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Stamp Taxes Manual

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Chapter 1: An overview of Stamp Duty and Stamp Duty Reserve Tax

Overview

Who we are

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1.1 The Inland Revenue Stamp Taxes Office is the oldest part of the Inland Revenue and celebrated its 300th Anniversary in 1994. We were once responsible for collecting duty on a wide range of activities, covering matters as disparate as medicine bottle labels, playing cards, dice and cheques.

1.2 We are now responsible for the assessment and collection of Stamp Duty on documents used to effect the sale and transfer of interests in property, mainly land and buildings, and shares and other securities. We also administer the collection of Stamp Duty reserve tax arising on transactions carried out through electronic share dealing systems, notably CREST. Stamp Duty and Stamp Duty Reserve Tax together yield around £8bn per year.

1.3 We provide advice which is used to advise Ministers when they consider changes in the law.

1.4 In October 1999 the Stamp Office became a Business Stream of Capital & Savings Division known as IR (Stamp Taxes). It is under the control of a Business Director who reports to the Director of Capital & Savings.

Stamp Duty

1.5 Stamp Duty is under the care and management of the Board of Inland Revenue (See the Inland Revenue Regulation Act 1890 and Section 1 of the Stamp Duties Management Act 1891).

Stamp Duty is a tax on documents

1.6 Stamp Duty is a tax payable on documents which transfer certain kinds of property, and on some other legal documents. 'Property' means all items capable of being owned, not just land or houses, but not all transfers of property are dutiable. When property can merely be handed over (the legal term for this being 'passing by delivery'), for example a car, furniture etc., there is no charge to Stamp Duty because there is no document executed on which to charge the duty. Some property, such as houses, land, shares in a company and goodwill of a business, may be transferred only in a prescribed legal form.

1.7 The Stamp Act 1891 provides that documents liable to Stamp Duty may not be registered or used unless they have been duly stamped. Since owners want to be able to demonstrate their title to property they are effectively required to have their document stamped if they want anyone, including a Court, to take notice of it. These are the documents we deal with and upon which we impress stamps.

Rates of duty

Fixed and Ad Valorem duties

1.8 The duties now imposed are of 2 kinds; fixed duties or ad valorem. A fixed duty does not vary with the content of the document. Ad valorem duty, however, varies according to the amount or value of the consideration paid, or obligation incurred, or the value of the property affected by the document in question. Some documents are not liable to any Stamp Duty or are liable to duty at the “nil” rate. The types of document chargeable with Stamp Duty, particularly those liable to fixed duties, have been progressively reduced and instead are subject to exempt instrument regulations. Judicial authority for many points of principle and interpretation of Stamp Duty law can, however, only be found in cases concerning duties long abolished.

1.9 For a document to be liable to Stamp Duty it must come within one of the various provisions of the Finance Act 1999. The main charges nowadays are on -

- sales (Conveyances or Transfers on Sale);
- leases (ie grant of a new lease or property);
- other transfers not involving a sale - these are charged at the fixed duty rate of £5. The main function of the £5 charge is to protect the ad valorem duty on sales by ensuring that the relevant categories of document have to be sent in for stamping, so that we can spot those that are actually sales.

Duty on share sales

1.10 For sales, there are different rates of duty for shares and for other property. Share transfers are normally charged at 0.5% of the price, with no threshold. Normally there is no charge on the issue, as distinct from the transfer, of shares (unless they are bearer shares, for which there are separate rules - See Chapter 8). There is a 1.5% charge on the issue or transfer of shares into depositary receipt schemes and “clearance services”. These are arrangements under which the shares themselves are held by a depositary or nominee (often an American bank) and

interests in them (usually in the form of depository receipts) are traded by investors. Before 1986 the use of depository receipts was becoming a means of avoiding duty on shares. The 1.5% charge is a kind of season ticket, reflecting the fact that subsequent transfers of the receipts themselves are not liable.

The chargeable consideration

1.11 In general ad valorem Stamp Duty is levied only if the consideration on sale is in the form of cash, debt or securities but since 1994 this has been extended, in the case of duty on land transfers, to consideration in the form of any property. Following the Finance Act 2000, a transaction structured as a sale of non chargeable property, such as gilts, for which land or an interest in land forms all or part of the consideration, is deemed to be a sale of the land or interest in land at market value.

Gilts

1.12 Gilts and most loan capital are exempt from duty except for loan capital which is in some way equity-related, eg convertible into equity or carrying a return related to the profits of a business, unless the return bears an inverse relationship to results.

Stamp Duty threshold in sales of land or property

1.13 For sales of other property there is a scale of rates depending on the price paid. It is not a “slice” scale. A single rate is charged on the total price. The rate is nil on sales for £60,000 or less. The £60,000 point is normally referred to as the “threshold”. Sales over £60,000 but not over £250,000 are charged at 1%; sales over £250,000 up to £500,000 are charged at 3%; and sales over £500,000 are charged at 4%. In all cases the amount which results is rounded up, if necessary, to the nearest multiple of £5.

Leases

1.14 On the grant of a new lease, duty is charged by reference to the premium paid (if any) and the average annual rent. The premium is charged at the same rate as a sale but if the rent is more than £600 a year the premium is liable to duty even though it might be £60,000 or less. So if the rent is significant the £60,000 threshold does not apply. Rent is charged by reference to a separate scale of rates which depend on the length of the lease. (See Chapter 5 for full instructions regarding the assessment of Leases.)

Administration

Unstamped documents

1.15 Documents are sent to a Stamp Office (or brought to the public counter) for stamping. An unstamped document cannot be relied upon nor can it be used for legal purposes, such as registering a transfer of ownership or production as evidence in Court, except in a criminal case. (Section 14(4) Stamp Act 1891)

1.16 There are penalties for presenting a document for stamping more than 30 days after the date it was executed (or after the date on which it was first brought into the UK, if it was executed overseas). There is also interest payable if the Stamp Duty due on a document is not paid within 30 days of the date the document was executed, regardless of where it was executed. See Chapter 3 for full instructions on penalties and interest.

