



The following is an updated version of a practice note, first published in 1981. The text has been revised by Brian Bohan, Solicitor, Chairman of the Society's Taxation Committee.

Adjudication is a very important constituent of the Stamp Duty code. It is essential for the proper stamping of certain instruments; it is a necessary prerequisite for an appeal against an assessment of the duty and, finally, it authenticates the correctness of the stamp. The fact that in recent years over 50,000 instruments are adjudicated upon annually reflects that importance. The necessity for and the volume of adjudications demand that, as far as possible, there is no avoidable delay in the processing, assessing and stamping of instruments lodged for that purpose. This article is intended as an aid to the attainment of that objective.

The Stamp Act 1891, contains two sections only relating to adjudication, dealing respectively with the assessment of duty (Section 12) and with appeals (Section 13). For our present purposes we are concerned solely with the first two sub-sections of Section 12 which indicate the purpose of and the mechanics of adjudication.

The Revenue Commissioners may, under sub-section (1) "be required by any person to express their opinion with reference to any executed instrument upon the following questions:

- (a) whether it is chargeable with any duty.
- (b) with what amount of duty is it chargeable".

To that end "the Commissioners may require to be furnished with an abstract of the instrument, and also with such evidence as they may deem necessary, in order to show to their satisfaction whether all the facts, and circumstances affecting the liability of the instrument of duty, or the amount of duty chargeable thereon are fully and truly set forth therein". (Subsection (2)).

The following are the requirements necessary to enable the Revenue Commissioners to carry out their functions under that section:

- (i) the delivery of a copy deed with the original;
- (ii) the completion of a "Warrant for Adjudication" which is at once an application for adjudication and information sheet;
- (iii) certain information.

The delivery of the copy deed and the completion of the warrant present no difficulties. Experience has shown that the problems arise under the third head, that relating to information. Cases cannot be finalised where insufficient information is available to enable

ADJUDICATION OF STAMP DUTY



ADJUDICATION OF
STAMP DUTY

(Contd.)

decisions to be made. The effects of the necessary querying and the resulting delays are cumulative and affect both the case in question and others. Arrears which inhibit and delay the practitioner, his client and the commissioners occur.

These delays can be reduced considerably if certain steps are taken. Amongst the most important is the necessary relevant documentation such as a valuation, rate demand note, contract for sale, floor area certificate, statutory declarations etc., as the case may be. Next comes information that may not be apparent on the face of the documents and should be set out in a covering letter, such as the necessity for adjudication if it is a case where the need for adjudication is not readily apparent; the stage of building of a dwellinghouse; whether chattels or other property were also included in a sale. The amount of documentation and information necessary will depend upon the nature of the property the subject of the transaction and upon the facts of the case.

The Revenue Commissioners and the Society's Conveyancing Committee have been considering a number of practical problems which, over the years, have become apparent and, for the assistance of practitioners, have prepared particulars of the documentation and information that might be furnished in each of six different transactions. Not all would be required in all cases; on the other hand, there may be unusual circumstances in which further correspondence would be necessary in a minority of cases. However, it can be taken that if the steps outlined therein are reasonably adhered to, the question of raising queries will not arise in the vast majority of instruments that are lodged for adjudication.

1. Conveyance or Transfer operating as voluntary disposition inter vivos

Where the property is land

Furnish a statement of the market value of the property at the date of the instrument and describe the property.

State the rateable valuation, area of the property and the name of the rated occupier (a Rate Demand Note may be furnished giving this information). State whether the lands were subject to any charges and, if so, the amount thereof.

If only a fractional share of the property is passing, show how the share arose.

If only a limited interest or reversion in the property is passing, a statement as to how the interest arose (or a copy of the instrument which created it) should be furnished. The date of birth of the life tenant should be stated.

If applicable, the appropriate transaction certificate or relationship certificate should be included in the instrument.

Where the property is quoted stocks, shares or marketable securities

Furnish a statement showing the market value of each item of property.

Where the property is unquoted stocks or shares

Furnish a detailed valuation of the property transferred.



Furnish copies of the balance sheets, trading and profit and loss accounts for the three years prior to the date of the transfer, together with a statement of the market value of the fixed assets of the company.

Where relief is claimed under the Family Home Protection Act, 1976

Furnish a description of the property.

Certify that the property is a family home within the meaning of Section 2 of the Act.

2. Conveyance, Transfer or lease of a New House or Flat

Where exemption is claimed under Section 49 Finance Act 1969 (as amended by Section 48 Finance Act 1976, Section 48 Finance Act 1981, Section 100 Finance Act 1984)

Furnish a copy of the Certificate of Floor Area, form H.P.3 for a house or form F.P.3 for a flat (forms H.P.4 and F.P.4 do not confer exemption).

