
- where an affidavit is contested the court will provide for the presence of the officer.

PART 11 MANAGEMENT PROVISIONS

Overview

This Part includes those provisions which were previously contained in the Stamp Duties Management Act, 1891. It is divided into 8 Chapters as follows:

- **Chapter 1** contains definitions and care and management provisions. It also sets out the scope of the provisions contained in this Part;
- **Chapter 2** sets out how moneys received for duty or fees payable by means of stamps but not appropriated to that duty or those fees are to be recovered;
- **Chapter 3** creates a number of offences in relation to the misuse of dies and stamps. In addition to these offences, sections 5 and 8 of the Forgery Act, 1913, create offences relating to the forgery of dies and the possession of forged stamps and dies. **Sections 10(5), 12(4), 128(2), 147(1) and 149(1)** also create offences as do sections 1078 and 1079 of the Taxes Consolidation Act, 1997;
- **Chapter 4** contains provisions relating to the sale, and licensing for sale, of stamps and the distribution of stamps. The Revenue Commissioners have not licensed any person to sell or deal in revenue stamps. Neither have they appointed any person to be a distributor of revenue stamps. The 30 cent adhesive stamp on bills of exchange and promissory notes may only be purchased from the Revenue Commissioners and stamps which are impressed by means of a die on instruments may only be impressed by the Revenue Commissioners.

This Chapter also applies to postage stamps issued by An Post. The amendment to section 20 of the Finance Act, 1911, contained in Part I of the Fourth Schedule to the Postal and Telecommunications Services Act, 1983, extends to An Post the provisions contained in this Chapter (i.e. **sections 146, 148 and 150**) relating to the licensing of persons to sell stamps. Section 69 of the 1983 Act provides that **sections 147 and 149** apply to postage stamps;

- **Chapter 5** enables the Revenue Commissioners to refund or give an allowance for stamp duty already paid in certain circumstances;
- **Chapter 6** contains a number of miscellaneous provisions;
- **Chapter 7** contains provisions relating to the time limit for repayment of stamp duty, interest on repayment and time limits for enquiries and assessments by the Revenue Commissioners; and
- **Chapter 8** contains provisions for the calculation of interest on unpaid duty.

CHAPTER 1

Interpretation, Application and Care and Management

135 Interpretation (Part 11)

“duty”, “office of the Commissioners”, “officer” and “stamp” are self-explanatory.

The Revenue Commissioners have 3 units dealing with stamp duties - one in Dublin, one in Cork and one in Galway. The details of those units are:

Office of the Revenue Commissioners,
Dublin Stamping District,
Stamping Building,
Dublin Castle,
Dublin 2.

Telephone: 1890 482 582
Fax: (01) 6748145; 6793261

Office of the Revenue Commissioners,
The Stamp Duty Office,
Cork North West District,
Revenue House,
Assumption Road,
Blackpool
Cork.

Telephone: (021) 6027050
Fax: (021) 6027109

Office of the Revenue Commissioners,
The Stamp Duty Office,
Galway County District,
Custom House,
Flood Street,
Galway.

Telephone: (091) 547700
Fax: (091) 536385, 536381

136 Application (*Part 11*)

Part 11 applies to all—

- duties (see *section 135*), and
- fees which are for the time being directed to be collected or received by means of stamps.

The only fees which are now collected or received by means of stamps are Registry of Deeds fees and property arbitration award fees.

137 Stamp duties under care and management of the Commissioners

This section provides that all duties chargeable by law as stamp duties are to be under the care and management of the Revenue Commissioners.

CHAPTER 2

Mode of recovering money received for duty

138 Moneys received for duty and not appropriated to be recoverable in High Court

This section enables the Revenue Commissioners to enforce payment to them of any moneys collected by any person for the purposes of paying stamp duty or any fee collected by means of a stamp. If proceedings are brought to recover the moneys the Revenue Commissioners may also seek the cost of the proceedings. However, if the person shows cause as to why the costs should not be paid by him or her the court may make whatever order it deems just.

CHAPTER 3

Offences

139 Certain offences in relation to dies and stamps provided by the Commissioners to be offences

This section creates a number of offences in relation to the fraudulent misuse of dies and stamps. The provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to these offences.

140 Proceedings for detection of forged dies, etc.

Where information is given before a judge of the District Court that there is just cause for suspecting a person of committing one of the offences set out in *section 139* the judge may issue a warrant to enable any premises belonging to or occupied by the suspected person, or any premises suspected of being used by the suspected person in the commission of the offence or for hiding any machinery, etc., used in the commission of the offence, to be searched.

Any machinery, etc., found during the search may be seized. On seizure the machinery, etc., must be delivered up to the Revenue Commissioners.

141 Proceedings for detection of stamps stolen or obtained fraudulently

When s/he has a reasonable suspicion that stamps were stolen or fraudulently obtained a judge of the District Court may issue a warrant for the seizure of stamps concealed or deposited in his or her jurisdiction and for bringing before him or her or any other judge of the District Court within the same jurisdiction the person in whose possession or custody the stamps were found. (1)

If the person does not satisfactorily account for the possession of the stamps, or does not prove that s/he bought the stamps from the Revenue Commissioners, or a person appointed to sell and distribute stamps, or a licensed person, then the stamps are forfeited and must be delivered up to the Revenue Commissioners. (2)

However, if within 6 months of the stamps being delivered up to the Revenue Commissioners, any person proves that s/he bought them from the Revenue Commissioners or from a person appointed to sell and distribute stamps or from a licensed person and that the stamps were stolen or fraudulently obtained from him or her then the Revenue Commissioners will return the stamps to that person. (3)

142 Licensed person in possession of forged stamps to be presumed guilty until contrary is shown

If forged stamps are found in the possession of a person who was duly appointed to sell and distribute stamps or licensed to sell stamps that person is presumed, until the contrary is satisfactorily proved, to have known that they were forged and to have intended to sell them. Such a person is guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence. (1)

If they have cause to suspect that a person who was duly appointed to sell and distribute stamps or licensed to sell stamps has forged stamps in his or her possession, the Revenue Commissioners may by warrant authorise the search, between 9 a.m. and 7 p.m., of any premises belonging to the suspected person. If entry is not allowed voluntarily then the authorised person may break in. (2)

Any stamps found on the premises or in the custody or possession of the suspected person may be seized. (2)

If requested to do so by an authorised person members of the Gardaí Síochána must assist the authorised person in the execution of the warrant. If the garda refuses that garda is liable to a penalty of €1,265. (3), (4)

Any person who refuses admittance to the premises or opposes the authorised person in the execution of the warrant is liable to a penalty of €1,265. (4)

143 Mode of proceeding when stamps are seized

When stamps are seized under a warrant, the person authorised by the warrant must give a receipt for the stamps so seized and permit them to be marked if the person in whose custody or possession they were found so requests.

144 Defacement of adhesive stamps

Any person who defaces an adhesive stamp is liable to a penalty of €630. The penalty will not apply, however, where the defacement was sanctioned by the Revenue Commissioners.

145 Penalty for frauds in relation to duties

Any person who engages in a fraudulent act, etc., intending to defraud the State of stamp duty is guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

CHAPTER 4

Sale of stamps

146 Power to grant licences to deal in stamps

This section enables the Revenue Commissioners to license persons to sell stamps. **(1) – (4)**
The licence will specify the name of the licensed person and the place where that person may sell the stamps. The licensed person must give security of €1,265 to the Revenue Commissioners. Where a number of persons are carrying on business in partnership only one licence and one security is required. The security is not liable to stamp duty.

The licence may be revoked at any time by the Revenue Commissioners. **(4)**

A notice containing the name of the licensed person together with the words “Licensed to sell stamps” must be displayed prominently on the outside of the place where the stamps are licensed to be sold. Licensed persons who fail to display the notice are liable to a penalty of €1,265. **(5)**

147 Penalty for unauthorised dealing in stamps, etc.

A person who— **(1)**

- deals in stamps without being licensed to sell and distribute stamps,
- deals in stamps at a premises which is not specified in his or her licence,

is guilty of an offence and section 1078 of the Taxes Consolidation Act, 1997, applies to that offence.

A person who— **(2)**

- is not duly appointed to sell and distribute stamps, or
- licensed to sell stamps,

but who displays any kind of notice to the effect that s/he deals in stamps or is authorised to deal in stamps, is liable to a penalty of €1,265.

148 Provisions as to determination of a licence

When the period for which the licence is granted comes to an end either because the licence has expired or been revoked or because the licensed person has died or become bankrupt, any stamps which that person had in his or her possession may be returned to the Revenue Commissioners within 6 months after the date the licence expired or was revoked or of the date of death or bankruptcy. (1)

The Revenue Commissioners may reimburse the person who returned the stamps, subject to the deduction of any discount, if they are satisfied that the stamps were in the possession of the person whose licence has expired or was revoked, or who died or became bankrupt at the relevant time for the purpose of sale and that they were obtained by that person from them or from some other person duly appointed to sell and distribute stamps or licensed to sell stamps. (2)

149 Penalty for hawking stamps

Stamps may only be sold by a licensed person at the place specified in the licence. If the licensed person sells the stamps at a place not specified in the licence or an unlicensed person sells stamps s/he is guilty of an offence and section 1078 of the Taxes Consolidation Act, 1997, applies to that offence. (1)

In addition all the stamps are forfeited and must be delivered up to the Revenue Commissioners who may dispose of them as they think fit. (1)

Any person may arrest a person found committing an offence under this section and bring that person before a judge of the District Court having jurisdiction where the offence was committed. That judge will hear and determine the matter. (2)

150 Discount

This section enables the Minister for Finance to sell stamps at a discount.

CHAPTER 5

Allowance for spoiled or misused stamps

151 Allowance for spoiled stamps

This section enables the Revenue Commissioners to repay duty where a stamp, or stamped material, has been spoiled. The relief only applies in certain specified cases. While this section provides that the claim for a refund must be made within 6 years—

- after the stamp is spoiled,
- or in the case of an executed instrument—
 - after the date of the instrument, or
 - if undated, after the date of the first or only execution,

the 6 year time limit has been changed (see *section 159A*) to 4 years from the date the instrument was stamped by the Revenue Commissioners for a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*.

In the case of an executed instrument—

- no action must have commenced in which the instrument could have been given in evidence, and
- the instrument must not have already been used for the purpose of registering title, and
- the instrument must be given up to be cancelled.

To apply for a refund the original stamped instrument together with a completed form ST RFND 1 should be submitted to the Revenue Commissioners.

In addition to this section *sections 18, 29(4)(b) and (7), 31(4), 33(2), 36(2), 53(4)(b) and (7), 77, 80(9), 81(5), 81A(9), 81AA(11), 81C(5), 84, 117(2)(b)(ii), 148(2), 152, 154 and 159A* contain refund provisions.

152 Allowance for misused stamps

Where—

- an instrument has been inadvertently stamped with too much duty, or
- an instrument not liable to duty has been inadvertently stamped,

the Revenue Commissioners may refund the excess duty. While this section provides that the refund claim must be made within 6 years after the date of the instrument or, if the instrument is not dated, within 6 years after it was executed by the person who first or alone executed it, the 6 year time limit has been changed (see *section 159A*) to 4 years from the date the instrument was stamped by the Revenue Commissioners for a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*.

To apply for a refund the original stamped instrument together with a completed form ST RFND 1 should be submitted to the Revenue Commissioners.

153 Allowance, how to be made

Allowance for spoiled or misused stamps (*sections 151 and 152*) may be made in stamps or in money at the discretion of the Revenue Commissioners.

154 Stamps not wanted may be repurchased by the Commissioners

Unwanted stamps may be repurchased by the Revenue Commissioners if the Revenue Commissioners are satisfied they were properly acquired in the first place. Such stamps must be delivered up to be cancelled and the person claiming the repayment must prove to the satisfaction of the Revenue Commissioners that the stamps were purchased from them or from a person appointed to sell and distribute stamps or from a licensed person. The stamps must have been purchased within the period of 6 years before the application for a refund is made.

