Stamp Duties Consolidation Act 1999

(as amended by subsequent Acts up to and including the Finance Act 2014)

Notes for Guidance

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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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.

Prior to the termination of the adjudication process for instruments executed on or after 7 July 2012, in order to benefit from an exemption or relief the instrument may or may not have had to be presented for adjudication to the Revenue Commissioners. For ease of reference this Part distinguished between those instruments where adjudication (see ***section 20***) was compulsory in order to benefit from an exemption or relief - see ***Chapter 1*** - and other instruments - see ***Chapter 2***.

For instruments executed on or after 7 July 2012, a self-assessed stamp duty return must be filed under the e-stamping system in order to benefit from an exemption or relief provided for in ***Chapter 1***. In the case of an exemption or relief provided for in ***Chapter 2*** a self-assessed stamp duty return is required to be filed in respect of certain instruments which operate as a sale/voluntary disposition/lease of land. (see – *Regulation 4 and Schedule 1 of the STAMP DUTY (E-STAMPING OF INSTRUMENTS AND SELF-ASSESSMENT) REGULATIONS 2012 (S.I. No. 234 of 2012)*).

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 (5) 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 non-residential property, executed prior to I January 2015, between certain blood relatives and civil partners (i.e. consanguinity relief).

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

- ***sections 31(3), 31B(5), 36, 39(2), 42(3), 43, 52(1), 73, 75, 75A 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",
- miscellaneous Acts - see **Appendix 2**.

CHAPTER 1

Instruments in respect of which a self-assessed stamp duty return must be filed under the e-stamping system 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. A self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which relief is sought under this section.

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;

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return is required to be filed under the e-stamping system to claim this relief. ***(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 relief will be clawed back in any case where— ***(7)***

- it is subsequently found that the exemption was not properly due, 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 ***(10)*** 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***.

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.

A self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which relief is sought under this section. 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)*

    - incorporated[1], or
    - established by Act of the Oireachtas, or
    - a company the nominal share capital of which has been increased,

    with a view to the acquisition of the undertaking, or part of the undertaking, or issued share capital of the target company. A company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital will be treated as if it had increased its nominal share capital. *(2)(b), (5)*

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

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

- at least 90% of the consideration for the acquisition (except such part of that consideration as consists in the transfer to or discharge by the acquiring company of liabilities of the target company) must consist of the issue of shares in the acquiring company to— *(2)(c)*

    - either the target company or the shareholders in the target company, in cases where the undertaking or part of the undertaking is being acquired, or
    - to the shareholders in the target company in exchange for their shares, in cases where shares are being acquired.

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

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

- 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)*

[1] While the legislation refers to "registration" this is taken to mean "incorporation".

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;

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return is required to be filed under the eStamping system to claim this relief. ***(3)(a)***

The relief will be clawed back if— ***(8)***

- it is subsequently found that the exemption was not properly due,
- 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. A self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which the exemption from stamp duty is sought. 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)***

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return is required to be filed under the e-stamping system to claim this relief. ***(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 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

No longer effective – *Section 69 Finance Act 2004*

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

No longer effective – *Section 102 Finance Act 2007*

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 2015. 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.

By virtue of section 71 of the Qualifications and Quality Assurance (Education and Training) Act 2012 the National Qualifications Authority of Ireland (NQAI), the Higher Education and Training Awards Council (HETAC) and the Further Education and Training Awards Council (FETAC) were dissolved and replaced by a new body – the Qualifications and Quality Assurance Authority of Ireland (QQAAI). The references ***in section 81AA*** and ***Schedule 2B*** to the dissolved bodies have been updated in respect of qualifications awarded on or after 6 November 2012 - the establishment date of the new body.

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***. A self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which relief is sought. 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 ***(1)*** 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.

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

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

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

- a qualification from paragraph 1(f) or paragraph 2(h) of ***Schedule 2A*** and also the holder of a 180 hours certificate, or

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

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

Where Teagasc certifies that any other qualification corresponds to a qualification set out in ***Schedule 2B*** and also certifies that such qualification is deemed by the Qualifications and Quality Assurance Authority of Ireland (QQAAI) 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 young trained farmer, or each of them if there is more than one, must, for a period of 5 years from the date of execution of the instrument, ;

  - spend not less than 50 per cent of his or her normal working time farming the land and ***(8)(a)***

  - retain ownership of the land ***(8)(b)***

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 satisfy the conditions of the section. However, in cases where 2 of the joint owners are married or civil partners 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.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return is required to be filed under the e-stamping system to claim this relief. ***(10)***

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. The claim for repayment must be made within the period of 4 years from the date the person obtains the educational qualification (***see section 159A(1)***) and the following condition must also be satisfied: ***(11)(c)***

- the farmer, or each of them if there is more than one, must, for a period of 5 years from the date on which the claim for repayment is made to the Revenue Commissioners, spend not less than 50 per cent of his or her normal working time farming the land and retain ownership of the land.

