



It has come to the notice of the Conveyancing Committee that some practitioners may not be conscious of the true position relating to the 1% stamp duty payable on Transfers or Conveyances between related persons or that such rate applies whether the transaction is a sale or a voluntary transaction. In such transactions, to obtain the 1% rate of duty all of the parties to the transaction must come within the specified degrees of relationship, that is the person or each of the persons becoming entitled to the entire beneficial interest in the property on foot of the Transfer or Conveyance must be related to the person or to each of the persons who was or were immediately theretofore entitled, as a lineal descendant, parent, grandparent, step-parent, husband or wife, brother or sister of a parent, or brother or sister, lineal descendant of a parent, husband or wife, or brother or sister. If there is a person or persons involved in the transaction, either as transferor/s or as transferee/s who is not within the relationship specified, then the Transfer or Conveyance will be liable to stamp duty at the full appropriate rate and not at the 1% reduced rate. The above principle applies, irrespective of whether the property is transferred or conveyed to parties to hold as joint tenants or as tenants in common.

NOTE: Since the 17th day of July 1982 substitute “one half the ad valorem rate” for 1% above.

TRANSFERS BETWEEN RELATED PERSONS APPLICATION OF 1% DUTY

*Published in Law Society
Gazette, April 1980*

An Assent must be in writing (Section 52, subsection 5 of the Succession Act 1965). It is not necessary that the Assent be sealed. Accordingly, there is no need for the Personal Representative to sign and seal an Assent. It is sufficient that he signs the Assent. If the Assent is under Seal the Stamp Duty of £5 is payable¹. If it is not under Seal there is no need to stamp the Assent at all. (S.52 (8) Succession Act 1965).

Where the title is registered in the Land Registry the Assent must be lodged in the Registry for registration. If the title is unregistered it is recommended that the Assent should be registered in the Registry of Deeds.

STAMP DUTY ON ASSENTS

*Published in Law Society
Gazette, October 1983*

1. This stamp duty was increased to £10 by S.204 of 1992 Finance Act which came into effect on 1st February 1992



**FRAUDULENT
CONTRACTS**

A CAUTION

It has come to the attention of the Society that in a number of recent cases before the Courts, it has emerged in evidence that the parties to a Contract for Sale have grossly understated the true consideration and purchase price in order to avoid stamp duty or to perpetrate a fraud.

Whilst a Solicitor is not obliged to accuse or interrogate his client and is entitled to give credit to his client's instructions, he may not turn a blind eye to any illegality which is manifest.

It is clearly established that such an arrangement is illegal and the apparent Contract will not be enforced by the Courts. Where practitioners suspect such an arrangement they are under a duty to establish to their reasonable satisfaction, by making such enquiries as they consider necessary in the circumstance, that the purchase price is fully stated. This duty flows from their position as Officers of the Court having responsibility to maintain a high standard of honesty in commercial matters and to ensure that in future litigation the Court will not be misled as to the true consideration.

Where a Solicitor is not satisfied that the consideration stated is the true consideration he should decline to act in the matter. His client should be made aware of the fact that by being party to such an illegal arrangement he is in effect sacrificing all the legal rights which he would otherwise enjoy against the other party. Once the Court becomes aware of the illegal character of the transaction it will decline to enforce the Contract and this can be so even despite the fact that the parties themselves do not raise the defence in their pleadings.



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



STAMP DUTIES

THE FINANCE
ACT, 1990

Sub-section 5 of Section 112 of the Finance Act, 1990 provides that with effect from the 1st of September 1990 every instrument which transfers or leases land must contain a Statement in such form as the Revenue Commissioners may specify, certifying whether or not the land comes within the ambit of Section 112. The wording which was recommended by the Revenue Commissioners in their Statement of Practice SP.SD/2/90 is as follows:

1. In cases where the instrument comes within the provisions of the Section:

“It is hereby certified for the purposes of the stamping of this instrument that this is an instrument to which the provisions of Section 112 of the Finance Act, 1990 apply.

2. In cases where the instrument does not come within the provisions of the Section:

“It is hereby certified for the purposes of the stamping of this instrument that this is an instrument to which the provisions of Section 112 of the Finance Act, 1990 do not apply for the reason that ... (adding the reason i.e. specifying the type of property being transferred or leased e.g. agricultural land, existing houses etc.)”

Up to now the Revenue Commissioners have been fairly lenient with regard to deeds which do not contain the Certificate, but the Conveyancing Committee have now been advised that as and from the 1st of November 1990, any document which does not bear this Certificate will be returned.

Section 114 of the Act provides that no stamp duty shall be payable on any instrument whereby any property is transferred by a spouse or spouses of a marriage to either spouse or to both spouses of the said marriage.

The Committee has been advised by the Revenue Commissioners that they have received confirmation from both the Land Registry and the Registry of Deeds that they will not require such instruments to be adjudicated. Any instruments transferring property, whether Family Home or otherwise, between spouses which are submitted for adjudication are therefore being returned unstamped by the Revenue Office with a note explaining the reason.



The Finance Act, 1991 by sections 88 to 111 introduced very far reaching changes to Stamp Duty Regulations. The majority of the sections came into effect on 1 November, 1991 and members should take very careful note of the result of these sections. This memorandum is not to be regarded as comprehensive, but merely draws attention to the more important aspects of the sections, and each member should read the sections carefully.

The more important items are as follows:-

1. Stamp Duty is now no longer a voluntary tax. Prior to the passing of the Act, the parties to an instrument were free to decide not to stamp an instrument and there was generally no mechanism available for the Revenue Commissioners to institute legal proceedings against either party to enforce payment. This procedure is now radically changed and Stamp Duty is now compulsory. Section 94 (4) of the Act states that where an instrument chargeable with Stamp Duty is not stamped, or is insufficiently stamped, the accountable person shall be liable for the payment of the Stamp Duty, or where the instrument is insufficiently stamped, then the additional Stamp Duty and the amount of Duty and any penalties may be sued for by the Revenue Commissioners.
2. Prior to the 1991 Act if a person was not satisfied with the amount of Stamp Duty payable on a document, they were entitled to withdraw it. The 1991 Act now provides that after presenting a document for stamping it may not be withdrawn if the assessment of Stamp Duty is higher than anticipated and it is important, therefore, before lodging a document to ascertain as accurately as possible the exact amount of Stamp Duty payable on it.
3. There are now new penalties for insufficient or late stamping of any document wherever executed which is presented for stamping after 1 November, 1991, which are as follows:-
 - (a) increase of presentation penalty from £10 to £20, and
 - (b) increase of interest rate on outstanding duty from 5% per annum to 1.25% per month or part of a month, and
 - (c) penalties for late stamping of:-
 - (i) 10% of the Duty where the delay is under 6 months
 - (ii) 20% of the Duty where the delay is between 6 months and 12 months
 - (iii) 30% of the Duty where the delay is over 12 months
4. One of the most important changes is the introduction of very severe surcharges for undervaluation of property for Capital Acquisitions Tax or Stamp Duty. These charges are now draconian and very careful note should be taken of them. They are as follows:-
 - (a) where the submitted value is less than the ascertained value by greater than 10%, but under 30%, a surcharge of 50% of the Duty payable provided,

**FINANCE ACT
1991, SECTIONS
80 TO 111**

STAMP DUTIES



**FINANCE ACT
1991, SECTIONS
80 TO 111**

STAMP DUTIES

(Contd.)

however, that an understatement by less than £5,000 will attract no surcharge.

- (b) where the submitted value is less than the ascertained value by greater than 30%, but less than 50%, the surcharge is equal to the amount of the Duty,
- (c) where the submitted value is less than the ascertained value by an amount greater than 50%, the surcharge is double the amount of the Duty.

With particular reference to this paragraph No. 4, members would be advised to write to clients informing them of these extra surcharges, and informing them of the danger of undervalues. It is now more important than ever that a solicitor should not submit a valuation of his own, but should get an auctioneer/valuer to do the valuation. It is desirable to point out to the client that it is important for the auctioneer/valuer to do a proper valuation and not to undervalue the property. It would also be desirable to notify the auctioneer when writing for the valuation of the possible consequences of an undervaluation.