155 Allowance for lost instruments

In certain circumstances the Revenue Commissioners will stamp a replacement instrument free of charge if the original instrument has been lost. To enable the Revenue Commissioners to determine whether this relief should apply the following should be submitted to them—

- 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 lost instrument), covering the following points:
 - date of stamping the original instrument,
 - evidence of stamping the original instrument, and
 - evidence of the loss of the original instrument;
- the original or copy correspondence (if any) with the Revenue Commissioners on the stamping of the original instrument;
- the original or copy correspondence (if any) with the postal service or courier firm on the subject;
- a copy of the lost instrument, preferably of the stamped instrument;
- a copy (front and back) of the cashed cheque, bank draft or payable order relating to the payment of stamp duty in respect of the lost instrument;
- a substitute instrument (unstamped); and
- an undertaking that the lost instrument, if found, will be surrendered to the Revenue Commissioners.

CHAPTER 6

Miscellaneous

156 Discontinuance of dies

If the Revenue Commissioners—

- discontinue the use of any die and give public notice of that fact in *Iris Oifigiúil*, or
- discontinue the use of any die and replace the discontinued die with a new die and give public notice in *Iris Oifigiúil*,

the new die will come into effect on the date specified in the public notice.

An instrument which is dated and stamped with the discontinued die after the date specified in the public notice is deemed not to be duly stamped.

The discontinued die will not be a lawful die from the date specified in the public notice.

157 Declarations, affidavits and oaths, how to be made

This section sets out the persons before whom statutory declarations, affidavits and oaths may be made for the purposes of this Act or any other Act for the time being in force relating to duties. The persons are the Revenue Commissioners or any person authorised by them, commissioners for oaths, peace commissioners or notaries public. The powers of commissioners for oaths is extended to solicitors who hold a practising certificate by section 72 of the Solicitors (Amendment) Act, 1994.

158 Mode of granting licences

The Revenue Commissioners may authorise any person to issue on their behalf a licence or certificate under this Part or under any other Act for the time being in force in relation to duties.

159 Recovery of penalties, etc.

This section sets out how penalties imposed by this Part are to be recovered. Penalties are imposed by *sections 142(4), 144(1), 146(5) and 147(2)*.

CHAPTER 7

Time limit for repayment of stamp duty, interest on repayment and time limits for enquiries and assessments

159A 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, the date a statement of liability (e.g. in the case of levies and companies capital duty) was delivered to the Revenue Commissioners, the date the young trained farmer becomes the holder of the required educational qualification (see *section 81AA(11)*) or the date an operator-instruction (i.e. electronic transfer of shares in CREST) under *section 69* was made. If there is a shorter time limit in any provision of the stamp duty code (e.g. 3 years in *section 29* and *53*), that time limit will continue to apply.

The 4 year time limit will not apply to a repayment claim in respect of stamp duty arising on or before 25 March 2003 provided a valid claim is made to the Revenue Commissioners on or before 31 December 2004.

This section came into operation on 31 October 2003 by virtue of S.I. No. 514 of 2003 entitled “Finance Act 2003 (Commencement of Section 142) Order 2003”.

159B Interest on repayments of stamp duty

Summary

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.

This section came into operation by virtue of S.I. No. 514 of 2003 entitled “Finance Act 2003 (Commencement of Section 142) Order 2003” in respect of repayments made on or after 1 November 2003 other than repayments made in respect of claims for repayment made before 1 November 2003 by virtue of *section 29(4)(b)* and *(7)*, *section 53(4)(b)* and *(7)* or *section 117(2)(b)* which will be repaid at the rate of interest applicable under those particular sections.

Details

“relevant date” means—

(1)

- (i) the date which is 93 days after the date on which a valid claim in respect of the repayment is made to the Revenue Commissioners, or
- (ii) where the repayment is due to a mistaken assumption in the operation of stamp duty on the part of the Revenue Commissioners, the date which is the date of the payment of stamp duty, interest, a surcharge or penalty, as the case may be, which has given rise to that repayment.

“relevant document” means an instrument stamped by the Revenue Commissioners, a statement of liability delivered to the Revenue Commissioners under any provision of the Stamp Duties Consolidation Act 1999, or an operator-instruction entered in a relevant system under *section 69*.

“repayment” means a repayment of stamp duty including a repayment of any interest charged, surcharge imposed or penalty incurred, under any provision of the Stamp Duties Consolidation Act 1999.

No interest is payable in respect of a repayment claim made under any other provision of the Stamp Duties Consolidation Act 1999 unless the interest qualifies to be paid under this section. (2)

A repayment of stamp duty made in respect of a valid claim will carry interest payable at the rate of 0.011 per cent per day or part of a day for the period commencing on the relevant date (as defined in *subsection (1)*) and ending on the date that the repayment is made. This rate may be amended by Ministerial Order which must be laid before Dáil Éireann. (3), (8)

A claim for repayment shall be treated as a valid claim where the provisions of the Stamp Duties Consolidation Act 1999, governing the repayment claim, has been satisfied and any information required by the Revenue Commissioners in support of the claim has been furnished to them. (4)

Interest is not payable under this section where the amount is €10 or less. (5)

No interest is payable under this section in respect of a repayment or part of a repayment of stamp duty arising under any provision of any other enactment. (6)

Income tax is not deductible from any payment of interest and interest is not reckoned in computing income for the purposes of the Tax Acts. (7)

The Revenue Commissioners have power to make regulations in relation to the operation of the section. (9)

159C Time limits for making enquiries etc. and assessments by the Commissioners

Summary

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”.

Details

“neglect” means—

(1)

- in the case of an instrument or specified statement, a failure to disclose in the instrument, or as the case may be, in the specified statement, all the facts and circumstances affecting the liability to duty of such instrument or specified statement,
- in the case of an instrument to which *section 8(2)* applies, as between both the instrument and the statement referred to in that section, a failure to disclose all the facts and circumstances affecting the liability to duty of such instrument, or
- in the case of an instrument of the type referred to in *section 76*, a failure to enter a correct instruction in a relevant system within the meaning of *section 68*.

“relevant instrument” means an instrument stamped by the Revenue Commissioners, a specified statement delivered to the Revenue Commissioners or an instruction of the type referred to in *section 76* (CREST provisions).

“relevant period” means the period of 4 years commencing on the date the instrument was stamped by the Revenue Commissioners, the date the statement was delivered to the Revenue Commissioners, or the date the instruction was made.

“specified statement” means -

- an account delivered to the Revenue Commissioners under *section 5* (in respect of composition duty),
- a statement that is required to be delivered to the registrar under *section 117(1)(b)* (in respect of companies capital duty), or
- a statement that is required to be delivered to the Revenue Commissioners under *Part 9* (in respect of levies (e.g. financial cards and the 2% insurance levy)).

Any enquiries or other action made or taken by the Revenue Commissioners to satisfy themselves as to the correctness of a stamp duty charge on a relevant instrument (as defined above) may not be initiated after the expiry of the relevant period (as defined above). (2)

An assessment made by the Revenue Commissioners in connection with or in relation to any relevant instrument (as defined above) may not be made after the expiry of the relevant period (as defined above). (3)

The 4 year time limit imposed by this section on the Revenue Commissioners to make enquiries, take action and raise assessments will not apply where the Revenue Commissioners have reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to any relevant instrument. (4)

CHAPTER 8

Calculation of interest on unpaid duty and other amounts

159D Calculation of interest on unpaid duty and other amounts

Summary

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***. The interest is to be calculated in accordance with the formula below and the rate of interest is 0.0273 per cent per day.

Details

“period of delay” and “specified provision” are self-explanatory. (1)

The amount of interest chargeable is determined by the following formula— (2)

$$A \times D \times P$$

where—

- A is the duty or other amount due and payable under a provision of this Act which remains unpaid,
- D is the number of days (including part of a day) forming the period of delay, and
- P is 0.0273 per cent.

PART 12 REPEALS, ETC.

Overview

This Part contains provisions relating to the commencement of this Act, repeals, transitional arrangements and the short title of the Act.

160 Repeals

This section provides for the repeal of certain stamp duty enactments following the enactment of this Act. In accordance with section 8 of the Interpretation Act 1937, this Act will come into force on the date of its passing. However, the provisions of this Act will not apply to—

- instruments specified in *Schedule 1* executed before the date of passing of this Act,
- transactions liable to companies capital duty (*Part 8*) which took place before the date of passing of this Act, and
- the various levies (*Part 9*) where the relevant statements fell to be delivered under the repealed enactments before the date of passing of this Act.

Those provisions of the repealed enactments which impose a fine, forfeiture, penalty or punishment in respect of an offence are to continue in force in so far as they are concerned with an offence which was committed or began before the date of passing of the Act. (3)

Anything done under the provisions of the repealed enactments corresponding with the provisions of this Act are deemed to have been done under the provisions of this Act to which the provisions of the repealed enactments correspond. (4)

161 Saving for enactments not repealed

This section contains a saving mechanism for enactments not repealed.

162 Consequential amendments to other enactments

This section contains amendments to other enactments consequential on the passing of this Act.

163 Continuity and construction of certain references to old and new law

This section provides that the Revenue Commissioners have all the jurisdictions, powers and duties in relation to stamp duties and fees collected by means of stamps under this Act which they had before the passing of the Act. In addition, this section provides for the continuity of stamp duty law and of things done under that law.

164 Short title

This section contains the short title of this Act.

SCHEDULE 1

Overview

This schedule lists in alphabetical order the various instruments which are within the charge to stamp duty if they are executed in the State, or no matter where they are executed, if they relate to Irish property or to matters or things done or to be done in the State (see *section 2(1)*). Readers are reminded that in determining the liability of an instrument to duty regard is had to what the instrument does rather than the name the parties to it give to it.

AGREEMENT for a Lease, or for any letting.

Certain agreements for a lease or for a letting are chargeable to stamp duty as if they were an actual lease - see *section 50*.

AGREEMENT for sale of property.

Certain contracts or agreements for the sale of property are chargeable to stamp duty as if they were an actual conveyance or transfer on sale of the property - see *sections 31* and *36*.

ANNUITY.

- *Section 32* applies to the purchase of an annuity.
- Where there is a conveyance in consideration of an annuity *section 42* applies.

ASSIGNMENT.

These instruments are chargeable as conveyances on sale e.g. assignment on sale of a leasehold interest, assignment on sale of a policy of insurance.

ASSURANCE.

“Insurance” includes “assurance” - see definition of “policy of insurance” in *section 1*.

BILL OF EXCHANGE.

“Bill of exchange” is defined in *section 1*. See also *sections 23, 25* and *27* and the exemptions contained in this head of charge.

The head of charge applies to instruments i.e. cheques, drafts or orders which are *drawn (i.e. written) on an account in the State*.

BILL OF SALE.

See *Part 7*.

This head of charge relates only to goods. In the normal course goods are transferred by delivery i.e. no instrument is required to transfer title to goods from one person to another.

An absolute bill of sale transfers title to goods *without delivery* and is chargeable to stamp duty as if it were a conveyance on sale.

Bills of sale must be registered. There is an obligation on the registrar to ensure that they are duly stamped before registration and anyone registering a bill of sale which is chargeable to stamp duty but not duly stamped is liable to a penalty (see *section 129*).

Bills of sale are governed by The Bills of Sale (Ireland) Act, 1879, and The Bills of Sale (Ireland) Act (1879) Amendment Act, 1883. These Acts only apply in limited circumstances: they do not apply where possession of the goods is intended to be given i.e. where there is delivery. Taxi plates and tour buses are a typical example of the type of goods the sale or mortgage of which are governed by these Acts.

BOND in relation to any annuity on the original creation and sale of that annuity.

A bond is a promise under seal. See *section 32*.

CHEQUE.

The definition of “bill of exchange” in *section 1* includes cheques. Cheques are, therefore, chargeable to stamp duty under the “BILL OF EXCHANGE” head of charge.

CONTRACT.

Certain contracts or agreements for the sale of property are chargeable to stamp duty as if they were an actual conveyance or transfer on sale of the property - see *sections 31* and *36*.