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)***

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

where—

- S is the amount of stamp duty which would have been charged on the instrument, in the first instance, had 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 ***(12)(c)*** 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.

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 €110,000 when the 100 acres are valued at €210,000. In December 2008, A purchases 60 acres of land for €70,000 and does not re-invest the balance of €40,000. A will be liable to a clawback of €3,428.57 calculated as follows:

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

* S is €200,000 x 9% = €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 or civil partner 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 ***(14)(a) & (b)***

  - where the qualification is one that requires satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, that person will be deemed to be the holder, for the purposes of ***section 81AA***, of a qualification corresponding to one set out in ***subsection (4)(b)(i)***,

  - where the qualification is one that does not require a course of training, approved by Teagasc, that person will be deemed to be the holder, for the purposes of ***section 81AA***, of a qualification corresponding to a Level 6 Advanced Certificate in Agriculture in paragraph 1 of ***Schedule 2B***.

- Where the person has satisfactorily attended full-time a course at a third-level institution in any discipline for a period of not less than 2 years' duration, as provided for in ***section 81(1)(b)(ii)(I***), that person will be deemed, for the purposes of ***section 81AA***, to have achieved the required standard for entry into the third year of a full-time course of 3 or more years' duration at a third-level institution in any discipline, as confirmed by that institution – see ***subsection (5)(a)***. ***(14)(c)***

- Where the person is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, that person will be deemed, for the purposes of ***section 81AA***, to be the holder of a certificate awarded by FETAC for achieving a minimum stipulated standard in assessments completed, in a course of training approved by Teagasc in farm management, the aggregate duration of which exceeded 80 hours. ***(14)(d)***

- Where the person is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in either or both agriculture and horticulture, the aggregate duration of which exceeded 180 hours, that person will be deemed, for the purposes of ***section 81AA***, to be the holder a certificate awarded by FETAC for achieving a minimum stipulated standard in assessments completed in a course of training approved by Teagasc in either or both agriculture and horticulture, the aggregate duration of which exceeded 180 hours. ***(14)(e)***

The following **transitional arrangements** for qualifications obtained under ***section 81A*** on or after 25 March 2004 and before 2 April 2007 apply. Where a person holds a ***Schedule 2A*** qualification or a qualification certified by Teagasc as corresponding to a ***Schedule 2A*** qualification, and an 80 hours or, as the case may be, an 180 hours certificate is not required in respect of that qualification, that person will be deemed, for the purposes of ***section 81AA***, to be the holder of a qualification corresponding to a Level 6 Advanced Certificate in Agriculture in paragraph 1 of ***Schedule 2B***. ***(15)***

The relief applies to instruments executed on or after 2 April 2007 and on or before 31 December 2015. ***(16)***

Section 81B Farm consolidation relief

No longer effective

Section 81C Further farm consolidation relief

No longer effective

Section 81D Relief for certain leases of farmland

This relief is subject to a commencement order by the Minister for Finance pending resolution of EU State-aid issues. Subject to this, the section, introduced by Section 73 of Finance Act 2014, will exempt long-term leasing of land from stamp duty under the following conditions-

- The period of lease must be for a term of not less than six years and not greater than 35 years and
- the land is used exclusively for farming on a commercial basis which includes the occupation of woodland on a commercial basis and
- the lessee must be a farmer who has (or within a period of 4 years from the date of the lease will be the holder of) a qualification set out in Schedule 2, 2A or 2B to the Act, or a farmer who spends not less than 50% of his or her normal working time farming land (including the leased land).

Revenue will accept for the purposes of this relief that normal working time approximates to 40 hours. This will enable farmers with off-farm employment to qualify for the relief provided they spend a minimum average of 20 hours working per week on the farm. Where anyone can show that their “normal working time” is somewhat less than 40 hours a week, then the 50% requirement will be applied to the actual hours worked – subject to the overriding requirement that the farm is farmed on a commercial basis and with a view to the realization of profits.