5. Section 97 of the Finance Act, 1991 now seeks to impose a duty of care between the Revenue Commissioners and solicitors. This is in addition to the duty of care that already exists between the solicitor and his client. This section appears to imply that a solicitor is now obliged to see that an instrument is properly and fully stamped, and if he is knowingly and wilfully is employed in the preparation of such an instrument, then he could be liable for fraud. This duty imposed on a solicitor appears to be outrageous, but unfortunately is now law. The effects of sub-sections 3 and 6 of this section appear to be:-

- (a) If the solicitor fails in his statutory duty of care to the Revenue he will be liable for a substantial fine, and
- (b) irrespective of that, if he has any doubt or question relating to the transaction he should bring this to the attention of the Revenue Commissioners. If he fails to do so he will be liable for a substantial fine, and this can even relate to matters of valuation etc. if the solicitor/professional does not exercise reasonable care.

Again, as stated above, this memorandum is not an exhaustive summary of all changes in Stamp Duty under the Finance Act, 1991 and it is essential that each member should familiarise himself with the provisions of the relevant sections.

Taxation Committee



Practitioners are reminded that there are two distinct circumstances which arise in relation to Stamp Duty on Memorials arising from the provisions of the following Acts:-

(1) Section 14 Family Home Protection Act, 1976.

An assurance of a Family Home by one spouse into the joint names of both spouses is exempt from Stamp Duty.

A Memorial of the Deed of Assurance is also exempt from Stamp Duty.

(2) Section 114 Finance Act, 1990.

(a) An assurance by one spouse which has the effect of placing a family home into the sole name of the other spouse is exempt from Stamp Duty.

(b) An assurance between spouses of a property which is not a Family Home is exempt from Stamp Duty.

However, Memorials of these Assurances are liable to Stamp Duty.

**STAMP DUTY ON
MEMORIALS**



PENALTIES FOR LATE PAYMENT OF STAMP DUTIES

NOTICE FROM REVENUE COMMISSIONERS

The purpose of the penalties relating to late payment of stamp duties is to compensate the Exchequer for the late receipt of duty and to encourage early, voluntary compliance with the obligations under the Stamp Act. A particular aim of the surcharges for understatement of value is to encourage taxpayers and their agents to provide reasonable valuations on submitting documents for stamping. This would obviate the need for formal valuations and appeals which can be costly and time consuming for both the taxpayer and the commissioners. Provisions which are aimed at improving compliance have a direct impact on both solicitors and their clients.

In the case of solicitors, delays in paying duty can arise due to oversights in a busy office, although the solicitor has been put in funds by the client taxpayer. In order to meet this particular situation, the staff in Stamp Duty will deal with these delays and subsequent requests for mitigation according to the following guidelines:

1. Mitigation will depend upon the amount of the duty, the length of the delay and the record of the solicitor.
2. Where the duty does not exceed £5,000 and the delay in payment is no longer than six months, full interest will be charged. If, however, this is the first occasion in a calendar year in which such a delay occurred, the further penalties of 10% and 20% of duty will be mitigated in full.
3. If the delay is the second default by the solicitor in that calendar year, then the further penalties will be mitigated to 5% of the duty.
4. If the delay is more than six months but not more than twelve months, full interest will be charged but the further penalty of 20% of the duty will be mitigated to 5% in the case of a first late payment and 10% in the case of a second.
5. Any requests for mitigation which do not come within these guidelines will be dealt with under the general principals governing mitigation.

It must be emphasised that these guidelines are not legal provisions. They have been introduced only for the guidance of Stamp Duty staff and they may be departed from in any individual case depending on its unique circumstances. The operation of the guidelines will be reviewed after one year.

In addition to these guidelines, the Revenue Commissioners will continue to exercise their general discretion to mitigate interest and penalties including surcharges for undervaluation. In exercising this discretion, the Commissioners are obliged, under their care and management functions, to mitigate penalties only in cases where the delay in stamping the documents is due to circumstances beyond the control of the taxpayer and his or her advisers and solicitors, or to cases where the circumstances are such that the imposition of a penalty would be clearly unreasonable.



The decision to mitigate interest or penalties and the extent of mitigation depends upon individual circumstances. It is neither desirable nor practical to give a list of such circumstances, but the length of the delay in paying duty is a factor of considerable relevance as is, in the case of surcharges, the extent of the undervaluation. The Commissioners will also consider such factors as the past record of taxpayers or their agents, the view of the Valuation Office, where relevant, and any evidence in support of the explanation for the delay.

If a taxpayer or solicitor feels dissatisfied with the decision of a marking officer on the mitigation of a penalty, he or she may ask that the matter be discussed by a Penalties Review Committee, which has been set up in Stamp Duty. This committee is formed by all the marking officers and a supervising officer. It has been set up to ensure consistency of application of the penalty provisions and to allow for a more detailed reconsideration of contentious mitigation decisions. Any person who wishes to bring a case to the committee should set it out in writing, detailing the grounds for mitigation. If after this review, a solicitor is still dissatisfied, he or she may bring the matter to the attention of the Taxation Committee of the Law Society. The members of the committee may, depending on their view of it, discuss the case with Stamp Duty management.

Solicitors have also expressed concern about the implications for them of the negligence provisions in the Finance Act, 1991, where undervaluations of property are established. The Commissioners accept that solicitors have no special expertise in the area of property valuation. In their view, the obligation of solicitors under these provisions is to ensure that their clients are aware of the requirement to submit realistic valuations and that where a formal valuation is carried out, that it is done by a person who is competent and qualified to do so. A solicitor, unless he or she has knowledge to the contrary, is entitled to assume that any such person will carry out the valuation according to best professional practice.

Stamps Branch,
Revenue Commissioners

PENALTIES FOR LATE PAYMENT OF STAMP DUTIES

NOTICE FROM REVENUE COMMISSIONERS

(Contd.)

**STAMP DUTY
EVASION**

The Conveyancing Committee considers that the attention of members be drawn to the provisions of the following memorandum recently issued by the D.S.B.A.

Practitioners are reminded of the Statement of Practice regarding Stamp Duties issued by the Revenue Commissioners consequent upon the Finance Act 1991.

It has been brought to the notice of this Committee that breaches of the Revenue Guidelines are becoming increasingly prevalent particularly in transactions relating to the sale of residential properties inclusive of contents.

Practitioners should be aware that apportionment of sale considerations in such transactions only should be made on the basis that realistic and correct values are attributed to such contents based, if considered necessary, on valuations from reputable auctioneers. Any apportionments made on the basis of spurious or excessive valuations of contents in such transactions clearly constitute evasion and are in breach of the Revenue Guidelines. Practitioners also are reminded of the powers available to the Revenue Commissioners to impose substantial financial penalties and other sanctions not only against the parties involved in such transactions but also against their solicitors and other professional advisers.

Artificial Contract Prices for Loan Purposes

It also has been brought to the notice of this Committee that there is an increasing prevalence on the part of purchasers engaging in and assisting the practice of deliberately inflating sale prices of properties in excess of their actual real prices to facilitate purchasers seeking and obtaining increased loans to finance purchase of properties.

This Committee utterly condemns such practice which obviously not only is not in accordance with good conveyancing practice but also constitutes fraudulent and unprofessional conduct which would render practitioners assisting in such practice liable to serious sanctions by the Law Society.



The Conveyancing Committee would like to bring the following letter to the attention of practitioners. It is a response to a query in relation to clawback of stamp duty exemption/partial relief for new houses under the Finance (No 2) Act, 1998:

‘Ms Vivienne Bradley
McCann FitzGerald
9 February 1999

Re: Finance (No 2) Act, 1998 – stamp duty clawback

Dear Ms Bradley,

I refer to your letter dated 22 January 1999, on behalf of the Law Society Conveyancing Committee, in relation to the stamp duty clawback provisions in the Finance (No 2) Act, 1998.

Under the Finance (No 2) Act, 1998, the stamp duty exemption/partial relief for new houses was limited to houses which are purchased by, or on behalf of, persons who will occupy them as their only or principal place of residence. The stamp duty will be clawed back if rent is derived from the house during the period of five years from the date of the purchase or until the sale of the house within the said five-year period, whichever event first occurs. The clawback is in the form of a fine, payable by the purchaser who originally obtained the benefit of the exemption/partial relief.

I can confirm that a subsequent purchaser of a house, where a clawback has arisen, has no responsibility in relation to the clawback and is under no obligation to Revenue to make any enquiries as to whether circumstances giving rise to such a clawback have arisen.