CONVEYANCE or TRANSFER on sale

Definition of “conveyance on sale”

“Conveyance on sale” is defined in *section 1* as including—

- every instrument (see *section 1*), and
- every decree or order (including a decree or order for, or having the effect of an order for, foreclosure) of any court or of any commissioners,
- whereby—
 - any property, or
 - any estate or interest in any property,
- on the sale or compulsory acquisition of that property or that estate or interest,
- is transferred to or vested in,
- a purchaser, or any other person on such purchaser’s behalf or by such purchaser’s direction.

“Property” is anything which can be bought and sold. It includes real property (i.e. land and buildings) and personal property e.g. goods. An “estate in property” includes a freehold estate (e.g. fee simple, life estate) and a leasehold estate. An “interest in property” includes—

- easements (i.e. rights over the property of another) such as rights of way and rights in respect of water, light or air,
- profits à prendre (i.e. rights to take something off the land of another) such as a right to fell timber, shooting rights or fishing rights, and
- rentcharges (e.g. A charges her land with a payment of €1,000 p.a. to B).

It is not necessary that the property be transferred to the purchaser - it could, for example, be transferred to a nominee or to a sub-purchaser.

Provisions relating to conveyances on sale

See *Chapter 2* of *Part 5*. See also *Parts 6* and *7* which contain reliefs and exemptions from the charge.

Heads of charge

There are 3 “CONVEYANCE or TRANSFER on sale” heads of charge in *Schedule 1*:

- **CONVEYANCE or TRANSFER on sale of any stocks or marketable securities.**

“Stock” and “marketable security” are defined in *section 1*. In addition to the reliefs and exemptions contained in *Parts 6* and *7* the transfer of certain foreign loan securities is specifically exempted from stamp duty under this head of charge.

- **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.**

“policy of insurance” and “policy of life insurance” are defined in *section 1*. *Section 62* contains the rules for determining the location of risk. See also *section 130*.

The *creation* of a policy of insurance is chargeable to stamp duty under the “POLICY OF INSURANCE other than Life Insurance where the risk to which the policy relates is located in the State.” head of charge. The stamp duty charge in respect of life assurance policies taken out or varied on or after 1 January 2001 has been abolished. This head of charge catches the assignment of an existing policy of insurance or life insurance.

If a policy is assigned by way of voluntary disposition inter vivos and it has a surrender value the duty is 0.1% of the surrender value. If, however, there is no surrender value no duty is chargeable under this head of charge.

- **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.**

This head of charge is considered under the following headings:

1. Consideration,
2. Rate of Duty - larger transaction or series of transactions,
3. Mixed Property,
4. Consanguinity Relief,
5. Instruments to which this head of charge applies,
6. Deemed Conveyances on Sale
7. Certificates Required, and
8. Stamps Required.

1. Consideration

Stamp duty is chargeable on the *amount* of the consideration if the consideration is solely Irish money. If the consideration is expressed in a foreign currency or if it consists of stocks or marketable securities or debts (see *sections 9, 40* and *41*, respectively) with or without any money consideration then stamp duty is chargeable on the *value* 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.

Where the transfer is by way of voluntary disposition inter vivos stamp duty is chargeable on the market value of the property transferred (see *section 30*).

Special provisions apply where—

- the conveyance on sale is combined with a building agreement for a dwellinghouse or apartment (see *section 29*),
- the conveyance on sale is an order for foreclosure (see *section 39*),
- the consideration is payable periodically (see *section 42*),
- part of the consideration consists of covenants to improve the property being transferred (see *section 43*),
- the consideration cannot be ascertained (see *section 44*),
- the consideration has to be apportioned (see *section 45*),
- there are sub-sale arrangements (see *section 46*),
- there is more than one instrument of conveyance or transfer (see *section 47*), and
- valued-added tax is included in the consideration (see *section 48*).

2. Rate of Duty - larger transaction or series of transactions

Transaction Certificate

Because the duty applicable to a particular instrument depends on the amount or value of the consideration paid - the greater the amount or value of the consideration the higher the duty applicable - a stamp duty liability could easily be reduced or avoided by the simple expedient of breaking what is in effect one transaction into a number of smaller transactions. To ensure that this does not happen this head of charge provides that the rate of duty to be applied is 9% *unless* a statement (known as a Finance Certificate or a transaction certificate or a certificate of value) is included in the instrument which has been submitted to the Revenue Commissioners for stamping as to whether or not the transaction being effected by that instrument forms part of a larger transaction or of a series of transactions. The duty which will then apply will be based on the aggregate amount or value of the consideration.

Example 1

A sells his 100 acre farm to B for €260,000. The sale is completed by means of 4 separate instruments - Instruments A, B, C and D - each conveying 25 acres for €65,000 each. Instrument A is presented to the Revenue Commissioners for stamping. Had there been no requirement to include a transaction certificate the rate of duty chargeable on Instrument A would be 4%. However, because the parties cannot insert a certificate in that instrument to the effect that the transaction effected by that instrument “does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €70,000” the rate of duty applicable is 9%. The transaction certificate requirement ensures that the amount of duty payable in respect of Instruments A, B, C and D is exactly what would have been paid if the 100 acres had been conveyed in one instrument.

Example 2

See example in *section 31*.

Determination as to whether a transaction is part of a larger transaction or series of transactions

It is often difficult to decide whether a particular transaction is part of a larger transaction or series of transactions. The rule is that there must be some form of interdependence involved (e.g. default by the purchaser on one purchase would enable the vendor to pull out of all the purchases) but this

interdependence need not be contractual (e.g. the purchaser gets a lower price by virtue of agreeing to buy 2 properties rather than one). Generally, in the case of sales by private treaty where there are a number of sales between 2 parties at or about the same time, irrespective of whether there is a single contract or several contracts, there is a strong presumption that each individual conveyance must form part of a larger transaction or series of transactions. Sales at auction, on the other hand, where the property is sold in separate lots are regarded as separate transactions.

Example 3

A buys 6 apartments from DIY Construction Ltd in 2008. He pays €220,000 each for apartment nos. 1, 2 and 3 and €230,000 each for apartment nos. 4, 5 and 6. 6 contracts and 6 conveyances are drawn up. Because A bought so many apartments DIY Construction Ltd sold them at a small discount on the advertised price. As the transactions are interdependent the duty applicable to each conveyance is the following:

Duty on aggregate consideration of €1,350,000	= € 92,750
€875,00 (i.e. € 1,000,000 - € 125,000)	x 7% = €61,250
€350,000	x 9% = €31,500
Duty for apartments 1, 2 and 3	= €15,114 each
Duty for apartments 4, 5 and 6	= €15,801 each.

Example 4

A attends a public auction and successfully bids for lots 1 and 2. For lot 1, the hammer price was €240,000 and for lot 2 the hammer price was €290,000. Both lots comprised residential property. As the 2 properties were sold in separate lots at a public auction the stampable consideration for lot 1 is €240,000 and for lot 2 the stampable consideration is €290,000.

Lot 1 – duty payable = €8,050 (€240,000 - €125,000 x 7%).

Lot 2 – duty payable = €11,550 (€290,000 - €125,000 x 7%).

Example 5

A attends a public auction and successfully bids for lot 3. Lot 3 comprises 2 residential properties. The hammer price was €390,000. The stampable consideration is €390,000. The duty is €18,550 (i.e. €390,000 - €125,000 x 7%).

Example 6

See examples in *section 45A*.

Exchanges of property

Where property is exchanged (see *section 37*) each conveyance or transfer comprised in the exchange is regarded as a separate transaction i.e. it is not regarded as part of a larger transaction or series of transactions.

Apportionment of consideration

Where consideration has to be apportioned a higher rate of duty may apply in the case of non-residential property or a higher duty in the case of residential property – see examples in *section 45(1), (2) and (3)*.

Consideration does not exceed €127,000 / €10,000

Where the consideration (other than rent) – or aggregate consideration (other than rent) in the case of a larger transaction or series of transactions – does not exceed €127,000 in the case of residential property and €10,000 in the case of non-residential property and the conveyance contains the appropriate certificate, the conveyance need not be presented to the Revenue Commissioners in order to qualify for the exemption but must be presented for PD stamping.

Penalties

Penalties arise if an incorrect certificate is included in an instrument (see *section 17*).

Wording of transaction certificates

The wording of the various certificates is set out in **Appendix 3**. (See also leaflet SD 10(A)).

3. Mixed Property

In a mixed property situation, the residential part is not aggregated with the non-residential part for the purposes of determining the stamp duty (see head of charge and *section 7(c)*). A mixed property includes a property part of which is residential and part of which is non-residential (e.g. living quarters over a shop) or 2 properties one of which is residential and the other non-residential (e.g. a shop and a house).

Example 1

A building is bought for €800,000 in 2008. It comprises a retail shop at ground floor level and a residential apartment overhead. When apportioned on a just and reasonable basis the amount of the consideration attributed to the residential apartment is €400,000. The retail shop attracts duty of 9% on €400,000 and the residential apartment has a stamp duty liability of €19,250 (i.e. €400,000 - €125,000 x 7%).

Example 2

2 separate premises are bought in 2008 - one a house and the other a bakery - for €291,000. The consideration is apportioned on a just and reasonable basis, €126,000 being attributable to the house and €165,000 to the bakery. The house is exempt because it is under the threshold. Duty of €14,850 is chargeable on the bakery (€165,000 x 9%).

Example 3

2 separate premises are bought in 2008 - one a shop with living quarters overhead and the other a house. The consideration is apportioned on a just and reasonable basis. €240,000 is attributable to the living quarters and €185,000 to the shop. The consideration attributable to the house is €290,000. Stamp duty is chargeable as follows:

- living quarters (stamp duty = €12,837 i.e. aggregate consideration for residential property is €530,000. €530,000 - €125,000 = €405,000 x 7% = €28,350),
- shop (€185,000 x 9% = €16,650 - no aggregation between non-residential and residential property),
- house (stamp duty = €15,512 i.e. aggregate consideration for residential property is €530,000. €530,000 - €125,000 = €405,000 x 7% = €28,350.)

Example 4

See examples in *section 45(2)*.

4. Consanguinity Relief

Transfers between certain blood relatives qualify for a reduced rate of stamp duty. The reduced rate is half the rate of stamp duty which would otherwise apply.

In order to qualify for the relief the following 3 conditions must be satisfied:

1. the person (or each of them if there is more than one) becoming beneficially entitled to the property transferred must be related to the person (or each of them if there is more than one) previously so entitled in one of the following ways i.e. as a—
 - lineal descendant (child, grandchild, etc.),
 - parent,
 - grandparent,
 - step-parent,
 - husband (see also *section 96*),
 - wife (see also *section 96*),
 - brother of a parent (uncle),
 - sister of a parent (aunt),
 - brother,
 - sister,
 - lineal descendant of a parent (step-brother or step-sister),
 - lineal descendant of a husband (step-child),
 - lineal descendant of a wife (step-child),
 - lineal descendant of a brother (nephew or niece), or
 - lineal descendant of a sister (nephew or niece).

For the purposes of stamp duties chargeable on conveyances or transfers of *land*—

- section 27 of the Adoption Act, 1952, provides that an *adopted person* is considered to be the child of the adopter(s) and not the child of any other person,
- section 45 of the Finance Act, 1972, as amended by section 214 of the Finance Act, 1992, provides that a child *adopted* under a foreign adoption law is deemed to be related to any other person as if s/he were a child of the adopter(s) and not the child of any other person,
- section 39 of the Finance Act, 1960, provides that a person who was 21 years of age or more on 1 January, 1953, and who proves to the satisfaction of the Revenue Commissioners that from the age of 7 years or earlier s/he was *cared for and maintained at their own expense*, during the period defined by that Act, by a married couple other than his or her parents (if s/he was born to his parents in lawful wedlock) is considered to be a child of that couple and not the child of any other person.

