Stamp Duties Consolidation Act 1999

Part 5: Provisions applicable to particular instruments

This document should be read in conjunction with Part 5 (sections 22 to 67) of the Stamp Duties Consolidation Act 1999.

Document last updated December 2024.

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Introduction

This part of the Stamp Duties Consolidation Act (SDCA) 1999 should be read in conjunction with Schedule 1 to the SDCA. It explains and supplements the Schedule and is arranged in the same order.

1 Section 29

Conveyance on sale combined with a building agreement for a dwelling house or apartment

This section provides for a charge to Stamp Duty where a site is being sold and, in connection with or as part of an arrangement for that sale, a house or apartment has been, is being or is to be built on that site.

Stamp Duty in such cases is chargeable on the aggregate of:

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

Where it is not possible to determine the aggregate consideration at the time of the stamping of the instrument, a multiple of 10 times the market value of the land should be used to calculate the duty. A claim for refund can be made within 3 years of the stamping of the instrument, where it is shown that duty was overpaid.

The Stamp Duty Notes for Guidance contain commentary on the operation of section 29, including detailed examples.

2 Section 30

Voluntary dispositions inter vivos chargeable as conveyances or transfers on sale

If the consideration recited in the conveyance/transfer is natural love and affection or where the consideration shown is less than the market value (see Stamp Duty Manual Part 3: Valuation), the charge to duty is based on the market value.

The fact that the conveyance/transfer operates as a voluntary disposition should be indicated in the self-assessed Stamp Duty Return filed under the eStamping system and the market value of the property transferred should be included in the return.

3 Section 31

Certain contracts to be chargeable as conveyances on sale

This section provides that certain contracts are chargeable as conveyances on sale.

Contracts for the sale of intangible property such as:

- benefit of contracts,
- goodwill,
- book debts,
- cash on deposit, and
- fixtures attaching to a leasehold property

are liable to Stamp Duty.

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

Section 101A SDCA provides for an exemption from Stamp Duty on the sale, transfer or other disposition of an EU Single Farm Payment Entitlement.

Where a contract for sale comprises both property chargeable under section 31 and other property, the consideration must be apportioned and the consideration attributable to the property chargeable under section 31 should be included in the self-assessed Stamp Duty Return filed under the eStamping system in relation to the contract for sale.

Evidence relating to the basis of the apportionment should be retained by the accountable person for a period of 6 years for evidential purposes in the event of an audit of the transaction by the Revenue Commissioners.

Stamp Duty and the Land and Conveyancing Law Reform Act 2009

Section 52 of the Land and Conveyancing Law Reform Act 2009 came into operation on 1 December 2009.

Section 52 (1) provides as follows:

“Subject to subsection (2), the entire beneficial interest passes to the purchaser on the making, after the commencement of this Chapter, of an enforceable contract for the sale or other disposition of land.”

Notwithstanding the enactment of section 52, Revenue does not regard this section as having any effect on any of the provisions in the Stamp Duties Consolidation 1999 relating to (a) the timing of chargeability to Stamp Duty of instruments or (b) any exemptions or reliefs from the charge to Stamp Duty.

Accordingly, the charge to Stamp Duty will continue to arise on the instrument of conveyance or transfer which has the effect of implementing a contract or agreement for the sale of land.

The timing of a charge to Stamp Duty by reference to Section 31(1)(a) SDCA, which arises on a contract or agreement for the sale of an equitable estate or interest in any property (including land), is of course unaffected by the introduction of section 52 of the Land and Conveyancing Law Reform Act 2009.

4 Section 31A

Resting in contract

As a general rule, Stamp Duty does not become chargeable on a sale of property until the sale is completed by way of the execution of a deed of conveyance or transfer of the property, notwithstanding that the beneficial interest in the property may have passed to the purchaser on the making of an enforceable contract for sale[1] on an earlier date. However, in certain circumstances, section 31A SDCA provides for a charge to Stamp Duty to apply on a **contract or agreement for sale**. It is an anti-avoidance provision which is designed to address specific arrangements involving instruments which are resting in contract. It applies to instruments executed on or after 13 February 2013, other than instruments executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

Section 31A(1) provides for a charge to Stamp Duty to apply on a contract or agreement for the sale of an estate or interest in land in the State where **25% or more of the consideration** for the sale has been paid to the holder of the estate or interest in the land.

