

Stamp Duties Consolidation Act 1999

**(as amended by subsequent Acts up to and including
the Finance Act 2009)**

Notes for Guidance

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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

Section 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 (6)

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.

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 0.0219 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 0.0219 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)

Section 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)
 - incorporated¹, 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

¹ While the legislation refers to “registration” this is taken to mean “incorporation”.

- 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)
- 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 1) 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 1) 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 0.0219 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)

Section 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 calculated in accordance with *section 159D*, from the date of the instrument to the date on which the duty is paid, will apply.

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 calculated in accordance with *section 159D*, from the date of the instrument to the date on which the duty is paid, will apply. (8)

Section 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 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 clawback 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 0.0219 per cent per day (see **section 159D**) is chargeable on the clawback from the date of disposal, or part disposal, of the land to the date the (7)(aa)

clawback is paid.

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 clawbacks 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)

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 0.0219 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 clawback there is no need to return the original instrument for re-stamping.

Each joint owner is held jointly and severally liable for payment of the penalty/clawback. However, the number of penalties/clawbacks and/or the amount of the penalties/clawbacks 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 clawback 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 8IA* for instruments executed on or after 25 March 2004 and before 2 April 2007. See also *section 8IAA* for instruments executed on or after 2 April 2007 and on or before 31 December 2008. (9)

Section 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” (1) 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*).

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

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

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

- 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 (3) 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.

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 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. (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 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 clawback 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 0.0219 per cent per day (see *section 159D*) is chargeable on the clawback from the date of disposal, or part disposal, of the land to the date the clawback 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 clawbacks 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 €10,000 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 clawback of €3,428.57 calculated as follows:

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

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

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 (11)(b)

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 0.0219 per cent per day (see *section 159D*) from the date the instrument was executed to the date the penalty is paid.

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 clawback there is no need to return the original instrument for re-stamping.

Each joint owner is held jointly and severally liable for payment of the penalty/clawback. However, the number of penalties/clawbacks and/or the amount of the penalties/clawbacks 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 clawback 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)

Section 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 2012. 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 (2)

Schedule 2B (see **Schedule 2B**).

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:

“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 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 clawback 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 clawback at the rate of 0.0219 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 clawbacks 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 €10,000 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 clawback of €3,428.57 calculated as follows:

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

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

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 0.0219 per cent for each day (see *section 159D*) from the date the instrument was executed to the date the penalty is paid. (12)(e)

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 0.0219 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 clawback, 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 clawback 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
 - 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*.(14)(a) & (b)
- 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 (15)

a FETAC Level 6 Advanced Certificate in Agriculture in *Schedule 2B*.

The relief applies to instruments executed on or after 2 April 2007 and on or before 31 December 2012. (16)

Section 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. The wording of this certificate is: (2)(a)

“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 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 clawback 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 clawback, calculated in accordance with *section 159D*, at the rate of 0.0219 per cent per day from the date of disposal, or part disposal, of the land to the date the clawback is paid.

The clawback of the relief will not occur where the land is being compulsorily (9)(b)

acquired or is the subject of another exchange of lands which qualify for relief under this section.

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 0.0219 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 clawback or penalty, as the case may be, under *subsection (9)(a)*, *(9)(c)* or *(9)(d)*. (10)(b)

Any clawback 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 clawback or 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 clawback or 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)

Section 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 2011.

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 2011) 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 2011. 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 **(4)**

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.

Where a purchase of qualifying land takes place before the sale of qualifying land, (5) 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.

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 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 clawback 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 clawback is remitted. The rate of interest under **section 159D** is 0.0219 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 0.0219 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 clawback or penalty, as the case may be, under **subsection (9)(a), (9)(c) or (9)(d)**. (10)(b)

Any clawback 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 clawback/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 clawback/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 2011. (12)

Section 82 Charities

This section exempts certain charitable dispositions from the charge to stamp duty. (1)
The exemption is confined to conveyances or transfers (whether on sale or by way of gift) or leases—

- 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*.

Section 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.

Section 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 clawback incurred, calculated in accordance with *section 159D*, from the date of any disposal or cessation, to the date the clawback is remitted. (6)

The maximum clawback 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)

Section 83 Instruments given by means of security to company by subsidiary

Section deleted in respect of instruments executed on or after 7 December 2006.