With effect for *all* instruments executed on or after 14 January, 1988, section 74 of the Finance Act, 1988 (now section 8 of the Taxes Consolidation Act, 1997) provides that any relationship between persons is to be construed in accordance with section 3 of the Status of Children Act, 1987. Section 3 provides that the relationship between every person and his father or mother (or either of them) will, unless the contrary intention appears, be determined irrespective of whether his father or mother are or have been married to each other, and all other relationships will be determined accordingly. Section 3 also protects the position of an adopted person by deeming him or her to be, from the date of the adoption, the child of the adopter or adopters and not the child of any other person or persons;

For conveyances or transfers of land, executed on or after 31 March 2006, “lineal descendant” includes a foster child. A foster child is a person, being a transferee, who, prior to the date of execution of the instrument in respect of which relief from duty is claimed, has resided with, was under the care of and was maintained at the expense of the transferor throughout—

- a period of 5 years, or
- periods which together comprised at least 5 years,

prior to that person reaching 18 years of age but only if the claim for relief is not based on the uncorroborated testimony of one witness (see definition of “lineal descendant” in *section 1*).

2. the following certificate (delete as appropriate) must be included in the instrument:

“It is hereby certified by the party (or parties) becoming entitled to the entire beneficial interest in the property that the person (or each of the persons) becoming entitled to the entire beneficial interest in the property is related to the person (or each of the persons) immediately theretofore entitled to the entire beneficial interest in the property as a (state relationship(s)).”.

Each of the transferees must be related to *each* of the transferors.

Example

A executes a transfer to her son and her son’s spouse jointly. Consanguinity relief is not available, even in respect of the half interest passing to the son, because the daughter-in-law is not related to the transferor by blood.

3. adjudication is compulsory if the transfer is by way of voluntary disposition inter vivos (*section 30*). Even if the transfer is not by way of voluntary disposition inter vivos it is, nevertheless, the practice of the Revenue Commissioners to adjudicate (see *section 20*) all transfers in respect of which consanguinity relief is claimed.

Consanguinity relief does not apply to sub-sales - see *section 46(5)*.

5. Instruments to which this head of charge applies

In addition to the deemed conveyances on sale (see 6. below) examples of other instruments which are chargeable under this head of charge if they are on sale are as follows:

- an assignment of a leasehold interest,
- surrender of a lease by a tenant to his or her landlord where the landlord pays the tenant to accept the surrender,
- a declaration of trust by a vendor in favour of a purchaser,
- an assent in favour of a purchaser,
- a conveyance of property by the executors of a will in discharge of a pecuniary legacy,
- instruments creating an interest in property,
- release by life tenant of his or her life interest to the remainderman,
- release by remainderman of his or her remainder interest to life tenant,
- release of a rentcharge (e.g. A charges her land with a payment of €1,000 p.a. to B),
- appointment under a general power of appointment,
- demise by tenant of the whole of the term of his or her lease,
- payment of a sum of money in consideration of the release of an annuity.

6. Deemed Conveyances on Sale

Certain instruments are chargeable to stamp duty as if they were conveyances on sale - see *sections 30 to 38*.

7. Certificates Required

All instruments chargeable under this head of charge must contain one of the certificates provided for in *section 29(6)*. In addition, exemptions and reliefs from stamp duty are dependent on the appropriate certificates being contained in the instrument i.e.

- rate of duty (see 2. above),
- consanguinity relief (see 4. above),
- young trained farmer relief (see *sections 81, 81A* and *81AA*),
- farm consolidation relief (see *section 81B* and *81C*),
- approved sports bodies (see *section 82B*),

- transfer of site to child (see *section 83A*),
- certain family farm transfers (see *section 83B*),
- new dwellinghouse or apartment with floor area certificate exemption (see *sections 91 and 91A*),
- new dwellinghouse or apartment relief (see *section 92*),
- first time purchaser relief (see *section 92B*), and
- commercial woodlands relief (see *section 95*).

8. Stamps Required

In addition to money stamps the instrument may also need to be impressed with—

- a denoting stamp (see *section 11*),
- a particulars delivered stamp (see *section 12*), and/or
- an adjudication stamp (see *section 20*).

COUNTERPART.

These instruments are chargeable under the “DUPLICATE or COUNTERPART of any instrument chargeable with any duty” head of charge.

COVENANT in relation to any annuity on the original creation and sale of that annuity.

A covenant is a promise under seal. See *section 32*.

DRAFT for money.

The definition of “bill of exchange” in *section 1* includes drafts. Drafts are, therefore, chargeable to stamp duty under the “BILL OF EXCHANGE” head of charge.

DUPLICATE or COUNTERPART of any instrument chargeable with any duty.

See *section 13*. If the original instrument is not chargeable with stamp duty (i.e. it does not come within the charge or it is exempt or relieved from duty) then the duplicate or counterpart is not liable either. A duplicate or counterpart must be impressed with a denoting stamp (see *section 11*).

Duplicates and counterparts are liable to a fixed duty of €12.50. However, if the amount of ad valorem duty chargeable on the original instrument is less than €12.50 the amount of duty to which the duplicate or counterpart is liable is limited to the amount of duty paid on the original.

EXCHANGE.

See *section 37*. An exchange of stocks or marketable securities for other stocks or marketable securities is a conveyance on sale (see *section 40*).

INSURANCE.

These instruments are chargeable under the “POLICY, etc.” head of charge.

LEASE.

Provisions relating to leases

See *Chapter 4 of Part 5* and *Part 7*.

Meaning of “lease”, “rent”, “premium” and “indefinite”

“Lease” is not defined but essentially it means that the tenant must get exclusive possession of the property. Neither is “rent” or “premium” defined. Basically “rent” means the sum paid for the exclusive *use* of the land while the “premium” is a sum of money other than rent paid for the granting

of a lease. Payments such as service charges (e.g. charges in respect of electricity, up-keep of common areas) are not rent unless expressly stated in the lease to be recoverable as rent. "Indefinite" means periodical e.g. weekly, monthly, yearly.

Instruments within the charge

This head of charge deals only with the *creation* of a lease of *immovable property or rights relating to such property*. Leases of movable property such as motor cars or machinery are not liable to stamp duty. Where the lease is of a dwellinghouse for a period not exceeding 35 years or for an indefinite term and the rent does not exceed €30,000 p.a. (€19,050 p.a. for instruments executed before 13 March 2008) that lease is exempt from stamp duty (see paragraph (1)).

Stamp duty is chargeable both on the rent and on any premium (or fine) payable (see **section 7(b)**).

Example

A leases his shop to B for a term of 7 years. The rent reserved is €5,000 p.a. and there is a premium payable of €20,000. Stamp duty is chargeable on the rent and on the premium.

Calculation of duty on rent

In the case of rent duty is chargeable on the annual average rent. The rate of duty applicable is dependent on the term of the lease.

Example 1

A lease is granted for a term of 20 years. The rent for the first 10 years is set at €30,000 p.a., for the next 5 at €40,000 p.a. and for the balance at €45,000 p.a.

10 years x €30,000	=	€300,000
5 years x €40,000	=	€200,000
5 years x €45,000	=	<u>€225,000</u>
		€725,000

⇒ the annual average rent is €36,250 (i.e. €725,000 ÷ 20).

Example 2

A lease is granted for a term of 20 years. The rent for the first 5 years is set at €30,000 p.a. and for the next 5 years at €40,000 p.a. The rent payable in year 11 and subsequent years will be set in accordance with a rent review clause. The average annual rent is calculated on the rent and for the years as declared:

5 years x €30,000	=	€150,000
5 years x €40,000	=	<u>€200,000</u>
		€350,000

i.e. the average annual rent is €35,000 (i.e. €350,000 ÷ 10).

Rent payable in advance is chargeable as rent and not as a premium.

Example 3

A granted B a lease for a term of 3 years at a rent of €2,000 p.a. The lease provided that the total of the rent due i.e. €6,000 should be paid on the signing of the lease. Duty is chargeable on the average annual rent of €2,000.

A lease for a definite term of less than a year bears the same rate of duty as a lease for a year i.e. 1%.

Example 4

A grants B a lease for a term of 9 months. The rent payable is €600. The duty chargeable is €6.

Calculation of duty on premium

In the case of a premium the rates are similar to those set out in the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge (see commentary above). Insertion of a transaction certificate will be necessary to qualify for a rate of duty less than 9% in the case of non-residential property. A transaction certificate is required in all cases where residential property is involved. *Consanguinity relief does not apply.*

The consideration for stamp duty purposes is consideration which consists of money, stock or security (see paragraph (3) of head of charge) or the value of any produce or goods (see **section 51**) which forms part of the consideration.

Rent review clause

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

Option to renew

A lease with an option to renew is chargeable only in relation to the original specified term.

Certificates Required

All instruments chargeable under this head of charge must contain one of the certificates provided for in **section 53(6)**. In addition, exemptions and reliefs from stamp duty are dependent on the appropriate certificates being contained in the instrument i.e.

- rate of duty in respect of the premium (see above),
- new dwellinghouse or apartment with floor area certificate exemption (see **sections 91 and 91A**),
- new dwellinghouse or apartment relief (see **section 92**), and
- first time purchaser relief (see **section 92B**).

Stamps Required

In addition to money stamps the instrument may also need to be impressed with—

- a denoting stamp (see **section 11**),
- a particulars delivered stamp (see **section 12**), and/or
- an adjudication stamp (see **section 20**).

ORDER for the payment of money.

The definition of “bill of exchange” in **section 1** includes orders for the payment of money and, consequently, such orders are chargeable under the “BILL OF EXCHANGE” head of charge.

PARTITION or DIVISION.

See **section 38**.

POLICY OF INSURANCE other than Life Insurance where the risk to which the policy relates is located in the State.

See **sections 59, 61 and 62 and Part 7**.

RELEASE or RENUNCIATION of any property, or of any right or interest in any property.

See *section 63*.

If the effect of the release is to convey property, or any right or interest in property, to another person then the release is chargeable as a conveyance. If the release is on sale then it is chargeable as a conveyance on sale.

Example

A has a life interest in a farm. On her death the farm will pass to her brother, B. A executes a release of her life interest in favour of B in consideration of B paying A €10,000. The release is chargeable as a conveyance on sale.

SHARE WARRANT issued under the provisions of the Companies Act, 1963, and STOCK CERTIFICATE TO BEARER, and any instrument to bearer issued by or on behalf of any company or body of persons formed or established in the State and having a like effect as such a share warrant or such a stock certificate to bearer, expressed in the currency of the State.

See *section 64, 65 and 66 and Part 7*.

Section 95 of the Companies Act, 1963, provides that the re-issue of a debenture or the issue of another debenture in its place is to be treated as the issue of a new debenture for the purposes of stamp duty.

SURRENDER of any property, or of any right or interest in any property.

See *section 67*.

If the effect of the surrender is to convey property, or any right or interest in property, to another person then the surrender is chargeable as a conveyance. If the surrender is on sale then it is chargeable as a conveyance on sale.

TRANSFER.

These instruments are chargeable under the “CONVEYANCE or TRANSFER” heads of charge.

SCHEDULE 2

See *section 81*.

Qualifications for Applying for Relief From Stamp Duty in respect of Transfers to Young Trained Farmers

1. Qualifications awarded by Teagasc:

- (a) Diploma in Farming;
- (b) Diploma in Commercial Horticulture;
- (c) Diploma in Amenity Horticulture;
- (d) Diploma in Pig Production;
- (e) Diploma in Poultry Production.

2. Qualifications awarded by the Farm Apprenticeship Board:

- (a) Certificate in Farm Management;
- (b) Certificate in Farm Husbandry;
- (c) Trainee Farmer Certificate.

3. Qualifications awarded by a third-level institution:

- (a) Degree in Agricultural Science awarded by the National University of Ireland through University College Dublin;
- (b) Degree in Horticultural Science awarded by the National University of Ireland through University College Dublin;
- (c) Degree in Veterinary Science awarded by the National University of Ireland through University College Dublin;
- (d) Degree in Rural Science awarded by the National University of Ireland through University College Cork or by the University of Limerick;
- (e) Diploma in Rural Science awarded by the National University of Ireland through University College Cork;
- (f) Degree in Dairy Science awarded by the National University of Ireland through University College Cork;
- (g) Diploma in Dairy Science awarded by the National University of Ireland through University College Cork;

4. Certificates awarded by the National Council for Educational Awards:

- (a) National Certificate in Agricultural Science studied through Kildalton Agricultural college and Waterford Regional Technical College;
- (b) National Certificate in Business Studies (Agri-business) studied through the Franciscan Brothers Agricultural College, Mountbellew, and Galway Regional Technical College.