Adjudication

1.17 There is a procedure known as “adjudication” (See Chapter 6 for full instructions regarding adjudication) under which the Board can be asked to give an opinion on the liability to duty of any document which has been executed. The duty can then be calculated and our decision notified to the applicant, and there is a right of appeal to the Courts against our decision. Apart from the adjudication process, there are no powers to assess Stamp Duty or enforce its collection thus we do not have assessments in the income tax sense. We rely on the general legal disabilities which follow from leaving a document unstamped. The position is quite different where Stamp Duty Reserve Tax is involved.

Stamp Duty Reserve Tax

Paperless transactions in shares

1.18 Stamp Duty depends upon there being a document which can be stamped. It is not apt to cope with paperless transactions. For that reason, Stamp Duty Reserve Tax (SDRT) was introduced in 1986 to cater for paperless transactions in shares. At the time, company law required a paper transfer document for the registration of a transfer of ownership of shares but there were some transactions which did not produce a paper document. In particular transactions within the same Stock Exchange accounting period escaped Stamp Duty because there was no need for a transfer document.

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1.19 Stamp Duty Reserve Tax (SDRT) on purchases of shares is an integral part of the overall Stamp Duty regime, running alongside the Stamp Duty charge on share transfers.

CREST

1.20 In 1986 SDRT did no more than fill a few gaps. With the introduction of the CREST system for electronic share transfers SDRT has grown in importance very significantly and the greater part of the yield from share transfers now comes in the form of SDRT, most of which is collected through CREST. In order to cater for the introduction of CREST, the Treasury made company law regulations relaxing the general rule that a transfer must be made by a paper document. The regulations permit a paperless transfer of shares to be registered, provided it is made through an electronic system approved by the Treasury under the regulations. A number of changes to the Stamp Duty and SDRT rules were made in the Finance Act 1996 to cater for electronic transfers. The SDRT regulations were amended to impose an obligation on the operator of CREST (or any other Treasury approved electronic transfer system) to collect SDRT on transfers going through its system.

The scope of the charge

1.21 The principal charge to SDRT, under section 87 FA 1986, is on agreements to transfer “chargeable securities” for consideration in money or money’s worth. SDRT applies in place of Stamp Duty in cases where the agreement is not completed by an instrument of transfer (ie by a stock transfer form stamped with ad valorem duty). The tax is charged at 0.5% on the amount or value of the consideration given for the transfer. Unlike Stamp Duty, there are no fixed duties under SDRT and no rounding.

1.22 If there is no consideration in money or money’s worth, there is usually no SDRT charge. There are provisions to prevent a double charge. Thus SDRT is charged on any agreement to transfer shares, but the charge is cancelled if a transfer document is produced and stamped. If it is exempt from Stamp Duty it will also be exempt from SDRT unless there is a specific provision to the contrary, as there is in some cases.

1.23 Chargeable securities, defined in section 99 FA 1986, include shares in UK companies and shares in foreign companies with a register in the United Kingdom, interests in, rights arising out of and options to acquire shares, and units in most unit trusts.

1.24 Securities which are exempt from Stamp Duties, such as gilts and loan capital, are exempt from SDRT. There are also exemptions for charities and for certain transactions in the financial markets.

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1.25 There is a special higher rate SDRT charge of 1.5% in relation to the issue or transfer of securities into depository receipt schemes and clearance services.

Administration

1.26 The responsibility for paying SDRT to the Inland Revenue rests with the “accountable person” as defined in the SDRT Regulations 1986 (SI 1986 No 1711). This is usually the broker acting for the purchaser of the shares.

1.27 SDRT is under the care and management of the Board of Inland Revenue (See Section 86(2) of the Finance Act 1986). It is administered from SDRT Operations, Customer Service in Worthing (Ground Floor, East Block, Barrington Road, Worthing, West Sussex, BN12 4SE). However, audits of CREST participants and other share dealers are carried out by SDRT Operations, Assurance, also based in Worthing.

SDRT in respect of unit trust transactions

1.28 The Finance Act 1999 introduced new legislation in respect of unit trusts. The new legislation applies to transactions on or after 6 February 2000. For full instructions in respect of this legislation and its application see Chapter 15.

Scope

Section 14 of the Stamp Act 1891

1.29 The effect of Section 14(4) of the Stamp Act 1891 is that an unstamped document cannot be used for legal purposes (except as evidence in a criminal action) if it is executed in the UK or if it relates to property in the UK or anything done or to be done in the UK such as registration of a transfer of ownership by a Land or Company Registrar.

Territorial scope of SDRT

1.30 SDRT applies to shares in UK companies and to shares in foreign companies if they are held on a UK register or if they are “paired” with UK shares. It applies whether the deal is done in the UK or overseas and whether the people involved are UK resident or not. The 1.5% charges on depository receipt schemes, etc., apply to UK shares, but not to foreign shares even if they are on a UK register.

Reliefs

1.31 There are various reliefs from Stamp Duty or SDRT or both. For example:

- transfers and leases to charities;
- transfers to Registered Social Landlords
- group relief (Stamp Duty only) for transfers and leases between members of a group of companies;
- relief for certain company reconstructions without change of ownership;
- relief for share purchases by “intermediaries” who are members of an EEA exchange or a recognised foreign exchange;
- relief for on-exchange stock lending transactions;
- temporary relief upon the amalgamation of an authorised unit trust and an open-ended investment company; and
- relief upon the conversion of an authorised unit trust into an open-ended investment company.

The history of Stamp Duties

Origins

1.32 The existence of a form of Stamp Duty may be traced back to Roman times when it was decreed by Emperor Justinian in the middle of the 6th century that there must be certain inscriptions on legal forms, with a penalty for defacing any of them.

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1.33 Most historians agree that Stamp Duty, in its current form, originated in the Netherlands in 1624 as a result of a competition for a new form of tax. The winning scheme required that certain legal documents should be written on stamped paper.