Section 31A(2) provides that this charge **will not arise where**, within **30 days** after 25% or more of the consideration has been paid:

- there is a **conveyance or transfer** of the land made in conformity with the contract, and

- a self-assessed **Stamp Duty return is filed,** and the appropriate amount of **Stamp Duty paid**, in respect of the conveyance or transfer.

Where section 31A(1) does apply, the **contract or agreement for the sale** of an estate or interest in land is chargeable with the same Stamp Duty to be paid **as if it were a conveyance or transfer** of the estate or interest in the land.

Section 31A(3) provides that where Stamp Duty has been paid in respect of a contract or agreement, a conveyance or transfer that is subsequently made in conformity with that contract or agreement will not also be liable to Stamp Duty. Revenue will either denote the payment of the duty on the conveyance or transfer or transfer the Stamp Duty to the conveyance or transfer, where a Stamp Duty return has been filed in respect of the conveyance or transfer.

In accordance with section 31A(4), a claim for repayment of Stamp Duty paid on a contract or agreement under section 31A may be made to Revenue where the contract or agreement has been rescinded or annulled. A repayment claim is subject to section 159A SDCA, which provides, *inter alia*, for a 4-year limit on all repayment claims.

4.1 Deemed date of execution of contract or agreement

Section 2(3) SDCA provides that the due date for the payment of Stamp Duty in relation to a chargeable instrument is 30 days after the date of execution of the instrument. This 30-day period is extended to 44 days in practice. In the event that Stamp Duty is not paid within this 44-day period, interest on late payment and a late filing surcharge may arise, calculated from the date on which the Stamp Duty was originally due to be paid (i.e., on the 30th day after the date of execution of the instrument).

In the case of a charge to Stamp Duty arising by virtue of section 31A, the chargeable instrument is the contract or agreement. However, a charge to Stamp Duty under section 31A does not arise until such time as at least 25% of the consideration is paid, which can be a significant period of time after the date of execution of the contract or agreement concerned. Acknowledging this, Revenue accepts that **a contract or agreement that is chargeable with Stamp Duty by virtue of section 31A is deemed to be executed on the date on which 25% (or more) of the consideration has been paid.**

Accordingly, when filing a Stamp Duty return in relation to a contract or agreement that is stampable by virtue of section 31A, the filer can indicate in the return that the date of execution of the contract or agreement is the date on which 25% (or more) of the consideration has been paid.

5 Section 31B

Licence agreements

Section 31B SDCA is an anti-avoidance provision which is designed to address specific arrangements involving licence agreements. The section provides for a charge to Stamp Duty on certain licence agreements relating to land in the State under which the licensee is allowed to carry out development on that land and 25% or more of the market value of the land is paid to the licensor other than as consideration for the sale of all or part of the land. It operates by treating the licence agreement as a lease of the land concerned, and therefore chargeable to Stamp Duty.

Section 31B(1) provides that, for the purposes of the section, “development”, in relation to any land, refers to:

- the construction, demolition, extension, alteration or reconstruction of any buildings on the land, or
- any engineering or other operation in, on, over or under the land to adapt it for materially altered use.

A charge to Stamp Duty under section 31B will not arise in relation to a *bona fide* licence agreement relating to land where:

- the licence is not entered into in connection with the sale of the land;
- the licensor intends to retain the legal and beneficial ownership of the land;
- the licensee is entitled to enter onto the land for the sole purpose of erecting, installing and maintaining equipment (e.g. masts, antenna, pylons, turbines etc.) on the land for telecommunications or energy purposes;
- the licence fee is payable solely in respect of the use of the land for the purpose referred to above.

Section 31B(3) provides that a claim for repayment of Stamp Duty paid on an agreement under section 31B may be made to Revenue where the agreement has been rescinded or annulled. A repayment claim is subject to the 4-year time limit as provided for in section 159A SDCA.

The section applies to instruments executed on or after 13 February 2013, other than instruments executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

5.1 Deemed date of execution of agreement

Section 2(3) SDCA provides that the due date for the payment of Stamp Duty in relation to a chargeable instrument is 30 days after the date of execution of the instrument. This 30-day period is extended to 44 days in practice. In the event that Stamp Duty is not paid within this 44-day period, interest on late payment and a late filing surcharge may arise, calculated from the date on which the Stamp Duty was originally due to be paid (i.e., on the 30th day after the date of execution of the instrument).