SCHEDULE 2A

See *section 81A*.

Qualifications for Applying for Relief From Stamp Duty in Respect of Transfers to Young Trained Farmers

1. Qualifications awarded by the Further Education and Training Awards Council (FETAC):
 - (a) Vocational Certificate in Agriculture — Level 3;
 - (b) Advanced Certificate in Agriculture;
 - (c) Vocational Certificate in Horticulture — Level 3;
 - (d) Vocational Certificate in Horse Breeding and Training — Level 3;
 - (e) Vocational Certificate in Forestry — Level 3;
 - (f) Awards other than those referred to in subparagraphs (a) to (e) of this paragraph which are at a standard equivalent to the standard of an award under subparagraph (a) of this paragraph.

2. Qualifications awarded by the Higher Education and Training Awards Council (HETAC):
 - (a) National Certificate in Agriculture;
 - (b) National Diploma in Agriculture;
 - (c) National Certificate in Science in Agricultural Science;
 - (d) National Certificate in Business Studies in Agri-Business;
 - (e) National Certificate in Technology in Agricultural Mechanisation;
 - (f) National Diploma in Horticulture;
 - (g) National Certificate in Business Studies in Equine Studies;
 - (h) National Certificate or Diploma awards other than those referred to in subparagraphs (a) to (g) of this paragraph.

3. Qualifications awarded by other third-level institutions:
 - (a) Primary degrees awarded by the faculties of General Agriculture and Veterinary Medicine at University College Dublin;
 - (b) Bachelor of Science (Education) in Biological Sciences awarded by the University of Limerick;
 - (c) Bachelor of Science in Equine Science awarded by the University of Limerick;
 - (d) Diploma or Certificate in Science (Equine Science) awarded by the University of Limerick.

SCHEDULE 2B

See *section 81AA*.

Qualifications for Applying for Relief From Stamp Duty in respect of Transfers to Young Trained Farmers

1. Qualifications awarded by the Further Education and Training Awards Council:

- (a) Level 6 Advanced Certificate in Farming;
- (b) Level 6 Advanced Certificate in Agriculture;
- (c) Level 6 Advanced Certificate in Dairy Herd Management;
- (d) Level 6 Advanced Certificate in Drystock Management;
- (e) Level 6 Advanced Certificate in Agricultural Mechanisation;
- (f) Level 6 Advanced Certificate in Farm Management;
- (g) Level 6 Advanced Certificate in Machinery and Crop Management;
- (h) Level 6 Advanced Certificate in Horticulture;
- (i) Level 6 Advanced Certificate in Forestry;
- (j) Level 6 Advanced Certificate in Stud Management;
- (k) Level 6 Advanced Certificate in Horse-manship.

2. Qualifications awarded by the Higher Education and Training Awards Council:

- (a) Higher Certificate in Agriculture;
- (b) Bachelor of Science in Agriculture;
- (c) Higher Certificate in Agricultural Science;
- (d) Bachelor of Science in Agricultural Science;
- (e) Bachelor of Science (Honours) in Land Management, Agriculture;
- (f) Bachelor of Science (Honours) in Land Management, Horticulture;
- (g) Bachelor of Science (Honours) in Land Management, Forestry;
- (h) Higher Certificate in Engineering in Agricultural Mechanisation;
- (i) Bachelor of Business in Rural Enterprise and Agri-Business;
- (j) Bachelor of Science in Agriculture and Environmental Management;
- (k) Bachelor of Science in Horticulture;
- (l) Bachelor of Arts (Honours) in Horticultural Management;
- (m) Bachelor of Science in Forestry;
- (n) Higher Certificate in Business in Equine Studies;
- (o) Bachelor of Business in Equine Studies.

3. Qualifications awarded by other third-level institutions:

- (a) Bachelor of Agricultural Science — Animal Crop Production awarded by University College Dublin;
- (b) Bachelor of Agricultural Science — Animal Science awarded by University College Dublin;
- (c) Bachelor of Agricultural Science — Food and Agribusiness Management awarded by University College Dublin;
- (d) Bachelor of Agricultural Science — Forestry awarded by University College Dublin;
- (e) Bachelor of Agricultural Science — Horticulture, Landscape and Sportsturf Management awarded by University College Dublin;
- (f) Bachelor of Veterinary Medicine awarded by University College Dublin;
- (g) Bachelor of Science in Equine Science awarded by the University of Limerick;
- (h) Diploma in Equine Science awarded by the University of Limerick.

SCHEDULE 3

See *section 160*.

SCHEDULE 4

See *section 162*.

Appendix 1

This Appendix sets out those terms, used in the Stamp Duties Consolidation Act, 1999, which are defined in section 21 of the Interpretation Act 2005. The definitions contained in the 2005 Act apply unless the context otherwise requires.

<i>Interpretation Act 2005</i>	<i>Stamp Duties Consolidation Act 1999</i>
affidavit	ss134 and 157
the Circuit Court	ss21(2), 134(1) and 159(2)
Dáil Éireann	ss3(5), 29(8), 53(8), 78(2), 91A(9), 92(5) and 159B(8)(b)
the District Court	ss134(1), 140, 141(1), 149(2) and 159(2)
the Government	ss113(a)(i)
Great Britain	s113(a)(iv)
the High Court	ss21(2), 92B(8)(b) (“decree of nullity”) and 138(2)
land	21(5), 31(1)(b), 35(1), 50, 82(1), 93A, 94(2), 95(2) and (3), 99, 99A, 100(1), 106A and 121
month	ss14(2), 26, 36(2)(b), 45A(2), (4) and (6), 59(1)(a), 61(2)(c), 68(1) (“relevant period”), 75(2)(a) and (4)(b)(ii), 77(2)(e)(ii), 80(3)(b) and (9), 81(5)(a), 81A(9)(c), 87(1) (“stock borrowing”) and (3), 87A(1), (3) and (4), 91(2)(c), 91A(6)(b), 92(2)(b), 92A(3)(b), 92B(4)(b), 117(3), 123(2), (7) and (11)(b), 123A(2), (7) and (11)(b), 123B(2), 124(1)(a) (“relevant period”), (1)(b), (2)(a) (“relevant period”), (2)(b) and (5), 125(1) (“quarter”), 126(1)(a) (“relevant period”) and (7), 126A(1)(a) (“year 2001”), 141(3), 148(1) and 156
oath	ss140 and 157
the Oireachtas	ss3(6), 80(2)(a), 86(a), 111 and 113(a)(i)
statutory declaration	ss20(9), 29(5), 53(5), 75(4), 79(6)(a) and (7)(a), 80(7)(a) and (8)(a), 151(1), 155(2) and 157
writing	ss1(1), (“instrument”, “policy of insurance”), 2(3)(a), 6, 8(6), 10(2), 21(3), 36(2)(b), 75(4), 76(1) and (4), 81(3)(b), 81A(7)(b), 81AA(8)(b), 81B(1)(b)(iii), (2)(d) and (3), 91(2)(b)(ii), 91A(1)(b)(iii) and (iv), (2) and (5), 92(1)(b)(ii), 92A(2)(b)(ii), 92B(3)(b)(ii), 108A(3)(b), 123(2), 123A(2), 123B(2), 124(1)(b) and (2)(b), 125(2), 126(2), 126A(2) and (7)(a), 128(2), 139(e), 144, 151(1)(a)
year	ss1(1) (“child”, “residential property”), 3(6), 12(2), 18, 29(4)(b) and (7), 33(2), 34, 35(1), 42(1) and (2), 50, 53(4)(b) and (7), 76(1), 77(2), 79(7)(b), 80(8)(b) and (c), 81(1) (“young trained farmer”), (3)(b), (5) and (7)(a)(i) and (ii), 81A(1) (“young trained farmer”), (3)(a), (9)(c) and (d), and (11)(a)(i) and (ii), 81AA(1) (“young trained farmer”), 81B(1)(a) (“valid consolidation certificate”), (2)(d), (3) and (9)(a), 85(2)(b)(iii), 87(4), 87(5), 87A(5), 91(2)(b)(ii), 91A(4)(b), 92(1)(b)(ii), 92A(2)(ii), 92B(3)(ii), 119(4) to (6), 120A, 123(1) (“due date”), (2) and (11), 123A(1) (“due date”), (2) and (11), 123B(2) and (3), 124(1)(a) (“relevant period”), (2)(a) (“relevant period”), (5)(a)(i) and (ii), and (5A), 125(2), 151(2)(a), 152, 154, 159A(1), 159C(1) (“relevant period”) and 163(3)

In addition section 18 of the Interpretation Act 2005, provides that the word “person”, unless the contrary intention appears, shall be construed as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons as well as an individual.

Appendix 2

Apportionment Details

Apportionment details are required (a) where a mixed property is sold for one consideration, or (b) where the sale of a wholly residential property or a mixed property forms part of a larger transaction or series of transactions. A suggested format for the furnishing of apportionment details is set out below. In the case of (b) the aggregate consideration (including that portion attributable to contents) should also be apportioned where necessary as between the residential element and non-residential element comprised in the larger transaction or series of transactions

Re: X to Y - Conveyance/Lease Dated _____

These details are delivered under section 8(2) of the Stamp Duties Consolidation Act, 1999 - as required by section 16(2) of the Stamp Duties Consolidation Act, 1999 - because the property in question consists partly of an interest in residential property.

Apportionment by the Vendor(s)/Lessor(s):

In relation to the above-mentioned sale/lease:

1. I/we state that the "aggregate consideration"* is: € _____
2. I/we estimate the "residential consideration"** to be: € _____
3. The basis for the estimate at 2 above is as follows:

Signed: _____ Date: _____
Signed: _____ Date: _____

Apportionment by the Purchaser(s)/Lessee(s):

In relation to the above-mentioned sale/lease:

1. I/we state that the "aggregate consideration"* is: € _____
2. I/we estimate the "residential consideration"** to be: € _____
3. The basis for the estimate at 2 above is as follows:

Signed: _____ Date: _____
Signed: _____ Date: _____

* As that term is defined in section 45(2)/52(5) of the Stamp Duties Consolidation Act, 1999.

** As that term is defined in section 16(1) of the Stamp Duties Consolidation Act, 1999.

Note: Any other facts or circumstances affecting the liability of the instrument to stamp duty should also be disclosed, unless contained in the deed

Appendix 3

Rates of Duty and Certificates – Residential and Non-Residential Property

Table 1

Rates of stamp duty for Conveyances on Sale or Lease Premiums of Residential Property

Consideration (or Aggregate Consideration) exceeds €127,000**	Full Rate (for instruments executed on or after 5 November 2007)	First Time Buyer Rate (for instruments executed on or after 31 March 2007)
First €125,000	Nil	*Exempt
Next €875,000	7%	*Exempt
Excess over €1,000,000	9%	*Exempt

** Transactions, where the consideration (or aggregate consideration) does not exceed €127,000, are exempt from stamp duty.

Table 1A

Rates of stamp duty for Conveyances on Sale or Lease Premiums of Residential Property

Aggregate Consideration	First Time Buyer Rate (for instruments executed before 2 December 2004)	First Time Buyer Rate (for instruments executed on or after 2 December 2004 and before 31 March 2007)	First Time Buyer Rate (for instruments executed on or after 31 March 2007)	Full Rate (for instruments executed before 5 November 2007)
Not exceeding €127,000	*Exempt	*Exempt	*Exempt	*Exempt
€127,001 - €190,500	*Exempt	*Exempt	*Exempt	3%
€190,501 - €254,000	3%	*Exempt	*Exempt	4%
€254,001 - €317,500	3.75%	*Exempt	*Exempt	5%
€317,501 - €381,000	4.5%	3%	*Exempt	6%
€381,001 - €635,000	7.5%	6%	*Exempt	7.5%
Over €635,000	9%	9%	*Exempt	9%

Table 2

Rates of stamp duty for Conveyances on Sale or Lease premiums of Non-Residential Property

Aggregate Consideration	Rate of Duty	Certificate No.
Not exceeding €10,000	*Exempt	Nos. 3A/B + 8C
€10,001 - €20,000	1%	Nos. 3A/B + 8C
€20,001 - €30,000	2%	Nos. 3A/B + 8C
€30,001 - €40,000	3%	Nos. 3A/B + 8C
€40,001 - €70,000	4%	Nos. 3A/B + 8C
€70,001 - €80,000	5%	Nos. 3A/B + 8C
€80,001 - €100,000	6%	Nos. 3A/B + 8C
€100,001 - €120,000	7%	Nos. 3A/B + 8C
€120,001 - €150,000	8%	Nos. 3A/B + 8C
Over €150,000	9%	Nos. 3A/B

N.B. Where applicable VAT should be excluded from the chargeable consideration.