Section 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 – (1)

- (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 (see *section 20*). (4)

The insertion of an incorrect statement in the instrument will constitute an offence within the meaning of section 1078 of the Taxes Consolidation Act, 1997. (5)

Section 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.”.

Section 83C Exchange of houses

Summary

The purpose of this section is to allow a person selling a new house (or apartment) to take a trade-in from an individual selling an old house without having to pay stamp duty immediately on the old house. The stamp duty is deferred until the earlier of the date the individual sells it on or 31 December 2010. This relief applies to instruments executed between 7 May 2009 and 31 December 2010, both dates inclusive.

Details

“excess land” means an area of land attaching to an old house which does not include the building or the part of a building or the area of land referred to in the definition of “house”. (1)

“house” means a building or part of a building, used or suitable for use as a dwelling and includes an area of land for occupation and enjoyment with the dwelling as its gardens or grounds which, exclusive of the site of the dwelling, does not exceed 0.4047 hectare.

“house builder” means a person who has constructed a house and includes a person associated with the first mentioned person as part of an arrangement in connection with the construction or disposal of the house.

“new house”, in relation to a house builder, means a house that immediately prior to a conveyance, transfer or lease of the house by the house builder, has been constructed by the house builder and has not previously been occupied or sold.

“old house”, in relation to an individual, means a house that, immediately prior to a conveyance or transfer of the house by the individual, has been occupied by that individual or any other individual.

This section applies to the sale of a dwelling to a house builder, subject to the following: (2)

- (a) the instrument effecting the conveyance or transfer must contain a statement that this section applies,
- (b) a new house is acquired from the house builder, and
- (c) the consideration for the new house is the old house.

The exemption applies to the conveyance or transfer by an individual (whether alone (3)

or with other individuals) of the old house to the house builder.

Any difference in value between both houses is to be paid in cash. (4)

Where the property being sold to the house builder exceeds 1 acre plus the size of the house, stamp duty will be payable in the normal way on the “excess land”. (5)

The instrument effecting the exchange must be adjudicated by the Revenue Commissioners in accordance with *section 20*. (6)

Where a number of instruments are used for the purposes of effecting a transaction which qualifies for relief under this section, all the instruments must be presented to the Revenue Commissioners at the same time. (7)

A full clawback of the relief allowed on the conveyance or transfer of the old house to the builder (together with interest if payment is delayed) will become due on the earlier of: (8)

- (a) any part of the old house being sold on to another person, or
- (b) 31 December 2010.

In addition, a penalty will be applied if the relief should not have been granted due to the inclusion of a false certificate in the instrument. The penalty is 125% of the relief granted together with interest, calculated in accordance with *section 159D*, from the date the instrument was executed to the date the penalty is paid.

A person will not be liable to a penalty under *subsection 8* to the extent that a clawback has been paid and vice versa. (9)

The relief only applies to instruments executed between 7 May 2009 and 31 December 2010, both dates inclusive. (10)

CHAPTER 2

Other instruments

Section 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 section 509 of the Taxes Consolidation Act 1997. (1)

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)

Section 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.

Section 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)*.

Section 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 (3)

borrowing transactions entered into on or after 25 March 2005 – previously it was 6 months) from the date of the stock borrowing then—

- 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 0.0219 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)

Section 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) (3), (4)

from the date of the stock transfer then—

- 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 0.0219 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)

Section 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-incorporated² 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 2) 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 2) company other than an Irish collective investment undertaking, the

² 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.

exemption does not apply.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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 depositary 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.

Section 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)

Section 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 (1)

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. ***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 (2)(d)

incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997, and is, therefore, a revenue offence.

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. 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)

Section 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 available to him/her at the time of so certifying, that— (1)

- 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 the Revenue Commissioners may specify, certifying that— (3), (4), (5)

- 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 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 clawback 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 0.0219 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 clawback 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. (6)

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. (6A)

Where a valid floor area certificate, within the meaning of *section 91* has issued, that 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. (7)

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. (8)

Section 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 contract the consideration chargeable to stamp duty is the greater of— *(1)(a)(i), (ii)*
 - 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	€25,000
Building contract	<u>€575,000</u>
	€800,000

The element of the consideration on which duty is chargeable is €25,000 (i.e. the cost of the site). The duty payable is €7,000 (€100,000 (i.e. €25,000 - €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. €15,000) 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. 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 (2)

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.