1694

1.34 This concept was first introduced into this country in 1694 in the reign of William & Mary by “an Act for granting to Their Majesty’s several duties on Vellum, Parchment and Paper for 4 years, towards carrying on the War against France”.

1.35 Although initially meant to be imposed for only 4 years to finance the war against Louis XIV the duties were instead continued and increased from time to time by various statutes.

1.36 The duty ranged from 1 penny to 40 shillings on a wide variety of documents including insurance policies, documents in court proceedings, grants of honour, grants of probate and letters of administration. Yield was then about £5,000 per annum.

1765

1.37 The attempted imposition of Stamp Duties in America was met with opposition throughout the colonies. Protest meetings were held and the outcry of “no taxation without representation” was raised. The arrival of ships bearing consignments of stamped papers was attended by major rioting, the most well known being the Boston Tea Party.

1793

1.38 Until 1793 Stamp Duty was not changed significantly, although the scope was extended to some extent from 1779 onwards, and inflation steadily increased the yield. 1793 saw the first introduction of ad valorem (ie according to value) duty on Grants of Probate and Letters of Administration.

1797

1.39 In his Budget speech for 1797, Pitt described Stamp Duty as a tax “easily raised, widely diffused, pressing little on any particular class, especially the lower orders of society, and producing a revenue safely and expeditiously collected at a small expense” which he said had not undergone any considerable increase for some years. He then promptly proceeded to virtually double it!

1808

1.40 Pitt also tried to widen the base of ad valorem duty, in particular in relation to transfers of property, but it was not until 1808 that ad valorem duty was first imposed in respect of conveyances on sale and a few other documents. At the same time the duties in Scotland and England were equalised. Duties in Ireland were brought in line in 1842.

1815

1.41 Under the Stamp Act 1815 a further consolidation took place and ad valorem duty was extended to more categories of documents. The yield for that year was approximately £3 1/4 M.

1825

1.42 In 1825 William Wordsworth was appointed Distributor of Stamps for Westmoreland.

1840

1.43 The first adhesive postage stamp, the famous “Penny Black” was introduced in 1840 at the suggestion of Rowland Hill. With the introduction of the new postal system the responsibility for supplying the new stamps fell on the Stamps and Taxes Department.

1842

1.44 In 1842 the stamps payable in Ireland were assimilated to those payable in the rest of the UK. The period 1850 to 1891 saw an easing of Stamp Duty in what was a more peaceful and prosperous period.

1870

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1.45 In 1870 three statutes relating to Stamp Duty were passed: the first, the Stamp Act 1870 being a consolidation Act imposing various Stamp Duties, the second, The Stamp Duties Management Act 1870 consolidating and amending the law relating to the management of Stamp Duties, and the third, the Inland Revenue Repeal Act 1870, repealing earlier statutes relating to Stamp Duty.

1891

1.46 All these Acts were in turn superseded by the Stamp Duties Management Act 1891 and the Stamp Act 1891 which, with the various Finance Acts and Revenue Acts amending them and various miscellaneous Acts imposing duties and granting exemptions, constitute the present law on the subject of Stamp Duties.

1923

1.47 Responsibility for the production of banknotes passed from the Department to the Bank of England.

1946

1.48 Stamp Duty was introduced for dealing with transfers of units in unit trusts.

1947

1.49 An exemption was introduced for the transfer of shares in government or Parliamentary stocks, commonly known as gilts.

1963

1.50 Responsibility for the production of postage stamps passed to the Post Office.

1967

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1.51 An exemption for bearer instruments in foreign currencies was introduced to assist companies borrowing money overseas by means of issuing securities.

1971

1.52 The Stamp Duty under the Head of Charge Mortgage, Bond, Debenture and Covenant was abolished. Also the duty on insurance other than life assurance and most hire purchase agreements was abolished. The main reason for this was to remove red tape and as a help to the mortgage and housing market.

1976

1.53 The duty on the transfer of most loan capital was abolished to encourage the bond markets.

1986

1.54 The 1986 Finance Act introduced Stamp Duty Reserve Tax. From 27 October 1986 the date of the “big bang” the charge was imposed on Stock Exchange “closing” transactions, certain transactions where no document was used and certain transactions exempt from Stamp Duty. The old “jobbers” relief was replaced by a general relief for purchases by market makers and a relief for purchases made by broker/dealers matched by sales in the following seven days.

1.55 At the same time the rate of ad valorem Stamp Duty on share transfers was reduced from 1% to 0.5% and the 1.5% season ticket entry charges on ADR’s and clearance services introduced.

1.56 The Stamp Duty relief upon company reconstructions which had been in place since 1927 was abolished and replaced by three new, more stringent corporate reorganisation reliefs.

1987

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1.57 The Stamp Duty (Exempt Instruments) Regulations 1987 were enacted to allow certain documents previously liable to only fixed duty to be certified as falling within one of a number of categories in the Regulations. This then rendered them exempt from Stamp Duty and there was no longer any need to send them to the Stamp Office.

1989

1.58 The duty on life insurance policies was abolished.

1991-92

1.60 Between 20 December 1991 and 19 August 1992 there was a temporary rise in the Stamp Duty threshold on the transfer of property to £250,000, sometimes referred to as the “Stamp Duty holiday”.

1996

1.61 CREST took over from the Stock Exchange’s Talisman system, most shares becoming held and settled in dematerialised form within it. As a result, most of the duty on share transactions switched from being levied as Stamp Duty (on documents used to convey shares) to SDRT (on agreements to transfer shares). The territorial scope of SDRT was clarified.

1997

1.62 The Stamp Duty Reserve Tax (Amendment) Regulations 1997, together with other Finance Act 1997 legislation, were introduced to deal with developments in market structure concerning share transfers on investment exchanges. The legislation replaced Market Maker and Broker/Dealer relief with Intermediaries Relief. Significant changes were made to deal with developments in the market and also reflected the introduction of CREST.