* Where a conveyance/lease is exempt from stamp duty, the instrument need only be presented for PD stamping.

Table 3

Certificates for Residential Property Transactions

Transaction Type	First Time Buyer	Owner Occupier	Investor
Secondhand house	Nos. 3A/B + 5 + 6 + 7B + 8D/E/F <i>(*exempt from stamp duty)</i>	Nos. 3A/B + 8D/E/F <i>(full rate)</i>	Nos. 3A/B + 8D/E/F <i>(full rate)</i>
New House (floor area > 125 sq. m.) - if conveyance/lease gives effect to a site/building contract(s)	Nos. 2C/D + 6 + 7A + 8D/E/F <i>(*exempt from stamp duty)</i>	Nos. 2C/D + 7A + 8D/E/F <i>(full rate on greater of site value or 25% of total price less VAT)</i>	Nos. 2A/B + 8D/E/F <i>(full rate on entire consideration less VAT)</i>
New House (floor area > 125 sq. m.) - if conveyance/lease gives effect to a contract for a completed house	Nos. 4A/B + 6 + 7A + 8D/E/F <i>(*exempt from stamp duty)</i>	Nos. 4A/B + 7A + 8D/E/F <i>(full rate on 25% of total price less VAT)</i>	Nos. 3A/B + 8D/E/F <i>(full rate on entire consideration less VAT)</i>
New House (floor area < 125 sq. m. and > 38 sq. m.) - if conveyance/lease gives effect to a site/building contract(s)	Nos. 1 + 2A/B <i>(*exempt from stamp duty)</i>	Nos. 1 + 2A/B <i>(*exempt from stamp duty)</i>	Nos. 2A/B + 8D/E/F <i>(full rate on entire consideration less VAT)</i>
New House (floor area < 125 sq. m. and > 38 sq. m.) - if conveyance/lease gives effect to a contract for a completed house	Nos. 1 + 3A/B <i>(*exempt from stamp duty)</i>	Nos. 1 + 3A/B <i>(*exempt from stamp duty)</i>	Nos. 3A/B + 8D/E/F <i>(full rate on entire consideration less VAT)</i>

*Where a conveyance/lease is exempt from stamp duty, the instrument need only be presented for PD stamping

Table 4

Wording of Certificates in Conveyances/Leases

Cert. No.	<p align="center">Wording of Certificates (delete as appropriate)</p> <p align="center">Note: Knowingly furnishing an incorrect certificate is a Revenue Offence</p>
1	<p>“It is hereby certified that</p> <ul style="list-style-type: none"> (c) this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment, (d) on the date of execution of this instrument, there exists a valid floor area compliance certificate (within the meaning of section 91A(1)(a) of the Stamp Duties Consolidation Act 1999) in respect of the said dwellinghouse/ apartment, and (e) ©the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 91A(4)(b) (new dwellinghouse/apartment with floor area compliance certificate) of the Stamp Duties Consolidation Act 1999, and that no person (other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 1 April 2004, of furnished residential accommodation in part of the dwellinghouse/apartment concerned or other than by virtue of a title prior to that of the purchaser) will derive any rent or payment in the nature of rent for the use of the dwellinghouse/apartment or any part of it during that period.”
2A	<p>“It is hereby certified that section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”</p>
2B	<p>“It is hereby certified that section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”</p>
2C	<p>“It is hereby certified that—</p> <ul style="list-style-type: none"> (a) section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 applies to this instrument, and (b) on the date of execution of this instrument there exists a certificate which complies with section 92(1)(b)(ia) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act 1999.”
2D	<p>“It is hereby certified that—</p> <ul style="list-style-type: none"> (a) section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 applies to this instrument, and (b) on the date of execution of this instrument there exists a certificate which complies with section 92(1)(b)(ia) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act 1999.”
3A	<p>“It is hereby certified that section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument.”</p>

3B	<p>“It is hereby certified that section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument.”</p>
4A	<p>“It is hereby certified that—</p> <p>(a) this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment,</p> <p>(b) section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamps Duties Consolidation Act 1999 does not apply to this instrument, and</p> <p>(c) on the date of execution of this instrument there exists a certificate which complies with section 92(1)(b)(ia) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act 1999.”</p>
4B	<p>“It is hereby certified that—</p> <p>(a) this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment,</p> <p>(b) section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument, and</p> <p>(c) on the date of execution of this instrument there exists a certificate which complies with section 92(1)(b)(ia) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act 1999.”</p>
5	<p>“It is hereby certified that this instrument gives effect to the purchase of a dwellinghouse/apartment and that section 92B (3A) (residential property first time purchaser relief) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument.”</p>
6	<p>“It is hereby certified that the purchaser/each of the purchasers is a first time purchaser as defined in section 92B(1) (residential property first time purchaser relief) of the Stamp Duties Consolidation Act 1999.”</p>
7A	<p>“It is hereby certified that the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 92(1)(b)(ii) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act 1999, and that no person (other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 6 April 2001, of furnished residential accommodation in part of the dwellinghouse/apartment concerned or other than by virtue of a title prior to that of the purchaser) will derive any rent or payment in the nature of rent for the use of the dwellinghouse/apartment or any part of it during that period.”</p>
7B	<p>“It is hereby certified that the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 92B(3)(b)(ii) (residential property first time purchaser relief) of the Stamp Duties Consolidation Act 1999, and that no person (other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 6 April 2001, of furnished residential accommodation in part of the dwellinghouse/apartment concerned or other than by virtue of a title prior to that of the purchaser) will derive any rent or payment in the nature of rent for the use of the dwellinghouse/apartment or any part of it during that period.”</p>
8C	<p>“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 / €100,000 / €120,000 / €150,000.”</p>

8D	“It is hereby certified that the consideration (other than rent) for the sale/lease is wholly/partly attributable to 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 which is attributable to residential property exceeds €127,000.”
8E	“It is hereby certified that the consideration (other than rent) for the sale/lease is wholly/partly attributable to 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, had there been a larger transaction or a series of transactions, the amount or value, or the aggregate amount or value, of the consideration (other than the consideration for the sale/lease concerned which is wholly or partly attributable to residential property and other than rent) would have been wholly or partly attributable to residential property.”
8F	“It is hereby certified that the consideration (other than rent) for the sale/lease is wholly/partly attributable to residential property and that the transaction effected by this instrument forms 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 residential property is an amount equal to Y (insert aggregate amount).”
9	<p>“It is hereby certified that —</p> <p>(a) the instrument gives effect to the transfer/conveyance/lease of a site as defined in section 83A (transfer of site to child) of the Stamp Duties Consolidation Act 1999,</p> <p>(b) the person becoming entitled to the entire beneficial interest in the site is a child of the person (or of each of the persons) immediately heretofore entitled to the entire beneficial interest in the site,</p> <p>(c) at the date of this instrument, the value of the site does not exceed €500,000 and that the transaction hereby effected does not form part of a larger transaction or of a series of transactions whereby property with a value in excess of €500,000 is conveyed/transferred/leased to that child,</p> <p>(d) the purpose of the conveyance/transfer/lease is to enable that child to construct a dwellinghouse thereon which will be occupied by that child as his/her only or main residence, and</p> <p>(e) the transaction hereby effected is the first and only conveyance/transfer/lease of a site for the benefit of that child which contains this certificate.”</p>
10	“It is hereby certified by the party (or parties) becoming entitled to the entire beneficial interest in the property that the person (or each of the persons) becoming entitled to the entire beneficial interest in the property is related to the person (or each of the persons) immediately theretofore entitled to the entire beneficial interest in the property as a (state relationship(s)).”
11	“It is hereby certified that section 81AA (young trained farmers) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”
12	“It is hereby certified for the purposes of section 95 (commercial woodlands) of the Stamp Duties Consolidation Act 1999 that trees (within the meaning of that section) are growing on a substantial part of the land the subject of this instrument.”
13	“It is hereby certified that section 82B (approved sports bodies) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”
14	“It is hereby certified that section 83B (certain family farm transfers) of the Stamp Duties Consolidation Act 1999 applies to this instrument.”

Gifts

A transfer by way of gift is chargeable in the same manner as a transfer on sale with the substitution of the market value of the property for the consideration. In the case of a gift the appropriate transaction certificate (see Nos. 8C – F in Table 4) should be inserted and amended to substitute market value for consideration as appropriate.

Appendix 4

Section 92A Residential property owner occupier relief

Rates of duty applicable to instruments executed on or after 15 June 2000 and before 6 December 2001 subject to compliance with conditions.

Aggregate Consideration (other than rent)	Effective Rate
not exceeding £100,000	0%
£100,001 to £150,000	3%
£150,001 to £200,000	4%
£200,001 to £250,000	5%
£250,001 to £300,000	6%
£300,001 to £500,000	7.5%
greater than £500,000	9%

Section 92C Residential property investor relief (new houses)

Rates of duty applicable to instruments executed on or after 27 February 2001 and before 6 December 2001.

Aggregate Consideration (other than rent)	Effective Rate
not exceeding £100,000	3%
£100,001 to £150,000	3%
£150,001 to £200,000	4%
£200,001 to £250,000	5%
£250,001 to £300,000	6%
£300,001 to £500,000	7.5%
greater than £500,000	9%

Appendix 5

Miscellaneous Acts which contain Stamp Duty Exemptions

The following Acts, the relevant extracts from which are set out in the following pages, contain exemptions from the stamp duty chargeable under section 2(1) of the Stamp Duties Consolidation Act, 1999:

1. Excise Permit Act, 1832 - section 6,
2. Charitable Loan Societies (Ireland) Act, 1843 - section 26,
3. Landed Property Improvement (Ireland) Act, 1847 - section 59,
4. Common Law Procedure Amendment (Ireland) Act, 1856 - section 36,
5. Customs and Inland Revenue Act, 1889 - section 13,
6. Merchant Shipping Act, 1894 - sections 108(1), 196(1), 309(2), 320(4), 342(2), 395(7), 563, 721 and 731,
7. Friendly Societies Act, 1896 - section 33,
8. Congested Districts Board (Ireland) Act, 1899 - section 3(4),
9. Irish Land Act, 1903 - section 50,
10. Pilotage Act, 1913 - section 35(2),
11. Electricity (Supply) Act, 1927 - section 95,
12. Land Act, 1931 - section 2,
13. National Stud Act, 1945 - sections 5(3) and (4),
14. Forestry Act, 1946 - sections 19(12), 20(7), 21(7) and 26(8),
15. Alginat Industries (Ireland) Limited (Acquisition of Shares) Act, 1949 - section 2(2),
16. Irish News Agency Act, 1949 - section 4(3),
17. Transport Act, 1950 - section 67(4) and (5),
18. Erne Drainage and Development Act, 1950 - section 12,
19. Land Act, 1950 - sections 27(4), 28(8) and 30(19),
20. State Property Act, 1954 - section 6(2),
21. Statute of Limitations 1957 - section 60,
22. Land Act, 1965 - section 5(3)(a),
23. Succession Act, 1965 - sections 52(8) and 55(17),
24. Diseases of Animals Act, 1966 - section 6,
25. Housing Act, 1966 - section 50,
26. Diplomatic Relations and Immunities Act, 1967 - Articles 23, 28 and 34 of the First Schedule, Articles 32, 49 and 60 of the Second Schedule, Sections 7 and 8 of the Third Schedule, Sections 9 and 10 of the Fourth Schedule and Article 7 of the Fifth Schedule,
27. Higher Education Authority Act, 1971 - section 18,
28. Central Bank Act, 1971 - section 42(2) and (3) and section 48(7),
29. National College of Art and Design Act, 1971 - section 29,
30. Family Home Protection Act, 1976 - section 12(3),
31. Wildlife Act, 1976 - section 55(13),
32. Údarás na Gaeltachta Act, 1979 - section 25,
33. Irish Film Board Act, 1980 - section 33,
34. National Film Studios of Ireland Limited Act, 1980 - section 17,
35. Housing Finance Agency Act, 1981 - section 16,
36. Postal and Telecommunications Services Act, 1983 - sections 68(2) and 106(1),
37. Industrial Development Act, 1986 - section 17,
38. Transport (Re-organisation of Córas Iompair Éireann) Act, 1986 - section 31,
39. Building Societies Act, 1989 - section 118,
40. Trustee Savings Banks Act, 1989 - section 64,
41. Insurance Act, 1990 - section 8(2),
42. Social Welfare (Consolidation) Act, 2005 – section 281,
43. Industrial Development Act, 1995 - section 9,
44. Harbours Act, 1996 - section 70(2),
45. National Cultural Institutions Act, 1997 - sections 41 and 61(1),
46. Credit Union Act, 1997 - section 185,
47. Air Navigation and Transport (Amendment) Act, 1998 - section 57, and
48. Asset Covered Securities Act, 2001 – section 104.