The Revenue Commissioners also accept that the relief is available to a lessee who farms the land in partnership or through a company, where the partners/main shareholder who is working director (as appropriate) satisfy the above conditions.

If any of the conditions referred to above cease to be satisfied within the first six years of the lease then the lessee will become liable to the stamp duty together with interest calculated in accordance with section 159D of the Act from the date the condition(s) ceased to be fulfilled to the date the stamp duty is paid. In the event of the lessee dying or becoming incapacitated the clawback of stamp duty does not apply.

Section 82 Charities

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

- of land,
- to bodies of persons, or trustees of a trust, established solely for charitable purposes, and
- which will be used for charitable purposes in the State or Northern Ireland.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return must be filed under the e-stamping system in ***(2)*** relation to conveyances, transfers or leases in respect of which relief under this section is sought.

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. Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which the exemption from stamp duty is sought. 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. ***(3)***

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which the exemption from stamp duty is sought.

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 ***(7)*** under the section not applied.

Section 82C Pension schemes and charities

Summary
This section provides an exemption from stamp duty in respect of the transfers of property held by pension schemes and charities

Detail
Definitions for the purpose of this section are self-explanatory ***(1)***

Transfers of property in the circumstances outlined, are exempt from a stamp duty charge. ***(2)***

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

No longer effective – Section 63(1)(b) Finance Act 2011.

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.

Adjudication has been abolished for instruments executed on or after 7 July 2012 and a self-assessed stamp duty return must be filed under the e-stamping system in relation to instruments in respect of which the exemption from stamp duty is sought.

Section 83C Exchange of houses

No longer effective.

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.

Details

Section (1) contains the definition of "loan capital". ***(1)***

Section (1A) contains the definition of an "enhanced equipment trust certificate" which means loan capital issued by a company to raise finance to acquire, develop or lease aircraft. ***(1A)***

Subsection (2)(a)(i) grants an exemption from stamp duty on the *issue* of Government loans and ***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. ***(2)(a)***

The *transfer* of loan capital of a company or other body corporate which— ***(2)(b)***

- is not convertible to Irish registered shares; ***(2)(b)(i)***
- is not convertible to other loan capital having a right of conversion to Irish-registered shares; ***(2)(b)(ii)***
- is issued for a price which is not less than 90% of its nominal value, and ***(2)(b)(iv)***
- 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), ***(2)(b)(v)***

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. ***(2)(c)***

The issue, transfer or redemption of an enhanced equipment trust certificate is not chargeable to stamp duty. ***(2)(d)***

Section 85A Certain investment certificates

This section provides that stamp duty shall not be chargeable on the issue, transfer or redemption of an investment certificate within the meaning of section 267N of the Taxes Consolidation Act 1997.

Section 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 2**, 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 86A Enterprise Securities Market

This section provides for the exemption from stamp duty of transfers of stocks or marketable securities admitted to the Enterprise Securities Market operated by the Irish Stock Exchange Limited. ***(1)***

The exemption does not apply to transfers of stocks or marketable securities where the admission of the stocks or marketable securities to the Enterprise Securities Market has been cancelled by the Irish Stock Exchange Limited. ***(2)***

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 borrowing transactions entered into on or after 25 March 2005 – previously it was 6 months) from the date of the stock borrowing then— ***(3)***

- the stock borrower will become liable to pay full ad valorem stamp duty on the stock transferred to the stock borrower by the lender;

- the stock borrower will have to pay the duty within 14 days after the end of that 12 month period. If the duty is not paid within that time interest, at the rate of 0.0219 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) from the date of the stock transfer then— ***(3), (4)***

- the repo buyer will become liable to pay full ad valorem stamp duty on the stock transferred to the repo buyer by the repo seller;
- the repo buyer will have to pay the duty within 14 days after the end of that 12 month period. If the duty is not paid within that time interest, at the rate of 0.0219 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 87B Merger of companies

This section provides an exemption from stamp duty on an instrument made for the purposes of, or in connection with, a cross-border merger, a merger, or an SE formed by merger.

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; 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 an investment limited partnership within the meaning of section 739J 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-incorporated company (other than an investment undertaking as defined in section 739B of the Taxes Consolidation Act 1997 or a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997), the exemption does not apply;

- units of a unit trust to which section 731(5) or (6) of the Taxes Consolidation Act 1997, relates. Section 731(5) relates to a unit trust which is not an authorised unit trust scheme within the meaning of the Unit Trusts Act 1990 but the units are held by capital gains tax exempt persons. 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 or other bodies corporate which are not incorporated in the State. However, if the transfer relates to Irish immovable property, or to the stocks or marketable securities of an Irish-incorporated company (other than an investment undertaking as defined in section 739B of the Taxes Consolidation Act 1997 or a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997), the exemption does not apply.