1997 to 1999

1.63 Multiple Stamp Duty thresholds were created (except for shares) and different rates of duty applied to each. Higher rates of Stamp Duty were introduced for properties above £250,000.

1999

1.64 A wide ranging package of compliance measures was introduced including provisions for the payment of interest on Stamp Duty paid late and on repayment of overpaid duty and a more modern penalty regime. All fixed duties were increased to £5. Ad valorem duties were amended to be calculated as a straight percentage figure then rounded up to the nearest £5. Stamp Duty in respect of unit trusts was abolished from February 2000 to be replaced by a modern SDRT system.

2000

1.65 Another wide ranging package of measures was introduced which included the removal of duty on short term leases at low rents, the abolition of duty on the transfer of Intellectual Property and the introduction of a new relief for transfers and leases to Registered Social Landlords. The definition of a group for the purposes of relief between associated companies was aligned to the rules pertaining to Corporation Tax. New provisions were introduced for transfers of land to a connected company and power was granted to the Treasury to make in year amendments to Stamp Duty law without a Finance Act being passed. These powers do not extend to changes in the rates of duty or amendments to the thresholds.

2001

1.66 New reliefs were introduced for land and property in designated Disadvantaged Areas and All-Employee Share Ownership Plans.

Chapter 2: Stamp Duty: general principles

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Chapter 2: Stamp Duty: general principles

The administration of Stamp Duty

Organisation of Stamp Taxes

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2.1 Stamp Taxes is organised into a number of local Stamp Offices providing a full range of Stamp Duty services, at Birmingham, Bristol, Edinburgh, Belfast, London, Worthing, Manchester and Newcastle. Most of these offices provide a postal and public counter service except Worthing, which only provides a postal service, and London, which only provides a public counter service.

2.2 There are also a number of specialist offices within Stamp Taxes. These are the Engineering Section in London, SDRT operations in Worthing and a small Head Office in Nottingham.

2.3 Local Stamp Offices are in general headed by an Office Manager who is assisted by a Process Manager, a Technical Adviser and a Business Adviser.

2.4 Although there is interaction between Stamp Duty and Stamp Duty Reserve Tax, in general the SDRT Operations, Customer Service in Worthing deal with the collection, receipting and repayment of SDRT.

The payment and denoting of Stamp Duty

2.5 Stamp Duty is paid on documents and Section 2 of the Stamp Act 1891 requires the payment of Stamp Duty to be denoted by impressed stamps and not by means of adhesive stamps. A document liable to Stamp Duty must be brought to, or posted to, Stamp Taxes for those stamps to be impressed. A document which has had the proper amount of Stamp Duty paid and impressed upon it is known as a “duly stamped” document.

Section 14 of the Stamp Act 1891

2.6 Stamp Taxes has no direct power of enforcement relating to Stamp Duty, though it does for SDRT. However, Section 14(4) of the Stamp Act 1891 provides that an unstamped document cannot be relied upon nor can it be used for any purpose whatsoever except production in a criminal case. This means that if a document is needed for any legal purpose, such as registering a transfer of ownership or production in a civil Court action, it must first be stamped.

2.7 Section 14 of the Stamp Act 1891 is further supported by Section 17 of the Stamp Act 1891 which provides for a maximum £300 penalty for anyone who registers or records a document which is not “duly stamped” within the meaning of Section 14(4).

Calculating the duty payable

2.8 It is sometimes remarked that the assessment and stamping of a document is provisional unless and until it is formally adjudicated under the terms of Section 12 of the Stamp Act 1891. In practice, Company Secretaries, Public Servants and generally all persons having responsibility for recording and registering documents are prepared to accept the assessment of Stamp Taxes without the need for formal adjudication unless it is specifically required by legislation.

2.9 The Stamp Duty liability of a document must be carefully considered and must always be supported by the authority of the Stamp Act and its amending Acts. If a customer objects to our calculation and requires a more formal opinion the document must be lodged for adjudication. (See Chapter 6 for full adjudication instructions) If a customer disagrees with our view then he can request a formal decision on adjudication in respect of the amount of Stamp Duty due on an executed document.

SDRT Operations, Customer Service Worthing

2.10 Where a transaction relates to stocks and shares but no Stock Transfer Form or other instrument of transfer is produced the agreement to transfer the securities is likely to be liable to Stamp Duty Reserve Tax in particular where the deal is settled through CREST. Where the SDRT is not paid through CREST, the customer is required to send full details of the transaction to the SDRT Operations, Customer Service in Worthing together with payment of the SDRT. Once payment is received an official receipt for the payment is issued and any interest on late payment calculated and requested.

2.11 If, subsequently, a document for exactly the same transaction is produced and stamped, thereby cancelling the charge to SDRT, the SDRT will be repaid, in most cases with interest. The customer must retain the SDRT receipt to be able to claim repayment if appropriate.

Court Judgements

2.12 Over the years there have been numerous decisions by the Courts about the scope and application of the legislation. Many of the Court cases concerned are listed in Appendix B and some are also referred to in the relevant part of this Manual.

Scots Law

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2.13 The law on Stamp Duty in Scotland is the same as that elsewhere in Great Britain, but its application may differ because of differences in Scots Law, in particular in relation to property. These differences are highlighted where appropriate in this Manual. The legislation for Northern Ireland before 1974 was separate but Stamp Duty law in Northern Ireland since 1974 is exactly the same as that in the rest of the United Kingdom. Any differences in Northern Ireland are mentioned where appropriate in this Manual.

Documents engrossed in languages other than English

2.14 Where a document is in a foreign language **a copy** should be sent for translation direct to:

Inland Revenue
Foreign Intelligence Section
Duchy Rooms
Somerset House
London
WC2A 1LB

The original document should be kept to await the translation.