The relevant extracts from the listed Acts are set out below:

1 Excise Permit Act, 1832 - 2 & 3 Will 4., c.16

6.—And it be further enacted, that every request note for any permit shall contain the date thereof, and the name of the place from which and the place to which the commodities therein mentioned are to be carried, and the mode of conveyance by which such commodities are to be removed, and shall likewise contain the real name and surname and place of abode of the person or persons sending such commodities, and of the person to whom they are to be sent, and, in case of a company or copartnership, the name of the firm, company, or copartnership, together with such other particulars as the Commissioners of Excise shall from time to time direct or appoint, or as shall be required by any Act or Acts relating to the commodities in respect of which the permit shall be required; and every such request note shall be signed by the person requiring the permit, or by his or her known clerk or servant; and no permit shall be granted on any request note which shall not be so signed, and contain the several particulars aforesaid: provided always, that no such request note or requisition shall be liable to any stamp duty thereon.

2 Charitable Loan Societies (Ireland) Act, 1843 - 6 & 7 Vict., c.91

26.—And be it enacted that no note or security for the repayment of any loan made by any society established or acting under the provisions of this Act, nor any receipt or entry in any book of receipt for money lent or paid, nor any debenture, or transfer, or draft, or order, nor any appointment of any agent, nor any bond or security, nor other instrument or document whatever, required or authorised to be given, issued, made, or provided in pursuance of the rules of any such society or of this Act, shall be subject to or chargeable with any stamp duty whatsoever.

3 Landed Property Improvement (Ireland) Act, 1847 – 10 & 11 Vict., c.32

59.—And be it enacted, that no bond, obligation, or other security, contract, agreement, or other instrument whatever, taken or made to or by the [Commissioners of Public Works in Ireland], nor any affidavit, deposition, release, receipt, or discharge to be respectively taken or made under and by virtue of this Act to or by them, nor any power of attorney to receive from the said Paymaster of Civil Services any monies advanced on account of loans under this Act, nor any other instrument whatsoever executed under the provisions of this Act, nor any memorial thereof for registration, shall be liable to any stamp duty whatever.

4 Common Law Procedure Amendment (Ireland) Act, 1856 - 19 & 20 Vict., c.102

36.—No document made or required under the provisions of this Act shall be liable to any stamp duty.

5 Customs and Inland Revenue Act, 1889 - 52 & 53 Vict., c.7

13.—(1) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty herein-before imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

6 Merchant Shipping Act, 1894 – 57 & 58 Vict., c.60

108.—(1) Every indenture of apprenticeship to the sea service shall be executed in duplicate, and shall be exempt from stamp duty.

196.—(1) The wages of a seaman volunteering into the Navy may be paid by bill drawn upon the owner, and payable at sight to the order of the Accountant-General of the Navy, and such bill shall be exempt from stamp duty.

309.—(2) The bond (*given by the master of an emigrant ship*) shall be executed in duplicate, and shall not be liable to stamp duty.

320.—(4) Contract tickets (*for passengers*) under this section shall not be liable to stamp duty.

342.—(2) The bond (*given by a passage broker*) shall be renewed on each occasion of obtaining a licence, and shall not be liable to stamp duty.

395.—(7) All such indentures and agreements (*for the sea-fishing service*) made in conformity with this part (*Part IV.: Fishing Boats*) of this Act shall be exempt from stamp duty.

563.— Any bond, statement, agreement, or other document made or executed in pursuance of the provisions of this part (*Part IX.*) of this Act relating to salvage by Her Majesty's ships shall, if made or executed out of the United Kingdom, be exempt from stamp duty.

721.—The following instruments shall be exempt from stamp duty:—

- (a) Any instruments used for carrying into effect the First Part of this Act.
- (b) Any instruments used by or under the direction of the Board of Trade in carrying into effect the Second, Fifth, Eleventh, and Twelfth Parts of this Act; and
- (c) Any instruments which are by those parts of this Act required to be in a form approved by the Board of Trade, if made in that form.

731.—All lighthouses, buoys, beacons, and all light dues, and other rates, fees, or payments accruing to or forming part of the Mercantile Marine Fund, and all premises or property belonging to or occupied by any of the general lighthouse authorities or by the Board of Trade, which are used or applied for the purpose of any of the services for which those dues, rates, fees, and payments are received, and all instruments or writings used by or under the direction of any of the general lighthouse authorities or of the Board of Trade in carrying on those services, shall be exempted from all public, parochial, and local taxes, duties, and rates of every kind.

7 Friendly Societies Act, 1896 – 59 & 60 Vict., c.25

33.—Stamp duty shall not be chargeable upon any of the following documents:—

- (a) Draft or order or receipt given by or to a registered society or branch in respect of money payable by virtue of its rules or this Act:
- (b) Letter or power of attorney granted by any person as trustee for the transfer of any money of a registered society or branch invested in his name in the public funds:
- (c) Bond given to or on account of a registered society or branch or by the treasurer or other officer thereof:
- (d) Policy of insurance, or appointment or revocation of appointment of agent, or other document required or authorised by this Act or by the rules of registered society or branch.

8 Congested Districts Board (Ireland) Act, 1899 – 62 & 63 Vict., c.18

3.—(4) No stamp duty shall be payable on any purchase of land by the Board for the purpose of sales to tenants.

9 Irish Land Act, 1903 - 3 Edw. 7., c.37

50.—No stamp duty shall be payable on any order or instrument made or issued under the Land Purchase Acts, or Part II of this Act, whereby any land in respect of which an advance is made under those enactments is vested in any person or is conveyed, or agreed to be conveyed to any person.

10 Pilotage Act, 1913 – 2 & 3 Geo. 5., c.31

35.—(2) Any bond given by a pilot in conformity with byelaws made for the purpose under this Act shall not be liable to stamp duty, and a pilot shall not be called upon to pay any expense in relation to the bond other than the actual expense of preparing the same.

11 Electricity (Supply) Act, 1927 – No. 27 of 1927

95.—Electricity shall be deemed to be goods, wares, or merchandise for the purpose of section 31 of the Stamp Duties Consolidation Act, 1999 (which makes certain contracts chargeable with stamp duty as conveyances on sale).

12 Land Act, 1931 – No. 11 of 1931

2.—No stamp duty shall be chargeable or payable on any agreement, conveyance, deed of charge, memorial, or other instrument (including instruments executed but not stamped before the passing of this Act) made for the purposes of or in connection with the sale by the Land Commission under or in pursuance of the Land Purchase Acts of land vested in them nor on any such instrument required by the Land Commission to be made for securing the repayment of moneys advanced by them.

13 National Stud Act, 1945 - No. 31 of 1945

5.—(3) No stamp duty shall be payable on any transfer of shares of the [Irish National Stud Company].

(4) An instrument made under section 7 or section 8 of this Act and sealed with the official seal of the Minister for Agriculture shall not, by reason only of such seal being affixed thereto, be rendered liable to any higher stamp duty than if it were an instrument under hand only.

(Section 7 enables the Minister for Agriculture to make leases of the National Stud Farm and section 8 enables the Minister for Agriculture to grant licences to use and occupy the National Stud Farm.)

14 Forestry Act, 1946 – No. 13 of 1946

19.—(12) No stamp duty shall be payable on any extinguishment order ... under subsection (11) of this section *(i.e. an extinguishment order made by the Lay Commissioners: the members of the Lay Commissioners are drawn from the membership of the Land Commission)*.

20.—(7) No stamp duty shall be payable on any order under subsection (1) of this section ... *(i.e. an order granting a right of way for the purpose of transporting timber from a wood or forest to a public road or to a railway or waterway)*.

21.—(7) No stamp duty shall be payable on any order under subsection (1) of this section ... *(i.e. an order granting the Minister for Lands a right of way over other land in connection with any land held by the Minister for the purposes of this Act)*.

26.—(8) No stamp duty shall be payable on any vesting order ... under subsection (7) of this section *(i.e. an order vesting land in the Minister for Lands)*.

15 Alginat Industries (Ireland) Limited (Acquisition of Share) Act, 1949 – No. 22 of 1949

2.—(2) No stamp duty shall be payable in respect of the acquisition of the shares [in Alginat Industries (Ireland) Limited by the Minister for Agriculture and Food].

16 Irish News Agency Act, 1949 – No. 33 of 1949

4.—(3) No stamp duty shall be payable on any transfer of shares of the [Irish News Agency].

17 Transport Act, 1950 – No. 12 of 1950

67.—(4) Stamp duty shall not be chargeable on an arrangement under section 26 or any order under section 27.

(5) The amount of all stamp duties paid by [C oras Iompair  ireann] on any instrument which is executed in order to supplement the transfer, effected by this Act, of the property of either dissolved undertaker or on any instrument which is executed in order to supplement any arrangement under section 26 or any order under section 27, shall be refunded to [C oras Iompair  ireann] out of moneys provided by the Oireachtas.

(An arrangement under section 26 is an arrangement for the voluntary acquisition and operation of transport undertakings and an order under section 27 is an order transferring to [C oras Iompair  ireann] certain functions of the Minister for Industry and Commerce or the Commissioners of Public Works in Ireland.)

18 Erne Drainage and Development Act, 1950 – No. 15 of 1950

12.—Notwithstanding anything to the contrary in any of the enactments relating to stamp duty, stamp duty shall not be chargeable in respect of any agreement entered into pursuant to this Act by the [Electricity Supply Board] to the [Ministry of Finance for Northern Ireland].

19 Land Act, 1950 – No. 16 of 1950

27.—(4) No stamp duty shall be chargeable or payable on any instrument by which a purchase [by the Land Commission] under this section is effected.

28.—(8) No stamp duty shall be payable on any transfer order ... under subsection (7) of this section (*i.e. an order vesting the land which was the subject of a purchase order under section 27*).

30.—(19) No stamp duty shall be payable on any instrument under this section or either of the two next following sections.

(Sections 31 and 32 relate to certain trusts constituted for the purposes referred to in section 4 of the Irish Land Act, 1903, and section 18 of the Irish Land Act, 1909, as extended by section 30(3).)

20 State Property Act, 1954 – No. 25 of 1954

6.—(2) No stamp duty shall be payable on any warrant under subsection (1) of this section (*i.e. a warrant under the official seal of the Minister for Finance vesting State land in a specified State authority*).

21 Statute of Limitations, 1957 – No. 6 of 1957

60.—No acknowledgment [under sections 51 to 57] shall be deemed to be an agreement within the meaning of the Stamp Duties Consolidation Act, 1999.