In the case of a charge to Stamp Duty arising by virtue of section 31B, the chargeable instrument is the agreement. However, a charge to Stamp Duty under section 31B does not arise until such time as at least 25% of the market value of the land is paid, which can be a significant period of time after the date of execution of the agreement concerned. Acknowledging this, Revenue accepts that **an agreement that is chargeable with Stamp Duty by virtue of section 31B is deemed to be executed on the date on which 25% (or more) of the market value of the land has been paid.**

Accordingly, when filing a Stamp Duty return in relation to an agreement that is stampable by virtue of section 31B, the filer can indicate in the return that the date of execution of the agreement is the date on which 25% (or more) of the market value of the land has been paid.

6 Section 31C

Shares deriving value from immovable property situated in the State

This section applies a Stamp Duty charge to certain transfers of shares, units or interest in entities that derive the greater part of their value from underlying Irish property. Guidance on the section is available in the Stamp Duty Manual Section-31C.

7 Section 31D

Cancellation Schemes of arrangement

This section applies a Stamp Duty charge on certain cancellation schemes of arrangement effected under the Companies Act 2014. Guidance on the section is available in the Stamp Duty Manual Section-31D.

8 Section 31E

Stamp Duty on certain acquisitions of residential property

This section applies a higher rate (15%) of Stamp Duty on certain acquisitions of residential property. This rate of duty applies to the acquisition of individual residential units such as houses and duplexes, but not to apartments, where a person acquires at least 10 such units during any 12-month period. Prior to 2 October 2024, the higher rate was 10%. Guidance on the section is available in the Stamp Duty Manual Section-31E.

9 Section 33

Conveyance or transfer in contemplation of sale

Under this section a charge to Stamp Duty arises where property is conveyed or transferred in contemplation of a sale – the consideration being deemed to be equal to the value of the property.

However, if it is shown to the satisfaction of Revenue that the sale contemplated did not take place or took place but for a consideration less than the value on which duty was paid, a claim, within 4 years of the instrument being stamped, may be made for repayment of the duty or portion of the duty, as appropriate.

10 Section 34

Agreements in connection with, or in contemplation of, sale

Section 34 SDCA is an anti-avoidance provision which provides that where a vendor enters into an agreement for the grant of a lease for a term exceeding 35 years or enters into an agreement to give other rights in relation to the property, the subsequent conveyance, with the benefit of the agreement, will be charged to Stamp Duty on the basis of the value of the property and in ascertaining the value of the property the value of the agreement for the grant of the lease or for the grant of other rights, as the case may be, is disregarded.

An avoidance scheme nullified by section 34 operates as follows:

X owns a property valued at €1m. X enters into an agreement for lease of the property with Y for a term of 999 years in consideration of a premium of €999,000 and a nominal rent of €10 p.a. In view of the term of the lease, a liability to Stamp Duty does not arise on the agreement for lease. X sells the freehold in the property, subject to the agreement for lease, to Y’s spouse/civil partner for €1,000. Section 34 ensures that the conveyance of the property by X to Y’s spouse/civil partner is chargeable to Stamp Duty on the unencumbered value of the property i.e. €1m rather than the sum of €1,000 payable by Y’s spouse/civil partner to X.

Section 83 of the Finance (No. 2) Act 2008 amended section 34 SDCA, confirming that schemes involving exchanges of property come within the scope of section 34. The amendment applies to conveyances or transfers executed on or after 20 November 2008.

11 Section 41

Conveyance in consideration of debt

This section provides that consideration involving the satisfaction or assumption of a debt is a chargeable consideration for the purposes of Stamp Duty. There are two elements to this section:

Firstly, where property is conveyed in satisfaction of a debt, duty is charged on the amount of the debt plus any cash consideration, or on the market value of the property if it is greater than the debt.

Secondly, where property is conveyed subject to the payment of a debt, duty may be charged either on the debt plus any cash consideration or the equity of redemption.

11.1 Examples

The following examples are in respect of this second element of this section and have been divided into (a) Sale, (b) Voluntary Disposition and (c) Part Sale/Part Voluntary Disposition.