2.15 Documents in Welsh may be received in any Stamp Office. If a translation is needed **a copy**, with a brief note requesting a translation should be sent direct to:

Inland Revenue
Regional Office Wales
Welsh Language Unit
Ty Glas
Llanishen
Cardiff
CF14 5TS

The telephone number is 02920 326636

The original document should be kept to await the translation.

All the facts and circumstances to be set out in a document

2.16 When presenting a document for stamping a Customer should ensure that all the facts and circumstances affecting its liability to duty, or the amount of duty chargeable, are “fully and truly set forth” in the document (Section 5 of the Stamp Act 1891). Following Section 5, Stamp Taxes is entitled to ask for copies of contracts, valuations, supporting documents and other background material which it considers necessary to calculate the duty. Where a document is to be adjudicated Stamp Taxes’ right to require evidence to be furnished is reinforced under Section 12(2) of the Stamp Act (see Chapter 6).

Liability of a document under more than one Stamp Duty provision

2.17 It occasionally happens that a document is liable to duty under more than one Stamp Duty provision. Section 4 of the Stamp Act 1891 provides that where an instrument relates to several distinct matters it is to be separately and distinctly charged. Section 4 also provides that where there are two distinct considerations in a document, one chargeable with ad valorem duty, the other separately chargeable the duty is also to be separately charged.

Denoting stamps

2.18 If the duty chargeable on a document (X) depends on another document (Y) being stamped and both documents are presented to Stamp Taxes, the duty paid on document Y may be denoted on document X under the provisions of Section 11 of the Stamp Act 1891. A special denoting stamp is impressed on document X to show the duty which was paid on document Y. It has a blank space in the centre in which the duty paid on document Y is written in manuscript.

2.19 Denoting stamps are also used to show or denote

- on a duplicate or counterpart document the duty stamped on the original (as required under Para 19 of Sch 13 FA 1999)

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- on a transfer executed following an agreement for sale charged under Paras 7, 8 and 9 of Sch 13 FA 1999 that ad valorem duty was paid
- on a lease which was granted in conformity with an agreement for lease stamped under Para 14 of Sch 13 FA 1999 that ad valorem duty was paid on the agreement. (Section 240(2) of the Finance Act 1994)
- bearer instrument duty on bearer instruments stampable on issue (under Sch 15 of the Finance Act 1999). The bearer instrument denoting stamp is only available in Bush House.

The fixed stamp duties

2.20 All fixed duties are £5. A £5 fixed duty is charged on a lease of a furnished dwelling-house for a definite term of less than a year if the rent for the term exceeds £5000. A fixed duty of £5 is also charged on leases which are not liable to ad valorem duty.

2.21 There are various provisions under which a £5 fixed rate of duty is chargeable. The more common ones are as follows:

- **Conveyance or transfer not on sale**

i) a change in beneficial ownership but for no consideration in money or money's worth nor under Section 57 of the Stamp Act 1891, ie a gift. Such a Transfer may therefore be exempted from duty if it is given a category L certificate under the Stamp Duty (Exempt Instruments) Regulations 1987. (See paragraphs 2.23 to 2.37 below)

ii) no change in beneficial ownership. Examples of transfers involving no change in beneficial ownership include a transfer from a beneficial owner to a nominee, from a nominee to the beneficial owner and from one nominee to another nominee of the same beneficial owner.

- **Disposition not on sale**

This is a type of Scottish document and is broadly as noted above except that it does **not** apply to transfers described under (ii) above. This description may apply to A to A transfers of shares in Scottish companies provided that no consideration is given.

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- **Declaration of any use or Trust**

A Declaration of Trust is chargeable under Para 17 of Sch 13 FA 1999 provided that it merely declares the trust(s) and therefore does not act as a transfer of property; whereas a “Declaration of Trust” which amounts to a Conveyance on Sale is chargeable to ad valorem duty. A Declaration of Trust which establishes a trust and gifts property is charged £5 fixed duty as a Declaration of Trust and £5 as a gift, but it may be exempted from the £5 duty as a gift if given a category L certificate under the Stamp Duty (Exempt Instruments) Regulations 1987. (See paragraphs 2.23 to 2.37 below). A Trust Deed which creates or records a unit trust is also chargeable to £5 duty under this Head of Charge.

Declarations of Trust in Policies of Life Insurance, for example where the beneficiary declares a trust in favour of a relative in respect of the future benefits under the policy, are exempt from the £5 fixed duty if they contain a category N certificate under the Stamp Duty (Exempt Instruments) Regulations 1987. (See paragraphs 2.23 to 2.37 below). This applies to documents executed on or after 1 October 1999.

- **Partition or division**

A Deed of Partition is chargeable to £5 fixed duty under Para 21 of Sch 13 FA 1999 provided that any consideration for equality given, or agreed to be given, does **not** exceed £100. Any consideration for equality exceeding £100 renders the document liable to ad valorem duty.

- **Release or Renunciation of any other kind**

Provided no consideration is given, a Release or Renunciation of property is chargeable to £5 fixed duty under Para 22 of Sch 13 FA 1999. If consideration is given, however, the document is charged to ad valorem duty. Note that certain documents often called a Release may be liable to ad valorem duty and that close scrutiny may be needed.

- **Surrender of any kind not chargeable as a conveyance on sale**

Where a tenant pays consideration to the landlord for agreeing to take a surrender of the lease, or a lease is surrendered for **no** consideration, the surrender document is

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chargeable to £5 fixed duty. We do not charge ad valorem duty because the property and the consideration are both passing the same way. If, however, the landlord pays consideration to the tenant for agreeing to surrender the lease ad valorem duty is payable if there is a document because the tenant has transferred his leasehold interest to the landlord for consideration.

- **Duplicates and counterparts**

Provided that the original or principal document has been fully stamped, the duplicate or counterpart is chargeable to £5 fixed duty or, if less, the actual duty paid on the original document. It is very important to get proof that the original has been stamped ad valorem before stamping a duplicate with only £5 fixed duty and the duplicate denoting stamp.