Seamus Carey,
Assistant Principal,
Stamp Duty Technical Unit’

**CLAWBACK OF
STAMP DUTY
EXEMPTION/
PARTIAL RELIEF**



NEW SYSTEM FOR
STAMPING DEEDS

The Conveyancing Committee has been informed by the Revenue Commissioners that a new computerised system for stamping deeds will shortly be introduced by them. Revenue have indicated that the system is currently being tested and that they hope that, all going well, it will be introduced on a phased basis over a two-week period, probably in November. Revenue have also stated that they will furnish information leaflets to the profession setting out full details of the new system prior to its implementation. In the meantime, the committee wishes to give practitioners a flavour of the new system as follows.

New features of the system include:

1) **Identifier number**

Each document presented for stamping will be allocated a unique identifier number which will be printed as part of the new 'printed string'. Any recorded information in relation to the document can be accessed by means of this identifier number. The information recorded on the electronic database will include the name and address of the solicitor acting in the case, the effective date of the document, the date of presentation for stamping, the consideration or value of the property, the relevant classification(s), the duty payable, any penalties due, payments received, date and type of stamping details, relevant details of the transaction taken from the PD form, details of certificate values, types of property transferred, relevant reliefs together with any mitigation of penalties granted or refused.

2) **Green stamps replaced**

The old familiar embossed green stamps will be replaced by a combination of a 'printed string', one or more embossed clear foils and a silver coloured securagrafix.

a) **The printed string**

i) Detail part of the string:

- Documentation identification number will be ten numeric characters
- Date document was stamped in the format dd/mm/yy
- Code representing the type of transaction (for example, C for conveyance, M for mortgage and so on). A complete list of the type of transactions and how they will be represented will be made available in the Revenue information leaflet
- Amount of duty paid in respect of that transaction. (Note that the code and amount of duty will be repeated if more than one transaction is included in the document)
- Capital letter P followed by an amount indicating that penalty/interest



- was imposed and paid (if applicable)
- Letters PM followed by an amount indicating that penalty/interest had been partially mitigated (if applicable)
 - Letters PM not followed by an amount indicating that penalty/interest had been fully mitigated (if applicable).
- ii) Summary part of the string:
- Letter A indicating that the document had been adjudicated (if applicable)
 - Letters PD indicating that a Particulars Delivered form had been received (if applicable)
 - Letters EUR or IEP showing the currency of the document
 - Amount showing the total amount paid including duty, interest and penalties.
- iii) Collateral and counterpart:
- In the case of a collateral and/or counterpart document, the following text will be printed as appropriate: ‘Collateral – principal fully and properly stamped’ or ‘Counterpart – original, fully and properly stamped’.
- iv) Exempt documents:
- In the case of documents adjudged exempt, the word ‘exempt’ will replace the amount.
- The string will usually be printed on the front of the document in a one-line, two-line or three-line format, depending on the space available. If space is very limited, only the summary information will be printed on the front and the detailed information will be printed on the back.
- b) Embossed clear foils**
- The summary information will be covered with either one or two transparent foils. The number required will be dependent on the length of the summary. Each of these foils will display three images of castle gates. The word ‘Revenue’ will appear at an oblique angle on these foils in colours of green and orange. The foil protects the data which it covers and is intended to prevent tampering.
- c) Silver coloured securagrafix**
- A non-transparent silver coloured foil incorporating a registered holographic image of a harp with matt white detail with grating infill will be impressed adjacent to the transparent foil(s), on the right hand side. This hologram will indicate the end of the printed string.

NEW SYSTEM FOR STAMPING DEEDS

(Contd.)

**NEW SYSTEM FOR
STAMPING DEEDS**

(Contd.)

Changes in practice

The Revenue Commissioners have indicated they will introduce the following changes in practice when the new computerised system becomes operational:

1. In the Dublin office a one-stop service will be available in most instances. An electronic ticketing system will be in place and persons will take a ticket (adjudication/straight or straight only). They will then wait to be called to the appropriate desk. It will no longer be necessary to queue separately for marking, stamping and PD stamping. Persons attending at the public office are asked to have their documents, supporting documentation and payments correctly ordered before seeking service. The committee has not yet been given information on what procedures will be adopted in the Cork office.
2. It will no longer be possible to have a document marked without stamping. Instead, an assessment will issue as required.
3. The PD stamp will no longer be impressed separately. It will form part of the marking string which, together with the foils and secure graphics, will form the stamp. A properly completed PD form, where required, must be presented before stamping may proceed. It will be possible to make payment in advance of delivery of the PD form in order to prevent penalties accruing.
4. Change from cheques and so on will no longer be given in cash. Refunds will be made by means of payable order through the post. Refunds will be made to the solicitor of record unless written authorisation to the contrary is provided.
5. When cancelling stamps, the old system of blockouts will be replaced by a simple inked stamp or manual embossment. The database will contain full details of all cancellations.



The Conveyancing Committee has been asked by the Revenue Commissioners to remind the profession that the new computerised system for stamping deeds will shortly be implemented by them. It is proposed to phase in the new system and for a while both the old and new systems will operate in parallel.

The Revenue Commissioners have asked us to remind solicitors that there will be some changes in practice including the following:-

1. PD stamping may only take place at the same time as the Deed is stamped. Solicitors must therefore now lodge a PD form in appropriate cases along with the Deed. In cases where solicitors do not have the PD form available but there is a danger of the time limit running out for stamping the deed without penalty, it will be possible to pay the amount of the duty and obtain a receipt for payment. Note that the deed will not be stamped until it is produced at a later date together with the receipt for payment and the PD form when available. The Revenue Commissioners have told the Committee that this facility to pay stamp duty where the PD form is not yet available is being provided as a concession to the profession to alleviate difficulties which practitioners may initially encounter with the changeover to the new system. However Revenue have indicated to the Conveyancing Committee that this concession will be withdrawn if it is abused by the profession. The Committee points out that the new requirement involves only one visit to the Stamping Office and may therefore be more cost-efficient for solicitors in any event.
2. Solicitors can still have deeds assessed for stamp duty. A printout will be given showing the assessment. However the details of the deed will be entered in the system and the Revenue Commissioners will follow-up with the solicitor thereafter for payment of the stamp duty on the deed.
3. Marking, stamping and PD stamping will now all take place on the same counter. The details of the deed are entered by the Revenue official into the computer there and then. The Revenue Commissioners estimate that the time taken to stamp a deed may now be a little longer. They asked for consideration and patience with staff while training on the new system in the initial stages.
4. Each solicitor will have a code number on the system. All deeds lodged by the solicitor (either personally or by a legal agent on behalf of the solicitor) will be entered using the solicitor's own code. The system records the solicitor of record as the taxpayer's agent. If solicitors wish (but it is not obligatory) they may include in their correspondence reference something to indicate in relevant cases

NEW STAMPING SYSTEM



**NEW STAMPING
SYSTEM**

(Contd.)

that a town agent acted on their behalf. Note however that the maximum length of the correspondence reference is 30 characters including spaces. Each document will now have a unique identification number which will be franked on the back of the cheque/draft used to pay the duty as well as on the deed itself. Therefore if a deed is lost it will be easier to ascertain that the stamp duty was paid. Solicitors should note that one cheque can be used to stamp a number of deeds.

The Committee would refer practitioners to its previous Practice Note on the New System for Stamping Deeds which was published in the November, 1999 issue of the Gazette for further information on the new stamp. In mid-February the Revenue Commissioners also circulated an information leaflet to all solicitors (code SD 8) entitled "Stamp Duty - New Stamping System". If any further information is required on the system itself solicitors should contact the stamping branch of the Revenue Commissioners.

If solicitors encounter difficulties in practice with the new system they should contact the Conveyancing Committee of the Law Society.



The Conveyancing Committee would like to bring to the attention of the profession the text of a letter received from the Department of Finance clarifying the transitional arrangements for stamp duty contained in the Finance No. 2 Act, 2000.

27 July, 2000

Mr. Brian Gallagher,
Chairman of the Conveyancing Committee,
Law Society of Ireland.

Dear Mr. Gallagher,

I have been asked by the Minister for Finance, Mr. Charlie McCreevy TD, to refer to your recent letter concerning the new stamp duty regime on the purchase of residential properties.