(a) Sale (Part cash/part debt)

The sale of a property for some cash consideration in addition to the transferee assuming a debt, the Stamp Duty is based on the total consideration being paid, i.e. the cash plus the debt. In this type of case the cash being paid and the debt assumed would equal the market value of the property.

(b) Voluntary disposition (no cash/all debt)

The property is being transferred on condition that the transferee assumes a debt of the transferor. The consideration may be stated to be "natural, love and affection". The amount of the debt is subtracted from the market value to establish the equity of redemption (i.e. the net value of the gift). Under section 30 SDCA, voluntary dispositions are chargeable to duty under the head of charge "Conveyance or transfer on sale of any property..." and the value of a voluntary disposition is substituted for the consideration recited in the deed. Stamp Duty is chargeable on the higher of these two figures, the debt assumed or the equity of redemption.

Example:

Market value €100,000
Debts assumed € 40,000
Equity € 60,000

Under section 30, Stamp Duty would be assessed on the equity of €60,000 (being greater than the consideration of €40,000).

(c) Part sale/Part voluntary disposition

Where the cash consideration being paid in the deed together with the debt assumed does not equal the market value of the property, the difference constitutes a gift. In such cases it will be necessary to compare three figures to establish the liability to Stamp Duty.

Example 1:

The property is valued at €100,000
The debt assumed € 40,000
The cash being paid € 5,000
The equity of redemption € 60,000
The total consideration is €45,000 whereas the equity is €60,000.

Under section 30 the duty is charged on the higher of the two figures. In this example, the duty will be calculated on €60,000.

Example 2:

The property is valued at €50,000
The debt assumed €30,000
The cash being paid € 5,000
The equity €20,000
The total consideration is €35,000 whereas the equity is €20,000.

Under section 41 the duty is charged on €35,000.

Where the debt being assumed exceeds the market value of the property being transferred as a result of a decline in property market values or increases in banking rates, the Revenue would consider a submission, on a case by case basis, to assess duty on the market value in such circumstances.

Mortgages

Stamp Duty is not chargeable on mortgages executed on or after 7 December 2006 or further advances made on or after 7 December 2006. This includes transfers of mortgages including such transfers in securitisation arrangements.

Anti-avoidance

Finance Act 2010, enacted on 3 April 2010, amended section 41. This amendment is an anti-avoidance provision to counteract the avoidance of Stamp Duty through the contrived creation and use of debt (which in reality represents a shareholder's funds) and which ultimately benefits the shareholder directly or indirectly.

This amendment provides that such debt, where paid by a person other than the transferee, is to be included for Stamp Duty purposes as consideration for the conveyance of property, in particular circumstances.

12 Section 44

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

This section provides that where the consideration for a sale of property cannot be ascertained, and the transfer would otherwise attract duty by reference to the amount of the consideration, duty is to be charged with reference to the value of the property.

Consideration ascertainable but not yet ascertained

In the case of the acquisition of shares the consideration may comprise an initial payment which is subject to adjustment once completion accounts have been prepared and agreed by the vendor and the purchaser. The amount of the adjustment may not be known for some time after the execution of the stock transfer form giving effect to the transfer of the shares and the adjustment may result in an increase or decrease in the amount of the initial payment made.

In such cases a Stamp Duty Return should be filed under the eStamping system by the due filing date on the basis of the initial amount of the consideration payable and Stamp Duty should be paid on this amount. The fact that the final amount of the consideration has not yet been ascertained should be disclosed in the Stamp Duty Return. When the final consideration is determined, an amended Stamp Duty Return should be filed together with payment of any additional duty that is due and payable. Claims that interest should not be charged on any additional duty will be considered on a case by case basis, with due regard to the factors in the case giving rise to delay in ascertaining the final consideration. [See also Stamp Duty Manual Part 2.8 regarding interest charges]. A repayment may be claimed if the final ascertained consideration is less than the amount of the consideration on which duty was paid.

13 Section 45

Apportionment of consideration

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

The Stamp Duty Notes for Guidance contain commentary on the operation of section 45, including detailed examples.