Certify that the instrument gives effect to the purchase of a house upon the erection thereof.

Certify that the property passing in the instrument is that referred to in the Certificate of Floor Area.

In the case of a flat, state, in addition to the above, whether it has been let or sold prior to present transaction.

Where it is claimed that duty should be assessed on a site fine and not on the value of a covenant to build

Furnish the Agreement for sale or lease, the Building Contract and any other agreement in connection with the transaction.

State the amount of the site fine (if any).

Furnish a statutory declaration from:

- (a) the solicitor for the builder, or
- (b) the solicitor for the purchaser, or
- (c) an architect,

giving precise details of the stage of development of the site as at the date of the Agreement for Sale or Lease.

3. Conveyance or Transfer on Sale

Where the property is land

Furnish the contract for sale.

Confirm that the consideration represents the full market value of the property passing.

State the amount owing in respect of any mortgage or charge where the purchaser undertakes payment thereof.

Furnish a statement as to whether there was an agreement between the parties for

**ADJUDICATION OF
STAMP DUTY**

(Contd.)



ADJUDICATION OF
STAMP DUTY

(Contd.)

the sale of any other part such as chattels etc.

If applicable, the appropriate transaction certificate or relationship certificate should be included in the instrument.

Where the property is stocks, shares or marketable securities

Confirm that the consideration represents the full market value of the property passing.

4. Conveyance or Transfer between Associated Bodies Corporate

Where relief is claimed under Section 19 Finance Act 1952 (Section 85 Finance Act, 1980 substituted a new Section 19), and Section 96, Finance Act, 1982.

Furnish a statutory declaration in pursuance of Section 19(5) Finance Act, 1952 as amended. The declaration should set out in full the grounds on which the claim is based stating:-

- that the claim is made in respect of the instrument(s), which should be summarised briefly, and that the effect of the instruments is that laid down by Section 18(2);
- types and particulars of the bodies corporate concerned (date of incorporation, registered number, share capital both nominated and issued);
- that the transferor was entitled to the beneficial interest in the relevant property;
- that the beneficial interest in the relevant property became vested in the transferee;
- how the relationship between the bodies corporate complies with Section 19(2). If any shares are held by a nominee, the instrument evidencing the beneficial ownership of those shares should be produced;
- whether it is intended that the relationship between the bodies corporate satisfying the provisions of Section 19(2) shall be maintained;
- whether the consideration for the transfer is shares. If so, share certificates should be furnished;
- the manner in which the consideration (if other than shares) has been or is to be found and satisfied;
- that the instrument(s) was/were not executed in pursuance of or in connection with such an arrangement as is described in Section 19(3).

5. Reconstruction or Amalgamation of Companies

Where relief is claimed under Section 31 Finance Act, 1965

Furnish a statutory declaration from a solicitor setting out fully the circumstances of the transaction and the grounds on which it is considered that the relief should apply and stating how much, if any of the consideration consists of cash.

Furnish copies of all documents pertaining to the transaction such as returns of



allotment forms, agreement, company minutes and resolutions.

Furnish share certificates relating to new shares issued which form all or part of the consideration paid by the transferee company.

6. Agreement for Sale chargeable under Section 59, Stamp Act, 1891

Where it is claimed that items of property to which the Agreement relates are within the exemptions contained in the section.

The consideration should be apportioned between items of property which are exempt and items which are not exempt. For this purpose a form St. 22 may be obtained from the Adjudication Office for completion.

If there is a balance sheet available which supports the values stated, this should be furnished.

ADJUDICATION OF STAMP DUTY

(Contd.)

*Published in Law Society
Gazette, May 1988*

As a result of the number of queries received from members of the Profession the Conveyancing Committee have been in contact with the Revenue Commissioners with regard to the applicability of Section 112 of the Finance Act, 1990. Arising from this consultation members of the profession should note that:

1. The Section applies to instruments executed on or after the 1st of September, 1990. The signing of a contract prior to that date will not therefore avoid the effects of the new legislation unless the transaction is also completed before that date i.e. that a Deed has been dated and delivered before that date.
2. Where any transaction to which the provision of Section 112 would apply has been completed prior to the 1st of September, 1990 save and except that the instrument of sale has not been stamped prior to that date, the Revenue Commissioners will accept that the provisions of Section 112 will not apply to any such instrument. They may however, seek a Statutory Declaration from the Solicitor that the purchase has been completed and that there is no lien, pledge or mortgage of any description to the vendor.
3. In genuine cases where the Deed is lodged for adjudication and a purchaser is anxious to complete before the 1st of September next, the adjudication office should be asked to expedite the matter and it is understood that every effort will be made to do so.

1st August, 1990

STAMP DUTY ON NEW HOUSES