The Finance No. 2 Act, 2000, which provides for the new stamp duty regime, contains transitional arrangements. These cater for persons who were in the process of purchasing a residential property and who would be disadvantaged by the new stamp duty rates. Such persons can have the duty assessed under the previous rate structure provided they had a contract evidenced in writing before 15 June 2000 and provided that contract [this latter use of the word "contract" was subsequently acknowledged by Ms. O'Riordan to be incorrect and should be substituted by the words "the instrument giving effect to the contract"] is executed on or before 31 January 2001. It is only necessary that a contract exists and that it is evidenced in writing prior to 15 June 2000. It is not necessary that the contract be signed or that it be unconditional. In this respect, the provisions are similar to those put in place in the Finance No. 2 Act of 1998 which also changed the stamp duty regime for housing.

I trust that this clarifies the position for you.

Yours sincerely,

Hannah O'Riordan
Private Secretary

The above may be of assistance to practitioners.

**STAMP DUTY:
TRANSITIONAL
ARRANGEMENTS
(FINANCE NO. 2
ACT, 2000)**



**FINANCE (NO. 2)
ACT, 2000 AND
FINANCE ACT 2001**

(A) CLAWBACK OF STAMP DUTY

The Finance (No. 2) Act 2000 makes provision for the clawback of stamp duty in certain cases where a property or its owner cease to meet the requirements set down by the Act in order to qualify for stamp duty reliefs.

The Conveyancing Committee has made enquiries with the Revenue Commissioners as to whether or not it is necessary for a subsequent purchaser of the property in question to make enquiries at the time of purchase to ascertain if any of the conditions giving rise to a clawback has occurred.

The Revenue Commissioners have confirmed that the clawback provisions in relation to the exemptions and reduced rates of stamp duty for first time buyers and other owner occupiers contained in the Finance (No. 2) Act 2000 impose a penalty payable by the purchaser who originally obtained the benefit of the relief in question. Revenue has confirmed that a subsequent purchaser has no responsibility in relation to the clawback and is under no obligation to the Revenue to make any enquiries as to whether circumstances giving rise to such a clawback have arisen.

(B) REFUNDS OF STAMP DUTY

The Finance (No. 2) Act 2000 deemed a person separated by a decree of judicial separation, or whose marriage had been dissolved by a decree of divorce, to be a first time purchaser in certain circumstances and subject to certain conditions. The Finance Act 2001 has extended this relief to persons separated by means of a deed of separation, or whose marriage has been the subject of a decree of nullity, again in certain circumstances and subject to certain conditions. These additional categories have been made applicable with retrospective effect to the 15th June 2000. If purchasers who fulfil the new criteria have paid stamp duty since that date they are entitled to claim a refund of the stamp duty paid.

The Finance Act 2001 also provided for a reduction of the 9% stamp duty rate which applied to investors purchasing new houses / apartments. This reduction applies retrospectively to instruments executed on or after the 27th February 2001. If investors have paid the higher rate of stamp duty since that date, an appropriate entitlement to claim a refund will also arise.



Practitioners have sought guidance as to the appropriate certificates to use in deeds of assurance between spouses consequent upon separation or divorce.

Separation

Spouses do not, of course, cease to be spouses as a result of a deed of separation or decree of judicial separation. Assurances between spouses in these circumstances are exempt from stamp duty.

The appropriate certificate is the following:-

"IT IS HEREBY CERTIFIED that Section 96 of the Stamp Duties Consolidation Act, 1999 applies to this Instrument".

No other Finance Act certificates are necessary.

Divorce

After divorce, spouses cease to be such, and therefore enjoy an exemption from stamp duty in only one circumstance, that is, if the provisions of Section 97 of the Stamp Duties Consolidation Act, 1999 apply. This section provides that stamp duty shall not be chargeable on an instrument by which property is transferred pursuant to an order under Part III of the Family Law (Divorce) Act, 1996 or pursuant to a relief Order within the meaning of Section 23 of the Family Law Act, 1995, made following the dissolution of a marriage by either or both of the spouses who were parties to the marriage concerned to either or both of them. This exemption does not apply in relation to an instrument by which any part of or beneficial interest in the property concerned is transferred to a person other than the spouses concerned.

The appropriate certificate is the following:-

"IT IS HEREBY CERTIFIED that Section 97 of the Stamp Duties Consolidation Act, 1999 applies to this instrument."

No other Finance Act certificates are necessary.

REVENUE CERTIFICATES IN ASSURANCES BETWEEN SPOUSES ON SEPARATION OR DIVORCE



**STAMP DUTY
CLAW BACK
RULES FOR INVESTORS**

The Conveyancing Committee would like to bring the following exchange of letters with the Revenue Commissioners to the attention of practitioners:-

"Revenue Commissioners,

Stamp Duty Customer Services Branch

24th January, 2002

Re: Stamp Duty Rates Applicable to Investors

We wish to advise you that we have experienced queries from practitioners with regard to the stamp duty rules and rates applicable to investors pursuant to the budgetary changes announced on the 5th December, 2001. In the circumstances, we would be obliged if you would kindly furnish us with a direction on the following queries in order that we might advise practitioners accordingly:-

Supposing the owner of an existing principal private dwelling house purchases a new principal private residence prior to 5th December, 2001 and now finds that due to the downturn in the property market, he is unable to sell the existing house and subsequently decides to remain in the existing house and to rent out the newly acquired premises. What are the claw back rules which apply to this situation?

(i) Is it the rates which were in force at the time of purchase (prior to 5th December 2001), i.e. the difference between the 9% (investor) rate and the stamp duty actually paid, or

(ii) Do the rates introduced on 5th December, 2001 apply, which will mean that the purchaser is not now liable to pay any further stamp duty since the stamp duty discharged pre-Budget 2001 as an owner occupier is exactly the same as the liability of an investor post Budget 2001?

In other words, does the purchaser (who turns investor) get the benefit of the post budget 2001 reduced rates on stamp duty or is he liable to the claw back rate of stamp duty which applied at the date of purchase (prior to 5th December, 2001), which would mean that such a person would constitute the only type of investor who is still obliged to pay the 9% stamp duty rate?

(iii) Following on from (ii) above, could you clarify the stamp duty position applicable to a person who purchases a new apartment as a principal private residence for say IR£95,000 in June, 2001 (i.e. no stamp duty is liable on the purchase) and now wishes to rent out the premises? If the claw back rules applicable prior to the 5th December, 2001 are applied, the purchaser will be obliged to pay 3% of the purchase price (less VAT) but if the post Budget 2001 claw back rules apply, then the property is exempt from stamp duty.



"Conveyancing Committee

Law Society of Ireland

6th February, 2002

Re: Stamp Duty Rates Applicable to Investors

I refer to your recent letter which raises some queries from your members in relation to stamp duty.

In view of the questions posed and to avoid confusion I must preface our reply by drawing the attention of your readers to the fact that the changes made in the Finance Act 2002 have no effect on the claw back provisions of the reliefs available for the purchase of a new house by an owner-occupier who certifies that he or she will occupy it as his or her principal private residence.

In your first example, an individual has purchased a new residential property prior to 06 December 2001. If the property in question is grant size (i.e. under 1346 sq.ft/125 sq.m's) and is for owner-occupation, no stamp duty liability will arise, where an effective deed of transfer, with appropriate certification is executed prior to 06 December 2001.

If after 06 December 2001, the purchaser decides to rent out the newly acquired property, a clawback of stamp duty will be due equal to the amount which would have been liable as at the date of transfer, had the purchaser not claimed the relief in question.

Similarly in your second example, again assuming that the property is a grant sized house, where the property is rented out at any stage within five years from the date of the transfer a claw back of the duty otherwise payable if the relief was not claimed, will arise. In the example provided the claw back arising is at the rate of 3% on the VAT exclusive amount.

In general, the effective date for claw back of stamp duty is the original date of transfer. The stamp duty rates which were appropriate as at that date will dictate the amount of duty due.

Your readers will find information regarding stamp duty on the revenue website at www.revenue.ie

Hoping that this information is of some assistance.

Yours sincerely,
Customer Service Stamp Duty Branch"

STAMP DUTY

CLAW BACK

RULES FOR INVESTORS

(Contd.)