14 Section 45A

Aggregation of transactions

The purpose of this section is to:

- counter attempts at avoidance where a house or an apartment is purchased by more than one purchaser and each purchaser takes a separate conveyance or transfer of an interest in the house or apartment in order to avail of lower Stamp Duty rates.
- put beyond doubt that the rate of Stamp Duty on such conveyances or transfers is to be determined on the basis of the value of the whole house or apartment concerned.

The section also extends to gifts made in a similar manner regardless of the circumstances under which the gifts take place or the parties involved in such gifts.

15 Section 46

Sub-sales

This section caters for situations where a person has contracted for the purchase of a property, but has not obtained a conveyance of the property, then contracts to sell the same property to a sub-purchaser. The property is conveyed directly from the original vendor to the sub-purchaser. Duty is payable on the consideration moving from the sub-purchaser.

Example

Mark agrees to sell his house to John for €500,000. John, before actually taking a conveyance of the house, contracts to sell the house to Fiona for €600,000. The house is conveyed directly from Mark to Fiona. The stampable consideration is €600,000 (the consideration moving from Fiona).

The property is residential and the duty payable is:

Chargeable consideration	€600,000
Stamp Duty payable	€6,000 (1% of €600,000)

16 Section 48

VAT and Stamp Duty on Conveyances or Transfers

Under this section Stamp Duty is charged on the VAT-exclusive consideration provided for in the sale of property. Accordingly, the consideration to be inserted in the self-assessed Stamp Duty Return filed under the eStamping system should exclude any VAT element of the consideration for the sale.

17 Overview of Chapter 4 (Sections 50 – 56): Leases

17.1 Key Terms in relation to leases

Lessor:	Person who grants lease.
Lessee:	Person to whom lease is granted.
Lease:	A demise or letting of lands or tenements, rights of common, rent, or any hereditament, by one person, called the **lessor**, to another called the **lessee**, for a term of years or life, or at will, usually for a rent reserved. The interest created by the lease must be **less** than the lessor has in the premises, or it is not a **lease** but an **assignment**. The Law of Property Act 1925, sections 53 and 54, provides that all leases except those not exceeding three years and with a rent of not less than two-thirds of the improved annual value must be by deed.
Leasehold:	Any interest in land less than freehold. But, in practice, the word is generally applied to an estate for a fixed term of years.
Licence (in relation to property):	A permission to do an act which would otherwise be a trespass and which creates no interest in the property.
Fee Farm Grant:	A document creating an interest under which the grantee holds in fee simple from the grantor in return for a perpetual rent. The transaction recorded by this type of document has features both of a conveyance and a lease.
Premium (Leases):	A sum of money other than rent paid for the granting of a lease.
Real Property:	Immovable property recoverable by a "real action", i.e. freehold land but not leasehold property. Leasehold property by a quirk of legal history is known as "Chattels Real".
Seisin:	Feudal possession in immovable property of a formal nature by the owner of a freehold estate therein. Mere equitable owners or leasehold owners did not have a seisin.
Surrender (Deed of)	A document yielding up an interest, for example, a leasehold interest or a life interest.
Tenancy Agreement	A document creating a tenant's interest in property.

The term "lease" is not defined in the SDCA but it essentially means that a tenant has exclusive use of the property in return for the payment of rent. The terms "rent" and "premium" are also not defined but "rent" essentially means the sum paid for the exclusive use of the land and premium is the consideration other than rent paid for the granting of the lease.

The lease head of charge in Schedule 1 to the SDCA deals only with the **creation** of a lease. It refers to leases of land, tenements or heritable subjects. "Tenements" means buildings, e.g. factory, apartment and "heritable subjects" means property capable of being passed on a death. A life interest is not capable of being passed on by the life tenant and so is not a heritable subject.

The lease head of charge only refers therefore to immovable property. The lease of a car, for example, would not fall under this head of charge.

- Consanguinity relief is not available on leases.
- Section 79 (associated companies) relief is not available on leases.

17.2 Charge to duty

A lease is chargeable to Stamp Duty under paragraph 3 of the "Lease" head of charge on both the premium (or fine) and the rent payable under the lease.

The duty chargeable on the premium is at the rate for residential or non-residential property as appropriate.

The duty on the rent is set out in the Table below.