Section 88A Reorganisation - 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.

Section 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) 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 or directly to the foreign fund, or

(b) a domestic fund transfers its assets to a foreign fund in return for the foreign fund issuing units in the foreign fund to the holders of units in the domestic fund or directly to the domestic 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 88E Transfer of assets within unit trusts

This section provides for an exemption from stamp duty on any instrument made for the purposes of the transfer of assets within an investment undertaking.

Section 88F Reconstruction or amalgamation of offshore funds

This section exempts schemes of reconstruction or amalgamation of offshore funds and exchanges in certain offshore funds from stamp duty.

Section 88G Amalgamation of unit trusts

This section exempts schemes of amalgamation from stamp duty.

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 the stocks or marketable securities of an Irish-incorporated company (other than an investment undertaking as defined in section 739B of the Taxes Consolidation Act 1997 or a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997**)**.

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 definition of "greenhouse gas emissions allowance" is 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)***

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

No longer effective

Section 91A New dwellinghouses and apartments with floor area compliance certificate

No longer effective – Section 61(1)(c) Finance Act 2011

Section 92 New dwellinghouses and apartments with no floor area certificate

No longer effective – Section 61(1)(d) Finance Act 2011

Section 92A Residential property owner occupier relief

No longer effective

Section 92B Residential property first time purchaser relief

No longer effective – Section 61(1)(f) Finance Act 2011

Section 92C Residential property investor relief

No longer effective

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 or civil partner 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.

This exemption does not apply to gifts. While "substantial" is not defined the Revenue Commissioners will consider each case on its merits.

Section 96 Transfers between spouses

This section exempts from stamp duty all transfers/leases of property between spouses and civil partners 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)***

Section 97 Certain transfers following the dissolution of a marriage

Summary

This section exempts from stamp duty certain transfers of property between former spouses and civil partners.

Details

All transfers of property from (a) one spouse to the other where those spouses have divorced or (b) one civil partner to the other civil partner where the civil partnership has been dissolved or annulled, 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 Part 12 of the Civil Partnership and certain Rights and Obligations of Cohabitants Act 2010, 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 or civil partnership where the dissolution is entitled to be recognised as valid in the State.

The exemption only applies to transfers between spouses who have divorced each other or former civil partners. If any other person is a party to the instrument the exemption does not apply. ***(2)(b)***

Section 97A Certain transfers by Cohabitants

Summary

This section exempts from stamp duty certain transfers of property between former cohabitants.

Detail

All transfers of property from one cohabitant to his or her cohabitant made pursuant to an order under section 174 of the Civil Partnership and Certain Rights of Cohabitants Act 2010 are exempt from stamp duty**.** ***(1)***

The exemption only applies to transfers between the cohabitants. If any other person is a party to the instrument the exemption does not apply. ***(2)***

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 (other than units in an investment undertaking as defined in section 739B of the Taxes Consolidation Act 1997) 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.

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

Where an instrument consists of both intellectual property and other chargeable property, the consideration is to be apportioned on a just and reasonable basis between intellectual property and the other property contained in the instrument, and in addition, only that part of the consideration which relates to property, which is not intellectual property, will be chargeable to stamp duty. ***(3)***

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 ***(8)*** instrument.

Section 101A Single farm payment entitlement

Summary

"payment entitlement" has the same meaning as it has for the purposes of Council Regulation (EU) No. 1307/2013 of 17 December 2013[2] ***(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)***

Where property is conveyed in separate parts by different instruments, the apportionment of consideration under ***section 45(1***), is to be on a just and reasonable basis where part of the property consists of a payment entitlement. ***(5)***

Where a payment entitlement is included in property contracted to be purchased by two or more persons who are relevant persons connected with one another, a similar apportionment under ***section 45(3)***, as that contained in ***subsection (5)***, is provided for. ***(6)***

A "relevant person", for the purposes of ***subsection (6)***, is defined as a person by or for whom the property is contracted to be purchased and the question of whether persons are connected with one another is to be construed in accordance with section 10 of the Taxes Consolidation Act 1997 and as if the reference to the Capital Gains Tax Acts in the definition of "relative" in that section was replaced by a reference to the Stamp Duties Consolidation Act 1999. ***(7)***

Where ***subsection (5)*** or ***subsection (6)*** applies and the consideration is apportioned other than in a just and reasonable manner, stamp duty is to apply as if the value of the property transferred was substituted for the consideration set out in the relevant instrument. ***(8)***

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.