**STAMP DUTY –
FLOOR AREA
COMPLIANCE
CERTIFICATE**

The latest edition of Revenue's statement of practice on stamp duty, SD10A, contains new requirements, the effect of which may be that certification of compliance with the Building Regulations from the Department of the Environment will be sought by Revenue as a prerequisite to obtaining stamp duty relief on the purchase of new houses. The inference is that if a Department inspector is not satisfied, stamp duty relief may be refused. Urgent clarification has been sought from the Department, but in the meantime, practitioners should approach the matter with caution.



A serious difficulty has arisen in respect of stamp duty in relation to conveyances/transfers of grant sized new houses (reference to “houses” includes apartments where appropriate) to first time buyers and owner/occupiers - the Conveyancing Committee's interim practice note published in the November 2004 Gazette refers.

Prior to July 2004, a purchaser of a grant sized new house could avail either of the exemption for such houses where a Floor Area Certificate had issued or, alternatively, elect to stamp as an owner/occupier of a new house in which case duty was paid on the site value or 25% of the entire consideration which typically would have been under the stamp duty threshold.

The second option has now been removed and accordingly, to avoid a charge to stamp duty on a grant sized new house, a purchaser must claim the exemption. In order to claim the exemption a “Floor Area **Compliance Certificate**” [FACC] **must be in existence on the date of the deed of transfer/conveyance.**

(Note: the option to pay duty based on the site value or 25% of the entire consideration remains in place in respect of houses over 125 sq.m.).

A representative of the committee met officials from the Department of the Environment, Heritage and Local Government recently, and it has been confirmed that the Department will not issue a FACC until such time as the house has complied, or the Department inspectors are satisfied that it will comply, with a wide range of requirements (contained in the Department's circular HA1) which go far beyond the internal measurements of the house or compliance with Building Regulations, and extend to such matters as durability of building materials, their compliance with Irish Agrément Board standards, the appropriateness of building methodologies etc. The Department also indicated that if the issue of a FACC was delayed, this was indicative of a substantive problem with the house.

In the first instance therefore, purchasers of new houses should not complete the purchase unless the FACC is to hand, and should not accept an undertaking either from the builder or his/her solicitor. Appropriate special conditions should be inserted, as stamp duties are, by law, a matter for the purchaser.

Particular problems arise in the case of contracts which are subject to stage payments.

The stage payment contract typically provides for a site purchase contract together with a building agreement with stage payments, at signing (15% to include booking deposit), first floor joist level (25%), roof (25%), plastering (25%) and completion (10%).

STAMP DUTY: FLOOR AREA COMPLIANCE CERTIFICATES



**STAMP DUTY:
FLOOR AREA
COMPLIANCE
CERTIFICATES**

(Contd.)

Where the builder and the house are registered with the HomeBond or Premier schemes the purchaser is protected in relation to the stage payments up to the limits of those schemes. In relation to subsequent stage payments, however, the purchaser has no security and accordingly it is necessary for the purchaser to take ownership by transfer or conveyance of the site contemporaneously with the payment of the first floor joist level stage payment. This is necessary for three reasons, firstly because a purchaser, in the absence of a transfer of the site ownership would be an unsecured creditor in the event of the builder's insolvency, secondly, no financial institution will advance the monies to meet the further stage payments without the transfer of site ownership, and thirdly, the purchaser will most likely be contractually bound to complete the conveyance / transfer at that stage.

The difficulty is that while in the case of stage payments the purchaser must take a conveyance/transfer at the first floor joist level, it will be seen that the FACC will not issue until the premises has been substantially completed, or even some time afterwards if there are problems with the particular house. The result of this is that people who clearly are intended to benefit from the relief as first time buyers and / or owner/occupiers of grant sized new houses, are likely to lose the relief.

Practitioners must advise purchasers in such circumstances that if they buy subject to stage payments, they will be unable to obtain exemption from stamp duty.

Urgent representations are being made to the Department of Finance in relation to the matter, but in the interim, the foregoing appears to represent the position. The committee also wishes to take this opportunity to restate its long held view that stage payments in new housing are anti-consumer and should be abolished.



The Conveyancing Committee has been advised by the Department of Finance that it is not proposed to make any changes to the primary legislation and an amended SD10A has been issued by Revenue which reflects the statutory position. (See the detailed practice note on the changes to stamp duty reliefs published at page 37 of this issue.) In relation to new houses under 125 square metres, first time buyers relief no longer applies and stamp duty relief is now available only if there is a Floor Area Compliance Certificate in existence at the date of the transfer / conveyance.

Purchasers' solicitors should insert special conditions in contracts for sale / building agreements relating to new houses under 125 square metres, to provide that the Floor Area Compliance Certificate must be available on closing. An undertaking is not acceptable. Practitioners must advise clients that purchasers buying these houses under stage payment contracts will not be able to claim exemption from stamp duty.

STAMP DUTY RELIEF - FLOOR AREA COMPLIANCE CERTIFICATES: A FOLLOW UP



**STAMP DUTY
RELIEFS -
FINANCE ACT 2005**

The Conveyancing Committee has been asked by **Revenue** to bring to your notice certain aspects of the Finance Act 2005 relating to stamp duty which entail a change in the certificates required to be inserted in instruments. The provisions relate to the new farm consolidation relief and the stamp duty relief for first time buyers.

Farm Consolidation Relief (Section 121 Finance Act 2005)

Section 121 inserts a new Section 81B into the Stamp Duties Consolidation Act 1999 which provides for a stamp duty relief for an exchange of farm land between two farmers for the purposes of consolidating each farmer's holding.

The new relief will mean that no stamp duty will be charged on an exchange of such lands where the lands are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will be charged on the amount of the difference in the value of the lands concerned. Where consideration is paid in respect of the difference (or part of the difference) in those values, it must be payable in cash.

This new relief applies to instruments executed on or after 1 July 2005 and on or before 30 June 2007 and the instrument must contain a certificate to the effect that the provisions of section 81B of the Stamp Duties Consolidation Act 1999 apply where the relief is claimed.

Further information regarding the relief and the wording of the new certificate (which is also available on the Revenue website (www.revenue.ie)) is attached at Appendix 1.

First Time Buyer Relief (Section 126 Finance Act 2005)

Section 126 of the Finance Act 2005, firstly, confirms the changes to section 92B of the Stamp Duties Consolidation Act 1999 announced in the Budget, reducing the stamp duty rates for first time buyers who are owner occupiers of secondhand houses. The revised stamp duty rates apply to instruments executed on or after 2 December 2004.

Secondly, this section also ensures that all new houses with a floor area under 125 square metres will have to have a Floor Area Compliance Certificate within the meaning of section 91A of the Stamp Duties Consolidation Act 1999 to avail of an exemption from stamp duty by providing that first time buyer relief is no longer available to such houses. To facilitate this change Certificate No. 5 in Table 4 of Leaflet SD10A has been amended to restrict application of first time buyer relief to secondhand houses. This change applies to instruments executed on or after 1 March 2005.

Further information in relation to the changes to the first time buyer relief (which is also available on the Revenue website (www.revenue.ie)) is attached at Appendix 2.



A revised version of Leaflet SD 10A, which includes the wording of all Revenue certificates required in instruments for stamp duty purposes, is also available on the Revenue website.

APPENDIX I

FARM CONSOLIDATION RELIEF

Purpose of the Farm Consolidation Relief

Section 81B of the Stamp Duties Consolidation Act 1999 provides for a new stamp duty relief which applies in respect of an exchange of land between two farmers for the purposes of consolidating each farmer's holding.

What is Farm Consolidation Relief?

The new relief provides that where there is a valid consolidation certificate in existence at the time of an exchange of lands, no stamp duty will be charged on an exchange of such lands where the lands are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will only be charged on the amount of the difference in the value of the lands concerned. This stamp duty is payable by the person or persons to whom the land which is of greater value is transferred. Where consideration is paid in respect of the difference (or part of the difference) in those values, it must be payable in cash.

The new relief applies to instruments executed on or after 1 July 2005 and on or before 30 June 2007.

What is a consolidation certificate?

A consolidation certificate is a certificate issued by Teagasc for the purposes of the relief to each farmer concerned in an exchange of lands. This certificate identifies the lands involved, the owners of such lands, and certifies that Teagasc is satisfied that the exchange of lands complies or will comply with the conditions of consolidation.

The conditions of consolidation together with instructions on how to apply for a consolidation certificate and the supporting documentation required to be submitted when an application is made for a consolidation certificate will be set down in guidelines to be made by the Minister for Agriculture and Food with the consent of the Minister for Finance.