Term of the Lease	**Rate of Duty**
Not exceeding 35 years or indefinite	1% of average annual rent
Exceeding 35 years but not exceeding 100 years	6% of average annual rent
Exceeding 100 years	12% of average annual rent

17.3 Rent Review

Many leases contain a rent review clause. Where a lease contains such a clause, the lease is chargeable at an additional €12.50 under paragraph (5) of the Lease head of charge.

17.4 Developer retaining unit in complex

It has been agreed with the Law Society of Ireland that the following procedure may be used where a developer of an apartment/housing complex or a commercial development retains ownership of one or more of the units in the development and the freehold interest, including the common areas are transferred to a Management Company.

- The Developer grants a lease of the retained unit(s) to a nominee of the Developer.
- The Nominee executes a Declaration of Trust in favour of the Developer.
- The Developer transfers the freehold reversion, including the common areas, to the Management Company.

- The Nominee assigns the leasehold interest in the retained unit(s) to the Developer.

A liability to ad valorem Stamp Duty does not arise in relation to any of the instruments giving effect to the above legal structure.

18 Section 50

Agreement for lease not exceeding 35 years

This section provides that an agreement for a lease for any term not exceeding 35 years or for any indefinite term shall be charged with the same duty as if it were a lease. The term of 35 years covers most commercial agreements.

Under the “Lease” head of charge, paragraph (4) provides that a lease subsequently made in conformity with such an agreement, which has been stamped under section 50, shall be charged with €12.50 duty.

In circumstances where the agreement for lease does not lead to the actual grant of a lease, a refund of Stamp Duty **may** be available.

The following confirmations will be required where a refund application is made to Revenue:

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

Applications for refund will be considered on a case-by-case basis having regard to the particular facts of the individual case and subject to the 4-year time limit within which repayment claims may be made (section 159A SDCA).

19 Section 50A

Agreement for lease exceeding 35 years

Section 50A SDCA is an anti-avoidance provision which is designed to address specific arrangements involving leases which exceed 35 years in duration. The section provides that an agreement for a lease for a term of more than 35 years will be liable to Stamp Duty as if it were an actual lease made for the term and the consideration provided for in the agreement, where 25% or more of the consideration has been paid. It operates by treating the agreement for lease for more than 35 years, to be a lease of the land concerned, and therefore chargeable to Stamp Duty.

A charge to Stamp Duty is not triggered under this section until 25% of the consideration is paid.

A claim for repayment of Stamp Duty paid on an agreement for a lease under section 50A may be made to Revenue where the agreement for lease has been rescinded or annulled. A repayment claim is subject to the 4-year time limit as provided for in section 159A SDCA.

This section applies to instruments executed on or after 13 February 2013, other than instruments executed solely in pursuance of a binding contract or agreement entered into before 13 February 2013.

19.1 Deemed date of execution of agreement

Section 2(3) SDCA provides that the due date for the payment of Stamp Duty in relation to a chargeable instrument is 30 days after the date of execution of the instrument. This 30-day period is extended to 44 days in practice. In the event that Stamp Duty is not paid within this 44-day period, interest on late payment and a late filing surcharge may arise, calculated from the date on which the Stamp Duty was originally due to be paid (i.e., on the 30th day after the date of execution of the instrument).

In the case of a charge to Stamp Duty arising by virtue of section 50A, the chargeable instrument is the agreement for a lease. However, a charge to Stamp Duty under section 50A does arise until such time as at least 25% of consideration is paid, which can be a significant period of time after the date of execution of the agreement concerned. Acknowledging this, Revenue accepts that **an agreement for a lease that is chargeable with Stamp Duty by virtue of section 50A is deemed to be executed on the date on which 25% (or more) of the consideration has been paid.**

Accordingly, when filing a Stamp Duty return in relation to an agreement for a lease that is stampable by virtue of section 50A, the filer can indicate in the return that the date of execution of the agreement is the date on which 25% (or more) of the consideration has been paid.

20 Section 52

Charging of duty on leases

20.1 Penal rent and surrender or abandonment of any existing lease or agreement to lease (Section 52(1))

A lease, agreement to lease or letting is not to be charged with duty in respect of:

- any penal rent (a penal rent is any additional rent reserved in case the lessee commits a breach of the covenants in the lease);
- any consideration which is expressed to be the surrender or abandonment of any existing lease or agreement to lease of the same property.

