

Stamp Duties Consolidation Act 1999

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

Notes for Guidance

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PART 4 ADJUDICATION AND APPEALS

Overview

This Part contains provisions relating to the adjudication of instruments and appeals against stamp duty assessments. Adjudication is the process whereby the Revenue Commissioners formally assess the liability of an instrument to stamp duty. When an instrument has been adjudicated it will bear an adjudication stamp. The advantage of having an adjudication stamp is that the instrument may be produced in evidence in most court proceedings notwithstanding the fact that doubts may be expressed later as to whether the correct amount of stamp duty was in fact paid in relation to the instrument - see *section 20(6)*. Certain instruments, however, may not be produced in evidence unless they bear, in addition to the adjudication stamp, the Particulars Delivered stamp - see *section 12*. More than one adjudication stamp may be needed in certain circumstances - see *section 7*.

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

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

Section 20 Assessment of duty by the Commissioners

Summary

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

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

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

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

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

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

Details

Power to raise assessments

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

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

Production of evidence

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

Instruments not chargeable

The Revenue Commissioners may, if they are satisfied that the instrument is not chargeable with duty, issue a stamp certificate denoting that it is not chargeable. (4)

Instruments chargeable

The Revenue Commissioners may, if they believe the instrument is chargeable, assess the amount of duty with which it is chargeable and after the instrument has been stamped in accordance with the assessment the Revenue Commissioners may issue a stamp certificate. (5)

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

Admission in evidence

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

Instruments which may not be assessed

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

not be stamped on the instrument.

Statutory declaration

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

Power to vary assessments already made

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

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

Section 21 Right of appeal of persons dissatisfied with assessment

Summary

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

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

Details

Definitions

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

Accountable person may appeal

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

Time limit to lodge appeal

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

Income Tax appeal provisions to apply

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

Appeals against value of land

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

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