Who is eligible for the relief?

The farmers involved in an exchange of lands are eligible for the relief. A farmer is a person who spends not less than 50% of his or her normal working time farming. The relief can also apply to an exchange of lands where not all the joint owners, on either side of the exchange, are farmers. However, the relief does not apply where any of the parties to the exchange is a company.

STAMP DUTY

RELIEFS -

FINANCE ACT 2005

(Contd.)



STAMP DUTY
RELIEFS -
FINANCE ACT 2005
(Contd.)

What type of land does the relief apply to?

The relief applies to exchanges of agricultural land including land suitable for occupation as woodlands on a commercial basis in the State and farm buildings on that land. Dwellinghouses or the lands occupied with such dwellinghouses are not included unless they are derelict and unfit for human habitation.

What conditions must be met before relief will be granted?

- The deed of transfer must contain a certificate to the effect that the provisions of section 81B of the Stamp Duties Consolidation Act 1999 apply to the transfer. The wording of this certificate is:

“It is hereby certified that section 81B (farm consolidation relief) of the Stamp Duties Consolidation Act 1999, applies to this instrument.”

- The following documentation/information must be submitted to the Revenue Commissioners with the deed of transfer when it is presented for adjudication:
 - a consolidation certificate which is valid on the date of execution of the deed effecting the exchange - *a consolidation certificate is valid for one year from the date it is issued,*
 - a declaration* to the effect that each **farmer** who is a party to the deed of transfer will, for a period of 5 years from the date of execution of the deed of transfer, remain a farmer and will farm the land exchanged,
 - a declaration* to the effect that each **person** who is a party to the deed of transfer will, for a period of 5 years from the date of execution of the deed of transfer, retain ownership of his or her interest in the exchanged land and that the land will be used for farming,
 - the PPS number* of each person who is a party to the deed of transfer.
- Where there is more than one deed of transfer required to effect an exchange of lands, all the deeds must contain the appropriate certificate that section 81B applies to the deed and must be presented for adjudication at the same time. Where the lands exchanged are not of equal value and there is more than one deed of transfer required to effect an exchange of lands, only the principal deed is chargeable to stamp duty and the other deeds of transfer will be adjudicated as not chargeable with any duty.

* A leaflet which will contain an application form relating to the relief will be published shortly.

Can the relief be clawed back?

The amount of relief actually granted will be clawed back, by way of a penalty, if the



land or part of the land is disposed of, within 5 years from the date of execution of the deed of transfer giving effect to the exchange of lands.

The amount of the penalty is the difference between the duty that would have been charged on the value of **all** the lands transferred to the farmer, in the first instance, (i.e. under section 37 of the Stamp Duties Consolidation Act 1999) had the relief not applied and the duty (if any) which was charged under section 81B. Interest is also charged on the penalty at the rate of 0.0273 per cent per day from the date of the disposal to the date the penalty is paid.

Are there any situations where the relief will not be clawed back?

A clawback of the relief will not occur where the land is compulsorily acquired or is the subject of another exchange of lands which qualifies for farm consolidation relief.

In addition, a clawback of the relief will not occur where a farmer or other joint owner disposes of part of the land to a spouse for the purpose of creating a joint tenancy or where one joint owner disposes of part of the land to another joint owner, who is a farmer.

What other penalties can apply?

Any person who furnishes a false declaration will be liable to a penalty of an amount equal to the difference between 125% of the duty which would have been charged on all the lands transferred to that person, had the relief not applied and the duty (if any) which was charged under section 81B together with interest on the penalty at the rate of 0.0273 per cent per day from the date of execution of the deed of transfer to the date the penalty is paid.

A similar penalty, together with appropriate interest (as above), applies where an invalid consolidation certificate is used to obtain the relief.

APPENDIX 2

FIRST TIME BUYER RELIEF

Section 126 of the Finance Act 2005 amends section 92B of the Stamp Duties Consolidation Act 1999 which provides for relief from stamp duty for first time buyers of residential property. The effect of the changes are set out below together with some general information in relation to “frequently asked questions” regarding the application of the relief.

STAMP DUTY

RELIEFS -

FINANCE ACT 2005

(Contd.)



**STAMP DUTY
RELIEFS -
FINANCE ACT 2005**

(Contd.)

Revised Rates

The stamp duty rates payable by first time buyers who are owner occupiers of second hand residential property up to €635,000 have been reduced. The revised stamp duty rates, which apply to **instruments executed on or after 2 December 2004**, are set out below:

Residential Property

<i>Aggregate Consideration</i>	<i>First Time Buyer Rate- before 2 December 2004</i>	<i>First Time Buyer Rate- on/after 2 December 2004</i>
Up to €127,000	Exempt	Exempt
€127,001 - €190,500	Exempt	Exempt
€190,501 - €254,000	3%	Exempt
€254,001 - €317,500	3.75%	Exempt
€317,501 - €381,000	4.5%	3%
€381,001 - €635,000	7.5%	6%
Over €635,000	9%	9%

New Houses

The relief under section 92B is no longer applicable to instruments executed on or after 1 March 2005 which give effect to the purchase of new houses with a floor area under 125 square metres. First time buyers who are owner occupiers will continue to be exempt from stamp duty on the purchase of such houses under section 91A of the Stamp Duties Consolidation Act 1999 where a Floor Area Compliance Certificate has been issued by the Minister for the Environment, Heritage and Local Government.

Partial relief under section 92 of the Stamp Duties Consolidation Act 1999, based on the new rate structure outlined above, will continue to apply to first time buyers who are owner occupiers of new houses where the floor area of such houses exceeds 125 square metres.

Certification

There has been no change in the stamp duty threshold bands and the transaction certificate to be included in the instrument should continue to recite the appropriate threshold amount.

There has been a change in the certification required to avail of first time buyer relief on the purchase of a secondhand house following the exclusion of new houses with a floor area under 125 square metres from the scope of the relief. The certificates required to be inserted in instruments, where first time buyer relief is claimed on the purchase of a secondhand house, are set out in Table 3 of Leaflet SD 10A (Certificate Numbers 3A/B, 5, 6, 7B and 8A/B) and the wording of those certificates is set out in Table 4 of Leaflet SD 10A.



The new wording of Certificate No.5 in Table 4 is as follows:-

“It is hereby certified that this instrument gives effect to the purchase of a dwellinghouse/apartment and that section 92B(3A)(residential property first time purchaser relief) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument.”

By certifying that Section 92B(3A) does not apply it is being confirmed that the instrument does not relate to a new house with a floor area under 125 square metres and only relates to a secondhand house. The revised certificate should be included in instruments executed on or after 1 March 2005 where first time buyer relief is claimed on the purchase of a secondhand house.

FREQUENTLY ASKED QUESTIONS

Who is a first time buyer?

A first time buyer is a person, (or, where there is more than one buyer, each of such persons):

- who has not on any previous occasion, either individually or jointly, purchased or built on his/her own behalf a house (in Ireland or abroad) and
- where the property purchased is occupied by the purchaser, or a person on his behalf, as his/her only or principal place of residence and
- where no rent, other than rent under the rent-a-room-scheme, is derived from the property for five years after the date of the current purchase.

What is the rent-a-room scheme?

Under this scheme there is no clawback of the first time buyer relief where rent is received by the person in occupation of the house, on or after 6 April 2001, for the letting of furnished accommodation in part of the house.

When does a clawback arise?

A clawback arises if rent is obtained from the letting of the house, other than under the rent-a-room scheme. The clawback amounts to the difference between the higher stamp duty rates and the duty paid and it becomes payable on the date that rent is first received from the property.

What is the position where a first time buyer purchases a new house where the floor area is under 125 square metres?

The purchase of a new house by a first time buyer, where the floor area is under 125 square metres, is exempt from stamp duty only where a Floor Area Compliance Certificate has been issued in respect of the house by the Minister for the Environment, Heritage and Local Government. If there is no Floor Area Compliance Certificate the full rates of stamp duty apply as first time buyer relief is not available for such a purchase.

STAMP DUTY

RELIEFS -

FINANCE ACT 2005

(Contd.)



STAMP DUTY

RELIEFS -

FINANCE ACT 2005

(Contd.)