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)

Section 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 (4)

applied and is being clawed back then

- (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)

Section 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. (IA)

The deeming provisions of *subsection (IA)* apply to cases other than where the donor or the lender is a parent of the purchaser. (IB)

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 (2) & (3)

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.

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 clawback 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 clawback 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 clawback applied under this section will be in addition to the clawback under *section 92*.

It should be noted where a clawback arises under this section and under *section 92* that the total of the 2 clawbacks 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 (7) 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.

A person who has left the former marital home due to the marriage having become (8)(a) 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, 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 (8)(aa) 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:

- 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.

Section 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.

Section 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.

Section 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.

Section 94 Purchase of land from Land Commission

This section provides that certain purchases of land from the Land Commission are exempt from stamp duty.

Section 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.

Section 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)

Section 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)

Section 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.

Section 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.

Section 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.

Section 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.

Section 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. For instruments executed on or after 7 May 2009, "intellectual property" has been amended to include any trade name, trade dress, brand, brand name, service mark, publishing title, any authorisation without which it would not be permissible for a medicine or a product of any design, formula, process or invention to be sold for any purpose for which it was intended or any rights derived from research undertaken prior to any aforementioned authorisation into the effects of a medicine or a product of any design, formula, process or invention.

(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, domain name, trade name, trade dress, brand, brand name, service mark or publishing title,
- (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 1992³,
- (d) any supplementary protection certificate provided for under Regulation (EC) No. 1610/96 of the European Parliament and the Council of 23 July 1996⁴,
- (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,
- (ea) any authorisation without which it would not be permissible for a medicine or a product of any design, formula, process or invention to be sold for any purpose for which it was intended,
- (eb) any rights derived from research undertaken prior to any authorisation referred to in paragraph (ea) into the effects of a medicine or a product of any design, formula, process or invention,
- (f) any application for the grant or registration of anything within paragraph (a), (b), (c), (d), (e), (ea) or (eb),
- (g) any licence or other right in respect of anything within paragraph (a), (b), (c), (d), (e), (ea), (eb) 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), (ea), (eb), (f) or (g),
- (i) goodwill to the extent that it is directly attributable to anything within paragraph (a), (b), (c), (d), (e), (ea), (eb), (f), (g) or (h).

Subject to **subsection (3)**, stamp duty is not chargeable on an instrument for the sale, (2)
transfer or other disposition of intellectual property as defined.

Where an instrument consists of both intellectual property and other chargeable (3)
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.

The amount or value of the consideration attributable to intellectual property will be (4)
disregarded for the purposes of the statement provided for in **paragraphs 7 to 12**,
relating to non-residential property, under the heading “CONVEYANCE or
TRANSFER on sale of any property other than stocks or marketable securities or a

³ OJ No. L 198, 8.8.1996, p.30

⁴ OJ No. L 182, 2.7.1992, P.1

policy of insurance or a policy of life insurance” in *Schedule 1* of the Stamp Duties Consolidation Act 1999.

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)

Section 101A Single farm payment entitlement

Summary

“payment entitlement” has the same meaning as it has for the purposes of Council Regulation (EC) No. 1782/2003 of 29 September 2003⁵ (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 (7)

⁵ OJ No. L270 of 21.10.2003, p.1.

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.

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)

Section 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.

Section 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.

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)

Section 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.

Section 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.

Section 106 Housing Finance Agency

This section exempts from stamp duty instruments which secure moneys advanced by the Housing Finance Agency to housing authorities.

Section 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 housing authority in connection with any of its functions under the Housing Acts 1966 to 2004, or
the Affordable Homes Partnership in connection with the services specified in article 4(2) of the Affordable Homes Partnership (Establishment) Order 2005.

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.*

Section 107 Certain mortgages of stock

Section deleted in respect of instruments executed on or after 7 December 2006.

Section 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.

Section 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 (3)

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.

A clawback of the relief, granted to a company under *subsection (2)(b)*, will arise (4) 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. The clawback 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 0.0219 per cent per day (see *section 159D*) from the date of the disposal or cessation to the date the clawback is remitted.

Notwithstanding *subsection (4)*, the maximum clawback (exclusive of interest) (5) 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.

Section 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.

Section 110 Certain health insurance contracts

This section exempts certain health insurance policies from the €1 stamp duty on non-life insurance policies.

Section 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.

Section 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.

Section 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.

Section 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.