The 'Transfer Passed for £5' Stamp

2.22 The 'Transfer passed for £5' stamp is used **only** on pre-paid stock transfer forms. These documents are stamped with £5 duty and are impressed with a 'pre-paid' rubber stamp to enable Registrars to identify them. We apply the 'Transfer passed for £5' stamp to pre-paid transfers which are represented at the request of Registrars and which we are satisfied are not liable to ad valorem duty.

The Stamp Duty (Exempt Instruments) Regulations 1987

2.23 These Regulations, which came into force on 1 May 1987, are contained in a Statutory Instrument (SI 1987/516) which was made under Section 87(2) of the Finance Act 1985. A further category of exempt instrument, Category N for Declarations of Trust in life policies, was added in 1999, as mentioned in paragraph 2.21 above. Under the Regulations a wide range of documents are exempted from £5 fixed duty, provided that the particular certificate is contained in the document. A document **not** containing the necessary certificate is **not** duly stamped until the £5 fixed duty (and in some cases an adjudication stamp) or the ad valorem Stamp Duty has been impressed. A document which is properly certified does not need to be referred to Stamp Taxes and may therefore be sent direct to the Registrar etc. to process.

The certificate should

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- be included as part of the document or endorsed upon it or, if prepared separately, be firmly attached to the document
- be signed by the transferor (or grantor) or his/her solicitor (or authorised agent, provided he/she is aware of the details on the certificate and states the capacity in which a certificate is given)
- state the relevant category; and, where the certificate is on an attached sheet
- give a full description of the document.

2.24 If it is clear that an uncertified document could have been given a valid certificate Stamp Taxes will give the customer the opportunity to add a certificate.

2.25 The suggested wording is....."**I/We hereby certify that this instrument falls within categoryin the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987**".

2.26 These are the categories of transactions for which certified documents are exempt under the Regulations:

- A** The vesting of property subject to a trust in the trustees of the trust on the appointment of a new trustee, or in the continuing trustees on the retirement of a trustee.
- B** The conveyance or transfer of property the subject of a specific devise or legacy to the beneficiary named in the will (or his nominee).
- C** The conveyance or transfer of property which forms part of an intestate's estate to the person entitled on intestacy (or his nominee).
- D** The appropriation of property within Section 84(4) of the Finance Act 1985 (death: appropriation in satisfaction of any interest of surviving spouse and in Scotland also of any interest of issue).
- E** The conveyance or transfer of property which forms part of the residuary estate of a testator to a beneficiary (or his nominee) entitled solely by virtue of his entitlement under the will.

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- F** The conveyance or transfer of property out of a settlement in or towards satisfaction of a beneficiary's interest, not being an interest acquired for money or money's worth, being a conveyance or transfer constituting a distribution of property in accordance with the provisions of the settlement.
- G** The conveyance or transfer of property on and in consideration only of marriage to a party to the marriage (or his nominee) or to trustees to be held on the terms of a settlement made in consideration only of the marriage.
- H** The conveyance or transfer of property within Section 83(1) of the Finance Act 1985 (transfers in connection with divorce etc.).
- I** The conveyance or transfer by the liquidator of property which formed part of the assets of the company in liquidation to a shareholder of that company (or his nominee) in or towards satisfaction of the shareholder's rights on a winding-up.
- J** The grant in fee simple of an easement in or over land for no consideration in money or money's worth.
- K** The grant of a servitude for no consideration in money or money's worth.
- L** The conveyance or transfer of property operating as a voluntary disposition inter-vivos for no consideration in money or money's worth nor any consideration referred to in section 57 of the Stamp Act 1891 (conveyance in consideration of a debt etc.).
- M** The conveyance or transfer of property by an instrument within Section 84(1) of the Finance Act 1985 (death: varying disposition).
- N** The Declaration of Any Use or Trust of or concerning a life policy, or property representing, or benefits arising under, a life policy.

Notes on particular instruments under the Regulations

2.27 A transfer in satisfaction of a general legacy of money (Section 84(4) Finance Act 1985) is **not** in category B, but may be in category D.

2.28 Transfers in satisfaction of the transferee's entitlement to cash in an estate where the total value of the residuary estate exceeds that sum are **not** in category C but may be in category D.

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2.29 Category D covers the dispositions and appropriations described in Section 84 Finance Act 1985.

2.30 A transfer to a spouse after marriage is **not** within category G unless it is made pursuant to an ante-nuptial contract, but it may fall within category L.

2.31 A document may only be certified under category H if it recites the parties to the marriage and no other party is brought into the transaction.

2.32 Deeds of family arrangement where consideration comes from outside the estate do **not** fall within category M and are liable to ad valorem duty.

2.33 Category L does **not** include transfers subject to or in consideration of a debt. If the proportion of debt being assumed does not exceed £60,000, £250,000 or £500,000 a certificate of value may be inserted in the document (see Chapter 4). A category L certificate and a certificate of value **cannot** both validly appear in the same document. Customers will frequently overlook the fact that where a gift is made subject to an existing legal charge for which the donee or transferee becomes solely or partly liable, there is an element of sale under Section 57. The consideration is the assumption of liability for the appropriate proportion of the outstanding mortgage amount as at the date of the deed. It makes no difference whether the existing mortgage is increased or whether it is discharged and replaced by a fresh mortgage the Stamp Duty charge arises in both cases. The position is different in Scotland. See the section of Chapter 4 dealing with Section 57.

2.34 Documents which would fall within categories D, L, or M but which are **not** properly certified need to be adjudicated (Sections 82(5) and 84(9) Finance Act 1985 refer).

2.35 Any transfer of shares from the trustees of an authorised profit sharing scheme to the employee entitled thereto may be certified under category F and exempted accordingly. If following an employee's request, however, the trustees buy his/her shares and appropriate them to another employee, then the employee's letter of direction is chargeable to ad valorem duty or SDRT is payable.