1. On 24th June, 2005 Revenue issued a press release clarifying this matter, the general terms of which were as follows:-

Notwithstanding this treatment, to take account of particular situations, Revenue is prepared to accept that a child, who is a first-time buyer, will not be precluded from claiming first time buyer relief where a parent acts as a co-mortgagor in the following circumstances:

- *The transfer of the house is taken in the name of the child.*
- *It is the intention of both the child and the parent that the parent is not to take a beneficial interest in the house.*
- *The parent has been joined into the mortgage solely at the request of the lending institution for the purpose of providing additional security for the monies being advanced for the purchase.*
- *It is not intended that the parent will be contributing to the repayment of the mortgage in the normal course.*

Where the four conditions set out above are satisfied, Revenue will treat the parent as effectively acting in the role of guarantor for the loan. Consistent with the above approach, Revenue will also be prepared to treat persons other than parents of the first-time buyer, who satisfy similar conditions to those set out above, as effectively acting in the role of guarantor for the loan. Their involvement in that capacity will not be treated by Revenue as precluding a claim to first-time buyer relief. In such

What is the position where the purchase monies are not provided entirely by the first time buyer?

To qualify for the relief the entirety of the purchase monies, including any borrowings, must be provided by the first time buyer. Any person, who provides part of the purchase monies or who is a party to any borrowings relating to such purchase, is also regarded as a buyer of the house and the relief will not be available unless that other person is also a first time buyer.

The basis for this treatment is that, in such circumstances, the house is held for the person providing the monies used in the purchase of the house by way of a resulting trust presumed in favour of that person. This treatment applies whether or not all the parties providing the purchase monies, or all the parties to any borrowings, are actually named in the deed of transfer.¹

What is the position in the case of a gift of part of the purchase monies?

Where a first time buyer receives an unconditional gift of monies which are used to purchase a house, he/she will not be precluded from claiming first time buyer relief.

What is the position where a person, being a first time buyer, purchases a house using the proceeds of the sale of a house owned by their spouse or partner who is not a first time buyer?

Where a person who is a first time buyer uses the proceeds of the sale of the house they previously occupied which was owned solely by their spouse or partner to buy a house solely in their own name, first time buyer relief would not be available as the spouse or partner (not being a first time buyer) would be providing the purchase monies for the house.

Can I qualify as a first time buyer if I have previously purchased a house abroad but not in Ireland?

No. A person who has previously purchased a house, either in Ireland or abroad, is not entitled to claim first time buyer relief.

What is the position where there is more than one purchaser and all of the purchasers are not first time buyers?

The first time buyer relief is not available and stamp duty is chargeable at the full rate on the entire purchase price. In order to obtain the relief all of the purchasers must qualify as first time buyers.

Can I avail of first time buyer relief if I previously received a gift of a house?

The relief can be claimed where the gift of the house was received prior to 22 June 2000



(or prior to 27 June 2000 in the case of **part** of a house). A gift received after the above date(s) is regarded as a prior purchase and would preclude a person from claiming the relief.

Can I avail of first time buyer relief if I have previously inherited a house?

Yes. An inheritance is not regarded as a previous purchase and the first time buyer relief can be claimed provided all other conditions of the relief are satisfied.

Can the first time buyer relief apply to a gift of a house?

Yes. A gift of a house is treated in the same manner as a purchase and the first time buyer relief can be claimed provided all other conditions of the relief are satisfied.

What is the position where a person, who had obtained first time buyer relief on the joint purchase of a house with another first time buyer, subsequently acquires the other joint owners interest in the house?

A person who obtained first time buyer relief on the purchase of an interest in a house would not be precluded from obtaining first time buyer relief on a subsequent purchase of another interest in the **same** house provided that person has not purchased another house or part of another house in the intervening period.

Are there any special situations where a person who is not a first time buyer can avail of first time buyer relief?

Yes. There are two particular situations where a person is deemed to be a first time buyer.

(a) The *trustees* of a trust (to which section 189A of the Taxes Consolidation Act 1997 applies), whose trust funds are raised by *public* subscriptions for the benefit of permanently incapacitated persons, in respect of the first house(s) bought after the establishment of the trust, for occupation by the beneficiary or if more than one, each of the beneficiaries.

(b) A *spouse* to a marriage the subject of a decree of *judicial separation*, a *deed of separation*, a decree of *divorce* or a decree of *nullity* in the case of the first acquisition of a house by the spouse following the separation or divorce provided that the spouse had, in relation to the former marital home,

- left that home;
- not retained an interest in that home;

whose separated/former spouse continues to occupy that home, which home was occupied by both spouses prior to the separation or dissolution of the marriage.

STAMP DUTY

RELIEFS -

FINANCE ACT 2005

(Contd.)

circumstances the conditions are as follows:-

- *The transfer of the house is taken in the name of the first-time buyer.*
- *It is the intention of both the first-time buyer and the other person that the other person is not to take a beneficial interest in the house.*
- *The other person has been joined into the mortgage solely at the request of the lending institution for the purpose of providing additional security for the monies being advanced for the purchase.*
- *It is not intended that the other person will be contributing to the repayment of the mortgage in the normal course.*

Revenue indicated that it did not propose to seek a claw back of stamp duty where transfers had taken place before the press release which complied with either set of conditions outlined above and that there was no need for tax payers or their advisers to consult Revenue unless the circumstances surrounding the purchase were different to those outlined above. Revenue stated that the relief from stamp duty is intended to benefit only genuine first-time buyers and Revenue will continue to use its audit programme to ensure that there is no abuse of the relief.

*Published in
Law Society Gazette,
May 2005*



**STAMP DUTY
WHERE
CONSIDERATION
FOR A SALE OR
LEASE INCLUDES
VAT**

The Conveyancing Committee was recently asked by practitioners to ascertain the Revenue Commissioners' requirements in relation to the stamping of deeds where the consideration for a sale or lease includes VAT. Some practitioners had reported to the committee their experience of being asked by Revenue to produce VAT invoices or VAT receipts in circumstances where they had lodged transfers, conveyances or leases for assessment for stamp duty purposes accompanied by PD form and contract for sale and/or building agreement.

The committee has received confirmation from the Revenue as follows:-

“Sections 48 and 56 of the Stamp Duties Consolidation Act 1999 provide that the chargeable consideration for stamp duty purposes is to exclude any VAT chargeable under Section 2 of the VAT Act 1972 on the sale or lease.

“While it is not normal practice to seek VAT invoices or receipts where the above provisions apply evidence, in the form of invoices or receipts, has been sought where the VAT position has not been clear from the documentation furnished. Where the VAT position is clearly set out in the Contract for Sale and/or Building Contract there should be no necessity for production of any further evidence in support of the exclusion of VAT from the chargeable consideration. If the VAT position is not reflected in the Contracts and the exclusion of VAT is being claimed the solicitor should clearly outline the VAT position in a covering letter showing how the net of VAT consideration has been calculated. The production of VAT invoices or receipts should only arise where there is some element of doubt regarding the VAT treatment of the transaction.”

It is very important that the correct VAT position is outlined at the date of stamping to ensure that your client does not pay stamp duty on the VAT element of the price.

If members are encountering any difficulties in relation to the VAT treatment of a particular transaction the matter in the first instance should be raised with the management of the relevant Stamp Duty Office and if necessary they can revert to the committee which may be able to take the matter up with Revenue on their behalf if there continues to be a difficulty in this area.



Recent reports from practitioners that they have been requested by the stamp duty office to insert certificates in deeds that the aggregate amount or value of the consideration exceeds €... (the top threshold amount) have been raised by the committee with the Revenue. It has now been confirmed by the Revenue that where the consideration exceeds the top stamp duty threshold, currently €635,000 for residential property and €150,000 for non-residential property, it is **not** necessary to insert a certificate in the instrument certifying that the aggregate amount or value of the consideration exceeds the top threshold amount. In such cases, stamp duty is chargeable at the top rate of 9% on the consideration.

It has also been confirmed by the Revenue that where the instrument relates to both residential and non-residential property and the consideration for either the residential property or the non-residential property is less than the appropriate top stamp duty threshold, it is only necessary to include a certificate relating to the consideration for the property for which a lower stamp duty rate is being sought.

The Revenue has advised that if Law Society members are encountering any difficulties in relation to the above certification requirements, they should in the first instance raise the matter with the management in the relevant stamp duty office and, if necessary, revert to the committee who will take the matter up on their behalf with Revenue if there continues to be a difficulty.

