Stamp Duties Consolidation Act 1999

(as amended by subsequent Acts up to and including the Finance Act 2010)

Notes for Guidance

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

STAMP DUTIES CONSOLIDATION ACT 1999

PART 1 INTERPRETATION

Overview

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

Section 1 Interpretation

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

The definitions of "accountable person", "approved person", "authorised person", "Commissioners", "conveyance on sale"[1], "die", "electronic return", "executed", "execution", "e-stamping system", "filer", "forge", "forged", "impressed", "instrument"[2], "material", "Minister", "money", "paper return", "policy of insurance", "policy of life insurance", "stamp", "stamp certificate", "stamped", "stock", "stock certificate to bearer" and "Teagasc" are self-explanatory. ***(1)***

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

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

- a period of 5 years, or

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

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

- periods which together comprised of at least 5 years,

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

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

A "marketable security" is defined as—

- a security (e.g. written evidence of a debt),

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

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

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

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

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

Example

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

The definition of "residential property" does not include contents but it does include the curtilage (i.e. the normal domestic out-houses, yard, garden, etc.) up to an area of one acre (exclusive of the site of the residential property).

Example

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

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

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