Example

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

Example

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

20.2 Covenant to improve (Section 52(2))

Where a lease is made for a consideration which is chargeable with ad valorem duty and for a further consideration which consists of a covenant by a tenant to substantially improve or make additions to the property demised, such further consideration is not to attract Stamp Duty.

Example

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

20.3 Payment of additional rent (Section 52(3))

Where an instrument (Instrument A) has been stamped as a lease and has rent reserved by it, any other instrument (Instrument B) which makes additional rent payable under Instrument A is also to be chargeable as a lease but only in respect of the additional rent payable. This provision, which is a relieving one, is effectively redundant since the abolition in 1992 (Section 205 (6) of the Finance Act, 1992) of the "BOND, COVENANT, or INSTRUMENT of any kind whatsoever" head of charge.

The subsection, when it did apply, only applied to increases in rents which were not provided for in the lease (Instrument A).

Example

A leases her shop to B for 35 years from 1 February, 1990, at a rent of £5,000 p.a. payable for the first 5 years but then subject to review at the end of the fifth year and every fifth year thereafter. At the end of the fifth year the rent is reviewed upwards to £6,000 p.a. No additional Stamp Duty is payable as a consequence of the upward review because the increase was provided for in the terms of the lease.

In year 9 A agrees to carry out some improvements to the shop in consideration of which B agrees to pay an annual rent of €7,000 p.a. and the lease is endorsed to that effect. The endorsement on the lease constitutes a separate instrument which was prima facie chargeable under the "BOND, COVENANT, or INSTRUMENT of any kind whatsoever" head of charge. This subsection then came into play with the effect that the endorsement became chargeable under the "LEASE" head of charge but only on the additional rent payable i.e. on €1,000 p.a.

With the abolition of the "BOND, COVENANT, or INSTRUMENT of any kind whatsoever" head of charge and the stipulation in section 205(10) of the Finance Act, 1992, that an instrument which was chargeable under that head of charge will not be chargeable under any other head of charge this subsection was made redundant.

21 Section 53

Lease combined with building agreement for dwelling house or apartment

Section 53 SDCA provides for a charge to Stamp Duty where land is being leased and, in connection with or as part of an arrangement for that lease, a house or apartment has been, is being or is to be built, on that land. Stamp Duty in such cases is chargeable on the aggregate of:

- the consideration (other than rent) paid for the land, and
- the consideration paid for the construction works.

Where it is not possible to determine the aggregate consideration (other than rent) at the time of the stamping of the instrument, a multiple of 10 times the market value of the land should be used to calculate the duty. A claim for refund can be made within 3 years of the stamping of the instrument, where it is shown that duty was overpaid.

See also section 29 SDCA, which deals with conveyances combined with building agreement for a dwelling house or apartment. The Stamp Duty Notes for Guidance contain commentary on the operation of section 29, including detailed examples.

22 Section 55

Procedure to apply where consideration cannot be ascertained

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

Example

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

€50,000 is the chargeable consideration.

Where **either** the rent **or** the premium cannot be ascertained Stamp Duty is chargeable on the market rent or the market premium, as the case may be.

Example

Where the amount of the premium was stated in the lease as €10,000, and only the rent could not be ascertained, Stamp Duty would be charged, in addition to the premium, on the market rent that could be obtained for a lease of the premises for 5 years with a €10,000 premium.

Example

Where the amount of the rent was stated to be €2,000 p.a., and only the premium could not be ascertained, Stamp Duty would be charged, in addition to the rent, on the market premium that could be obtained for a lease of the premises for 5 years with an annual rent of €2,000.

23 Section 56

VAT and Stamp Duty on Leases

Under this section Stamp Duty is charged on the VAT-exclusive consideration (i.e. premium) or rent provided for in the lease of property. Accordingly, the amount of the consideration (i.e. premium) and rent to be inserted in the self-assessed Stamp Duty Return filed under the eStamping system should exclude any VAT element of the consideration (i.e. premium) or rent payable under the lease.

24 Section 63

Letter of renunciation

This section charges an instrument, which effects the release or the renunciation of a right under a letter of allotment, to Stamp Duty on the same basis as if it were an actual share transfer. The section applies, however, only to stocks and shares where the company concerned has none of its shares quoted either on the official list or the unlisted securities market of a recognised stock exchange.