(Section 51 concerns the acknowledgment by the person in possession of land of the title of the person (other than a mortgagee) to whom a right of action to recover the land has accrued; section 52 concerns, inter alia, the acknowledgment by the person in possession of land of the mortgagee's title to the land in an action by the mortgagee to recover the land; section 53 concerns the acknowledgment by the person in possession of land, or the acknowledgment by the person liable for a debt secured by an incumbrance, of the debt in an action by the incumbrancer claiming sale of the land has accrued; section 54 concerns the acknowledgment by the mortgagee of the title of the mortgagor or his equity of redemption in an action to redeem the land in the mortgagee's possession; section 55 concerns the acknowledgment by the person in possession of land of a personal right in or over land in an action in respect of that right; section 56 concerns the acknowledgment of by a person liable for a debt of that debt, etc., and section 57 concerns the acknowledgment of the person accountable in an action claiming the personal estate of a deceased person or to any share or interest therein.)

22 Land Act, 1965 – No. 2 of 1965

5.—(3)(a) Stamp duty shall not be chargeable on any instrument made for the purpose of this section.

(This section concerns advances for the purchase of land by persons in congested areas.)

23 Succession Act, 1965 – No. 27 of 1965

52.—(8) This section shall not operate to impose any stamp duty in respect of an assent.

(This section deals with assents or transfers by personal representatives.)

55.—(17) Where any property is appropriated under the provisions of this section, a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for the like purpose.

24 Diseases of Animals Act, 1966 – No. 6 of 1966

6.—No stamp duty shall be payable, on ... any appointment, certificate, declaration, licence or thing under this Act

25 Housing Act, 1966 – No. 21 of 1966

50.— No stamp duty shall be payable on any agreement, deed, or other instrument relating to a letting of a dwelling mentioned in subsection (3) of section 58 of this Act on a tenancy for a month or a less period than a month.

26 Diplomatic Relations and Immunities Act, 1967 – No. 8 of 1967

FIRST SCHEDULE- Vienna Convention on Diplomatic Relations

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

SECOND SCHEDULE - Vienna Convention on Consular Relations

Article 32

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 49

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

Article 60

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

THIRD SCHEDULE - Convention on the Privileges and Immunities of the United Nations

Section 7.—The United Nations, its assets, income and other property shall be—

- (a) exempt from all direct taxes

Section 8.—While the United Nations will not, as a general rule, claim exemption from ... taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such ... taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of ... tax.

FOURTH SCHEDULE - Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations

Section 9.—The specialised agencies, their assets, income and other property shall be exempt:

- (a) from all direct taxes

Section 10.—While the specialised agencies will not, as a general rule, claim exemption from ... taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the specialised agencies are making important purchases for official use of property on which such ... taxes have been charged or are chargeable, States parties to this Convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of ... tax.

FIFTH SCHEDULE - General Agreement on Privileges and Immunities of the Council of Europe

Article 7

The Council, its assets, income and other property shall be exempt:

- (a) from all direct taxes

27 Higher Education Authority Act, 1971 - No. 22 of 1971

18.—Stamp duty shall not be charged on any conveyance or other instrument executed for the purpose of vesting property or any interest in property in [An tUdarás um Ard-Oideachas].

28 Central Bank Act, 1971 – No. 24 of 1971

42.—(2) Stamp duty shall not be charged on any agreement made between the transferor and the transferee for the transfer, in whole or in part, to the transferee of the business to which the licence held by the transferor relates.

(3) Stamp duty shall not be charged on any instrument executed in order to supplement the transfers effected or deemed to be effected by sections 34 and 35 of this Act.

(Section 34 concerns the transfer of accounts and section 35, the transfer of securities.)

48.—(7) Stamp duty shall not be chargeable on the issue, assignment, negotiation or redemption of bonds [issued by the Central Bank of Ireland].

29 National College of Art & Design Act, 1971 – No. 28 of 1971

29.—Stamp duty shall not be charged on any conveyance or other instrument executed for the purpose of vesting property or any interest in property in [Bord an Choláiste Náisiúnta Ealaíne is Deartha].

30 Family Home Protection Act, 1976 – No. 27 of 1976

12.—(3) No stamp duty ... shall be payable in respect of any [notice registered in the Registry of Deeds pursuant to the Registration of Deeds Act, 1907, or under the Registration of Title Act, 1964, by a spouse stating that he is married to any person, being a person having an interest in unregistered property or in registered land].

31 Wildlife Act, 1976 – No. 39 of 1976

55.—(13) No stamp duty shall be payable on any purchase order ... *(being an order to purchase land made by the Minister for Lands.)*

32 Údarás Na Gaeltachta Act, 1979 – No. 5 of 1979

25.—No stamp duty shall be payable on any instrument under which any property is acquired by an tÚdarás and, for the purpose of this section, “property” includes interests and rights of any description.

33 Irish Film Board Act, 1980 – No. 36 of 1980

33.—Stamp duty shall not be chargeable on any conveyance, transfer or other instrument executed for the purposes of vesting property or any interest in property in the [Irish Film Board].

34 National Film Studios of Ireland Limited Act, 1980 – No. 37 of 1980

17.—Stamp duty shall not be chargeable in respect of any conveyance, transfer or other instrument executed for the purpose of vesting property or any interest in property in the [National Film Studios of Ireland Limited].

35 Housing Finance Agency Act, 1981 – No. 37 of 1981

16.—Any bond, debenture or other security referred to in section 10(2) of this Act shall, for the purposes of section 86 of the Stamp Duties Consolidation Act, 1999, be regarded as being stock within the meaning of that section 86.

36 Postal and Telecommunications Services Act, 1983 – No. 24 of 1983

68.—(2) Money orders and postal orders issued by [An Post] shall be exempt from stamp duty.

106.—(1) Every cheque, warrant, order, power of attorney or other document executed by [An Post] in relation solely to the business of the Savings Bank shall be exempt from stamp duty.

37 Industrial Development Act, 1986 – No. 9 of 1986

17.—No stamp duty shall be payable on any instrument under which any land, easement, way-leave, water-right or other right whatsoever over or in respect of the land or water is acquired by the [Industrial Development Authority].

38 Transport (Re-organisation of Córas Iompair Éireann) Act 1986 – No. 31 of 1986

31.—... stamp duty shall not be chargeable on any licence under section 16.

(Section 16 enables licences to be granted by Córas Iompair Éireann to use land held by them.)

39 Building Societies Act, 1989 – No. 17 of 1989

118.—(1) Stamp duty shall not be chargeable on any instrument effecting the transfer of a share in a building society.

(2) Stamp duty, other than stamp duty provided for in Part 8 of the Stamp Duties Consolidation Act, 1999, shall not be chargeable on any transfer, conveyance or other instrument executed for the purposes of effecting an amalgamation of societies or a transfer of engagements under Part X or the conversion of a society into a public limited company under Part XI.

40 Trustee Savings Banks Act, 1989 – No. 21 of 1989 (as amended by section 2 of the Trustee Savings Banks (Amendment) Act 2001 – No. 6 of 2001

64.—Stamp duty, other than stamp duty provided for in sections 114 to 122 of the Stamp Duties Consolidation Act, 1999, shall not be chargeable on any transfer, conveyance or other instrument executed for the purposes of providing for or effecting—

- (a) an amalgamation of trustee savings banks under Part VI,
- (b) the reorganisation of a trustee savings bank into a company under section 57, including the transfer or other disposal to that company of all or part of the undertaking, property and rights of the trustee savings bank and of all or part of the liabilities or obligations thereof, including deposits in the said trustee savings bank and the liabilities referable thereto, or
- (c) the reorganisation of a relevant company into a banking company under section 57, including the transfer or other disposal to that banking company of all or part of the undertaking, property and rights of the relevant company and of all or part of the liabilities or obligations thereof, including deposits formerly in a trustee savings bank to which the relevant company succeeded and the liabilities referable thereto.

41 Insurance Act, 1990 – No. 26 of 1990

8.—(2) Stamp duty shall not be charged on any agreement, transfer, conveyance, assignment or lease whereby the business assets or liabilities of [Irish Life Assurance plc] are transferred or agreed to be transferred, in whole or in part, to the New Company.

42 Social Welfare (Consolidation) Act, 2005 – No. 26 of 2005

281.—Stamp duty shall not be chargeable upon any document by which any payment, refund, repayment or return under this Act is made.

43 Industrial Development Act, 1995 – No. 29 of 1995

9.—No stamp duty shall be payable on any instrument under which any land, easement, way leave, water right or other right whatsoever over or in respect of the land or water is acquired by the [Shannon Free Airport Development Company], Forfás, [Forbairt or the Industrial Development Agency (Ireland)].

44 Harbours Act, 1996 – No. 11 of 1996

70.—(2) A bond given by a pilot under subsection (1) shall not be liable to stamp duty and the pilot shall not be required to pay any expense in relation to the bond other than the actual expense of preparing the same.

45 National Cultural Institutions Act, 1997 – No. 11 of 1997

41.—Stamp duty shall not be chargeable on any conveyance, transfer or other instrument executed for the purpose of vesting property or any interest in property in [the Board of the National Museum of Ireland or the Board of the National Library of Ireland].

61.—(1) Sections ... 41 shall apply in relation to the National Gallery as they apply in relation to [the Board of the National Museum of Ireland or the Board of the National Library of Ireland] with the modification that the references to [the Board of the National Museum of Ireland or the Board of the National Library of Ireland] shall be construed as references to the Governors and Guardians and with any other necessary modifications.

46 Credit Union Act, 1997 – No. 15 of 1997

185.—(1) Stamp duty shall not be chargeable on any instrument effecting the transfer of a share in a credit union.

(2) Stamp duty shall not be chargeable on any transfer, conveyance or other instrument executed for the purposes of effecting, under Part IX, an amalgamation of credit unions or a transfer of engagements between credit unions.

47 Air Navigation and Transport (Amendment) Act, 1998 – No. 24 of 1997

57.—Stamp duty shall not be payable in respect of the transfer of an amount from a fund established in respect of a scheme for the granting of superannuation benefits in operation at the commencement of this Act to a fund established under and in accordance with section 32.

48 Asset Covered Securities Act, 2001 – No. 47 of 2001

104. —Stamp duty is not chargeable on:-

- (a) the issue of an asset covered security in accordance with this Act,
- (b) a transfer of such a security, or
- (c) a transfer of a business or part of a business, or an asset, in respect of which the approval of the Minister or the Authority is required under section 58.

Appendix 6
Advice of Receipt of Rent or Payment in the Nature of Rent

Clawback of Stamp Duty Exemption/Relief granted under Section 91, 91A, 92, 92A and 92B of the Stamp Duties Consolidation Act, 1999

This notification should be accompanied by (i) copy of the deed of conveyance/lease, including related contracts, in respect of which exemption/relief was granted, and (ii) payment of the penalty.

Part 1 - Notification of Payment

(To be completed by person who receives the rent or payment in the nature of rent other than rent in consideration for the provision, on or after 6 April 2001 (on or after 1 April 2004 in respect of section 91A), of furnished residential accommodation in part of the house/apartment)

Stamp Duty Ref. No. (if any): _____

Name of recipient (in block capitals): _____

Address of recipient: _____

Status of recipient (delete as appropriate) **Owner/Agent**

If "Agent" for another, name and address of owner: _____

Signature of recipient: _____

Date: _____

Part 2: Calculation of Penalty

(The penalty comprises the amount of stamp duty to be clawed back and any interest due*)

Calculation of clawback

(a) Total purchase price: € _____

(b) **Less** any Value-Added Tax: € _____

(c) Net purchase price [(a) - (b)]: € _____

(d) Amount of duty payable on net purchase price had exemption/relief not been granted: € _____

(e) **Less** any stamp duty already paid: € _____

(f) Amount of clawback [(d) - (e)]: € _____

Calculation of Interest due

(g) From / / to / / € _____

Total amount due (amount of clawback plus interest [(f) + (g)]: € _____

* Interest is chargeable at the rate of 0.0273% per day from 1 April 2005 (0.0322% per day from 1 September 2002 until 31 March 2005 and 1% per month prior to 1 September 2002) from the date the payment (i.e. rent or payment in the nature of rent) is first received to the date the amount of clawback is remitted.