2.36 Category N includes declarations of trust made after an insurance policy has been issued as well as those which are effected as part of the process of bringing the policy into existence. It includes declarations of trust over individual life policies and individual pension insurance arrangements such as personal pensions and retirement annuity contracts. It covers declarations of trust over more than one policy and policies relating to more than one life.

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2.37 Category N does not apply to documents creating trusts governing occupational pension schemes, pure accidental death policies nor declarations of trust establishing executive pension plans.

Exemptions from Stamp Duty in Particular Acts

2.38 Exemptions from duty are granted in various Finance Acts and in certain other Acts. Among the other Acts which give special exemptions are the Barracks Act 1890, the Building Societies Act 1986, the Clergy Residences Act 1776, the Chevening Estate Act 1959, The Diplomatic Privileges Act 1964, the Friendly Societies Act 1992, The Government Annuities Act 1929, the Highways Act 1980, the Merchant Shipping Act 1894 and the National Heritage Act 1980. Certain documents which are exempt from duty, such as those exempt under Section 129 of the Finance Act 1982 (“exemption for Charities”) are not regarded as duly stamped unless they have been presented to Stamp Taxes for adjudication. For further notes see Chapter 6, Adjudication and Stamp Duty Relief Claims.

Production of documents under Section 28 of the Finance Act 1931

2.39 Section 28 of the Finance Act 1931, as amended, requires that certain documents be 'produced' to the Commissioners of Inland Revenue before they may be considered to be duly stamped. We show that a document has been produced to us under that legislation by means of the impression in red of a hand-held rubber stamp. These documents consist of transfers of freehold land and grants and assignments of leases of land for 7 years or more. Documents which are required to be produced under Section 28 cannot be admitted in evidence without the produced stamp, even if adjudicated (Section 28(4)), and the stamp is required even if no duty is payable.

2.40 Documents with a £60,000 Certificate of Value sent direct to the Land Registry still need to be produced, although not to us. The PD form should be sent direct to the Land Registry with the document.

The particulars delivered form

2.41 Particulars delivered form L(A)451, and its Scottish equivalent LV(A) Scotland, should be completed by the Customer and sent with any document which is produced under Section 28 of the Finance Act 1931. In addition the form is to be completed, and sent direct to the Land Registry, where a document no longer needs to be produced following Section 89 of the Finance Act 1985 and the Stamp Duty (Exempt Instruments) Regulations 1985 (SI 1985/1688). Section 244/5 Finance Act 1994 impose the same requirements to land transfers in Northern

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Ireland. These documents provide information about land values, for use by the District Valuer. Copies are available on the Inland Revenue website.

2.42 The particulars delivered form should be completed and signed by the purchaser, or on his/her behalf, with full details of the document, the vendor(s), the property, the interest in land concerned and the price/rent paid. The form also contains boxes for information about other matters, such as any debt released, periodical payment covenanted to be paid and any land exchanged. If they do not apply the customer should enter 'Nil', not leave the box blank.

2.43 A plan should be provided if it is referred to on the form or if the description of the land is insufficient to identify it accurately.

Instruments that require the produced stamp

2.44 The following instruments all require production under the legislation:

- Any conveyance or transfer on sale of the fee simple of land or minerals.
- The grant of any lease of land or the grant of any mining licence, lease or rights, for a term of seven or more years.
- Any agreement for a lease for a term of seven or more years whether or not liable to ad valorem duty.
- The renewal or extension of a lease for a term of seven years or more.
- Duplicate transfers and leases where the original has been stamped as produced.

Instruments that do not require the produced stamp

2.45 None of the following instruments require production under the legislation:

- A conveyance or transfer where the consideration is nil or expressed by way of gift or natural love and affection.

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- An assignment or surrender where the consideration is nil.
- A lease of any sort that is for a term of less than seven years.
- A deed of easement or deed of grant of rights of way.
- A lease counterpart and deeds of trust.

2.46 Detailed notes about the requirements of Section 28 of the Finance Act 1931, as amended, are provided on the back of the particulars delivered form.

Statutory time limits

2.47 Stamp Duty law imposes certain time limits on customers. Unless, exceptionally, the legislation specifically provides for discretion in certain circumstances, these time limits are mandatory. Accordingly Stamp Taxes is unable to extend the statutory time limits. Examples are the 2 year limit for claiming repayments (Section 10 of the Stamp Duties Management Act 1891) and the 30 day period for giving notice of appeal against an assessment made under Section 12 of the Stamp Act 1891 (Section 13(2) of the Stamp Act 1891).

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Chapter 3: Stamp Duty: compliance

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Overview

3.1 This Chapter sets out the instructions to follow when a document is submitted late for stamping and/or the duty due or any part of the duty due is paid late. The position regarding penalties and interest is first covered separately followed by the instructions which relate to both. The Chapter also briefly covers the free-standing penalties under the Stamp Act 1891, the Stamp Duties Management Act 1891 and various Finance Acts.

Background

3.2 Documents can be presented for stamping without penalty and the duty paid without interest up to 30 days after the date of execution of the document. Interest is charged on late payment of the Stamp Duty as commercial restitution for the interest which the Treasury has lost as a consequence of late payment of the duty. Penalties are charged to encourage timely submission of dutiable documents or, in other words, to encourage compliance with the requirements of the Stamp Act.

3.3 The current interest and penalty regime was introduced in the Finance Act 1999 and only applies to documents executed on or after 1 October 1999. Section 109 of that Act substituted a new Section 15, 15A and 15B of the Stamp Act 1891 under which penalties and interest are now charged.

3.4 Under the penalty and interest provisions our customers are allowed a period of 30 days after the date of execution of a document to send it to us for stamping and to pay the duty due without any penalty or interest falling due.

3.5 Under Section 14(4) of the Stamp Act 1891 a document is not 'duly stamped' unless it has been stamped with the proper Stamp Duty, penalty and interest to which it is liable.