**STAMP DUTY
CERTIFICATES
WHERE
CONSIDERATION
EXCEEDS THE
TOP STAMP DUTY
THRESHOLD**



**FLOOR AREA
COMPLIANCE
CERTIFICATES
ON CLOSING**

In its practice note to the profession in the March 2005 issue of the Gazette, the Conveyancing Committee recommended that purchasers' solicitors utilise special conditions in contracts for the purchase of new properties in order to ensure that floor area compliance certificates (FACCs) are available for closing of purchases in cases where the purchasers wish to avail of and are entitled to first time buyer stamp duty relief.

Notwithstanding the terms of the practice note, the committee has been advised that many solicitors acting for builders persist in resisting the inclusion of such special conditions. In fact it is reported that many builders' solicitors insist on including conditions that oblige a purchaser to complete a purchase whether or not the necessary FACC is in place at closing, in contradiction of what is expressed in the Finance Act certificate in the deed. There are two reasons why it is essential to obtain the FACC on closing:-

1. the purchaser can legitimately claim stamp duty relief where entitled to do so
2. the purchaser can be satisfied that the new house or apartment complies with "such conditions as may be applied by the Minister from time to time ... in relation to the standards of construction and with the requirements of the Building Regulations", as required by Paragraph 5 of S.I. 128 of 2004 – Housing (Floor Area Compliance Certificate) Inspection Regulations 2004.

The stamp duty relief for first time buyers of houses and apartments under 125 square metres is used by the Department of Finance and the Department of the Environment to police building standards for these smaller, so-called "grant-sized" dwellings and to ensure that builders' VAT and tax clearance (C2) position with Revenue is in order. The Department of the Environment has indicated that if FACCs are applied for in time there should normally be no problem in having them available for closing and, if a FACC has not issued, it is indicative of a substantive problem with the house or of the builder's position with Revenue not being in order. In either case, the FACC will not issue until the relevant problem has been rectified, and as these matters are not within the control of the builder's solicitor, it is not appropriate to either give or accept an undertaking on closing to furnish the FACC following closing.

If purchasers' solicitors do not insist on obtaining the FACC on closing

- (1) they will be legally obliged to stamp the deed within the statutory period and they must obtain the appropriate stamp duty monies from their clients in advance of closing in order to do so. This cannot be cured by an undertaking from the builder's solicitor to furnish a FACC following closing, because the Finance Act certificate to the effect that there was a FACC in existence at the date of the deed (i.e. the date of closing) cannot be used retrospectively in the deed



and

- (2) the purchaser is forced to complete the purchase of a house or apartment without the required confirmation that proper building standards have been observed. If remedial work is required by the Department before issuing the FACC this may, in any event, prove to be very inconvenient for both builder and purchaser if the purchaser is in occupation.

The use of conditions in contracts that would tend to result in purchasers losing their entitlement to stamp duty relief, or in forcing purchasers to close without confirmation that necessary building standards have been adhered to, is considered by the committee to be most unreasonable and should be resisted and discouraged by all practitioners for the reasons outlined above. Appropriate special conditions should be used to ensure that the FACC is available for closing.

FLOOR AREA COMPLIANCE CERTIFICATES ON CLOSING

(Contd.)

**INTERLINKED
CONTRACTS AND
STAMP DUTY**

The Conveyancing Committee would like to advise practitioners of the terms of a letter received from Revenue on the above topic:-

“Revenue's view was sought as to whether section 29/53 of the Stamp Duties Consolidation Act 1999 ('SDCA') would apply in the case of specific documentation where there was a combined contract/building agreement for a new house/apartment.

The documentation provided for a unitary contract for sale/lease of a site and the construction of a house/apartment on the site in consideration of a composite monetary payment. This contract is given effect to by means of a deed of transfer/lease of the site and the house constructed thereon for a recited consideration of the total amount paid for the site and the house.

Revenue have confirmed that, in the above circumstances, the deed of transfer/lease can be certified on the basis that section 29/53 of the SDCA does not apply on the basis that the deed of transfer/lease gives effect to the purchase of a house/apartment on its erection. Accordingly, where relief from stamp duty under section 92 SDCA is applicable, the relief will apply by reference to subsection (1)(a)(iii) of section 92 by means of the reduction of the consideration (other than rent) for the sale by 75%.

Where the house/apartment transaction is structured by means of a contract for the sale/lease of the site coupled with a separate building contract, the provisions of section 29/53 of the SDCA would apply. In these circumstances where relief under section 92 SDCA is applicable the charge to stamp duty will be based on the greater of (A) the consideration paid in respect of the site or (B) 25% of the aggregate consideration paid for the site and the building of the house/apartment as provided for in subsection (1)(a)(i) or (ii) of section 92.”

[Assistant Principal

Direct Taxes: Stamp Duty, CAT & CGT]



A solicitor acting for a developer of an apartment development will occasionally be instructed that the developer wishes to retain one or more units in the development. Typically this will occur in a situation where the developer is building a block of apartments that it is selling by way of long leases. It contracts in the usual way to transfer the freehold reversion and the common areas to the management company when the last lease is granted. During the course of development it decides to retain one or more apartments for itself. As the developer cannot grant a lease to itself in respect of the apartment(s) to be retained, issues arise as to how and when the freehold reversion and the common areas will be transferred and as to how the title to the retained unit(s) will be held by the developer and any subsequent purchasers from the developer.

In the past, the practice was for the unsold apartment(s) to be transferred, together with the freehold interest and the common areas, by the developer to the management company and the management company would grant a leaseback of the unsold apartment(s) to the developer. It was Revenue practice in the above circumstances not to pursue a charge to ad valorem stamp duty.

The Conveyancing Committee proposed to Revenue a new way of dealing with this matter and a set of precedent documentation was drafted which accompanied the proposal. Revenue confirmed that the new procedure will not give rise to a charge to ad valorem stamp duty in relation to the retained apartments on the basis that no beneficial interest passes by virtue of any of the instruments executed in connection with the new procedure.

The structure of the new procedure is that the developer grants a lease of the unit it wishes to retain to a nominee reciting the fact that this lease is being granted in trust for the developer, and in order to facilitate the transfer of the freehold reversion and common areas to the management company, and to enable the legal structure for the apartment block to be put in place. Immediately the lease is granted, the nominee/trustee executes a declaration of trust in favour of the developer, the developer transfers the freehold reversion of all the leases, including the one to the nominee/trustee, to the management company and finally the nominee/trustee assigns the lessee's interest under the lease of the unit intended to be retained back to the developer.

More detailed particulars of the exchange of correspondence between the committee and Revenue on the stamp duty treatment of this matter and outlining the new procedure, together with the **precedent documentation**, is available by logging on to the members' area of the Law Society website and clicking in turn on Society Committees, Conveyancing, and Precedent Documentation.

**RETENTION OF
UNITS IN
APARTMENT
DEVELOPMENT
BY DEVELOPER:
STAMP DUTY
TREATMENT AND
PRECEDENT
DOCUMENTATION**

*Published in
Law Society Gazette,
June 2006*



**STAMP DUTY
TREATMENT OF
RENT REVIEW
MEMORANDUM**

The Conveyancing Committee received a query from a practitioner as to whether or not stamp duty is payable on an increase in rent in a 35 year lease following a five year rent review. On an initial telephone inquiry with Revenue Stamps Branch it was indicated that much would depend on the type of the instrument in question.

The committee forwarded a sample of the type of rent review memorandum in question in order to ascertain Revenue's position on the matter. The sample rent review memorandum was in the following terms:-

BY THIS MEMORANDUM dated the

1. _____ (the "landlord")

and

2. _____ (the "tenant")

DESIRE TO RECORD that the rent payable under the lease dated the _____ and made between the landlord, of the one part, and the tenant, of the other part, relating to the premises,

_____ has been fixed in accordance with the provisions of the lease at € _____ per annum (_____ per annum) payable from the _____. Such rent is to be exclusive of any additional rent or rents referred to in the lease.

SIGNED for and on behalf of the landlord

_____ Date: _____

in the presence of:

SIGNED for and on behalf of the tenant

_____ Date: _____

in the presence of

Revenue has confirmed that a liability to stamp duty will not arise in connection with an increase in rent arising on foot of a rent review provision in an existing lease, and, accordingly, a stamp duty liability will not arise in the case of a memorandum recording the details of the rent fixed as a result of the rent review.