[2] OJ No. L347 of 20.12.2013, p.608.

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.

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.

Section 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 to a housing authority and limits the stamp duty payable on a conveyance, transfer or lease of a house, building or land by a housing authority to €100.

A "housing authority" is defined for the purposes of this section. ***(1)***

An instrument giving effect to a conveyance, transfer or lease of a house, building or land to a housing authority is not chargeable to stamp duty. ***(2)***

Stamp duty payable on a conveyance, transfer or lease of a house, building or land by a housing authority is not to exceed €100. ***(3)***

*Note – Section 106B amended by Finance Act 2011 in respect of instruments executed on or after 1 April 2011.

Section 106C Grangegorman Development Agency

This section exempts from stamp duty instruments which transfer property to the Agency in connection with its function.

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 deleted by Finance Act 2014 – but see Section 1of Stamp Duties Consolidation Act 1999 (as amended by Section 73 FA 2014.

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 owned, either directly or indirectly, by the State. In addition, the Minister for Finance must have received confirmation in writing from the Agency, on or before the date of execution of the instrument, that such company will remain indefinitely 100% beneficially owned by the State. ***(3)***

A clawback of the relief, granted to a company under ***subsection (2)(b)***, will arise where the company subsequently disposes of the land or part of the land included in the exempt instrument, other than to a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002 or where the company ceases to be 100% beneficially owned, either directly or indirectly, by the State. 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. ***(4)***

Notwithstanding ***subsection (4)***, the maximum clawback (exclusive of interest) payable on any instrument will not exceed the amount of duty which would have been payable on the instrument had the exemption not applied in the first instance. ***(5)***

Section 108B National Asset Management Agency

This section provides an exemption from stamp duty on transfers of property and securities made in relation to transactions involving NAMA and its subsidiaries.

The definitions are self-explanatory *(1)*

A body corporate is associated with NAMA in accordance with the provisions of section 79 where shares in the body corporate are held by NAMA, and *(2)*
Where that body corporate is associated, directly or indirectly, with another body corporate in accordance with the provisions of section 79, NAMA will be associated with that other body corporate in accordance with the provisions of section 79.

An exemption from stamp duty arises — *(3)*
(a) on the sale, transfer, lease or other disposition (e.g. contract) of any property, asset or documentation to NAMA or a NAMA-subsidiary by NAMA, a NAMA-subsidiary or a participating institution,
(b) on the transfer to a NAMA-subsidiary or a participating institution of securities issued in order to provide consideration for the acquisition of bank assets from a participating institution,
(c) on the transfer to a NAMA-subsidiary by NAMA or a NAMA-subsidiary of securities issued for the purpose of financing the general operations of NAMA and its subsidiaries,
(d) on the transfer to a participating institution of a bank asset, security or other property by NAMA or a NAMA-subsidiary following a review of valuations by reference to section 122 of the Bill,
(e) on the transfer or other disposition to NAMA or a NAMA-subsidiary of any property in settlement or part settlement of an acquired bank asset,
(f) on the sale, transfer, lease or other disposition of any property, asset or documentation to NAMA or a NAMA group entity by (i) the Central Bank of Ireland, (ii) the Irish Bank Resolution Corporation, (iii) a subsidiary or subsidiary undertaking of the Irish Bank Resolution Corporation or (iv) a special liquidator appointed under section 7 of the Irish Bank Resolution Corporation Act 2013,
(g) on the transfer to the Central Bank of Ireland of securities issued under section 48 of the National Asset Management Agency Act 2009 for the purpose specified in subsection (2)(b) of that section.[3]

A transfer or lease exempted from stamp duty under this section will not be required to be presented to the Revenue Commissioners to be stamped with a Particulars Delivered Stamp (PD) in accordance with section 12. *(4)*

This section applies to instruments executed on or after Establishment Day within the meaning of section 4 of the NAMA Bill (21 December 2009). *(5)*

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

[3] Paragraphs (f) and (g) were inseted into subsection (3) by section 22 of the the Irish Bank Resolution Corporation Act 2013.

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 or any other interest in the stocks, funds or securities of the Government, Oireachtas, the Minister or other Minister of the Government,
- transfers of shares or any other interest in the stocks, funds or securities 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 or any other interest 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.