The Legislation

Section 15 Stamp Act 1891

3.6 Section 15 provides that a document may be stamped after execution if any penalty and interest due are paid in addition to any unpaid Stamp Duty due. It also provides that the penalty and interest are to be denoted on the document by means of a particular stamp. In this Chapter we will look at the position for late submission of a document and the interest on late payment of the Stamp Duty due on a document separately.

Interest

Section 15A Stamp Act 1891

3.7 Section 15A makes the general provision for interest on the late payment of Stamp Duty. Interest is due if

- The document is liable to ad valorem Stamp Duty; and
- That duty or any part of it remains unpaid more than 30 days after the date of execution of the document.

3.8 When a customer makes a payment by cheque and the cheque is met the first time it is presented to the bank, the date of payment is to be taken as the day on which the cheque was first received in Stamp Taxes. The interest charge begins to run from 30 days after the date of execution of the document until the cheque or other form of payment is received in Stamp Taxes.

3.9 It will be seen from this that documents liable to fixed duty are not liable to interest on late payment. They may, however, be liable to penalties if presented late.

Part payment

3.10 When a customer makes part payment of the duty within the 30 day period but the balance is not paid until after that period interest will only be due on any balance remaining unpaid after the end of the 30 day period.

3.11 If a customer makes his first payment of the duty after the 30 day period but only part of the duty due is paid, interest will be due on the total duty due up to the date of the first part payment then on the balance from then until payment of the balance is made.

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3.12 When the stamping of a document is delayed because the consideration liable to Stamp Duty is ascertainable but not yet ascertained, generally known as the “wait and see” type of case, the customer may lodge with us a payment on account of the duty which is due. The instructions in paragraphs 3.10 and 3.11 above will apply once the total duty due has been ascertained and paid. Now that interest is charged on late paid Stamp Duty the procedures described in paragraph 1.13 of the (February 1998) SDRT Guidance Notes no longer apply - either in “wait and see” cases or where a document has been presented for an adjudicated relief. You should only consider raising the question of SDRT in such cases where some difficulty arises in securing the stamping of the document, as described in the SDRT section of this Manual.

The rate of interest

3.13 The rates of interest due from time to time are those prescribed by the Treasury under Section 178 of the Finance Act 1989 and are applied to Stamp Duty by the Regulations in SI 1999 No. 2538. The rates for Stamp Duty are now harmonised with those for Income Tax. The interest rates for Stamp Duty Reserve Tax are, in turn, now harmonised with those for Stamp Duty. Interest rates are set out in full in Appendix C(2)

Rounding and de minimis limit

3.14 The legislation provides for a de minimis limit of £25 interest. This means that no interest is chargeable on Stamp Duty paid late if that interest amounts to less than £25.

3.15 All interest charges of more than £25 are to be **rounded down** to the nearest multiple of £5.

Income Tax

3.16 Interest on the late payment of Stamp Duty must be paid to Stamp Taxes without deduction of Income Tax and cannot be taken into account when calculating the income or profits of the customer making the payment.

Collection of interest

3.17 When a customer makes late payment of all or part of the duty on a document liable to ad valorem Stamp Duty you should calculate the interest due using the Microsoft Excel spreadsheet available in your office. The customer is to be advised of the interest payable and allowed 14 days to make payment. If payment of the interest is not received by the end of that period the customer is to be informed that if payment is not made within a final 14 days of that date the document will be returned unstamped and any payment held repaid without further warning.

3.18 The customer's attention should be drawn to the fact that an unstamped document cannot be used for any purpose whatsoever, except production in a criminal action, as a consequence of Section 14(4) of the Stamp Act 1891 and that if it is resubmitted at a later date for stamping, further interest and penalties will be due.

3.19 In the continued absence of payment of the interest the document should be returned and any payment held should be repaid without repayment interest being added.

3.20 If the customer supplies a reasonable explanation as to why payment of the interest cannot be made within the requested period you may use your own discretion regarding a short extension of the time allowed for payment.

Mandatory charge

3.21 The charge to interest on late payment is mandatory and you **may not** waive any interest charge of £25 or more, regardless of the reason for late payment of the Stamp Duty. The interest charge represents no more than commercial restitution to the Treasury for the period during which payment has been delayed.

3.22 There is no right of appeal by the customer against an interest charge on duty paid late.

Documents returned unstamped and re-submitted at a later date

3.23 If a document has been returned unstamped and is later re-submitted for stamping no reduction in the interest charge is to be made for the period during which the duty or any part of it was originally held by Stamp Taxes. When payment is received on re-submission of the document

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the interest is to be charged from 30 days after the date of execution of the document to the date payment is received upon the second presentation of the document.

Penalties

Section 15B Stamp Act 1891

3.24 Section 15B makes the general provision for payment of a penalty on the late submission of a document for stamping.

3.25 A penalty is due if a document is presented for stamping more than 30 days after

- The date the document was executed if it was executed in the UK; or
- The date the document was first received in the UK if it was executed outside the UK.

3.26 Penalties are due regardless of whether the document is liable to £5 fixed duty or ad valorem duty.

3.27 All penalties charged are to be **rounded down** to the nearest multiple of £5.

Documents presented up to a year after the 30 day period

3.28 If a document is presented for stamping up to one year after the end of the 30 day period mentioned above, the maximum penalty is £300 **or** the amount of the duty, **whichever is less**.

Documents presented more than a year after the 30 day period

3.29 If a document is presented for stamping more than one year after the end of the 30 day period mentioned above the maximum penalty is £300 **or** the amount of the duty, **whichever is greater**.

Mitigation

3.30 Section 15B of the Stamp Act 1891 provides that the Commissioners may, if they think fit, mitigate or remit any penalty for late presentation of a document. It goes on to provide that if there is a reasonable excuse for the delay in presenting the document no penalty is payable.

3.31 We will, in nearly all cases, mitigate the maximum penalty due under the legislation. We have published details of the mitigated penalties we will charge in straightforward cases are detailed in the following table.

3.32 Customers are advised that it is important for them to tell us about any factors which they consider relevant to the delay, when sending a document to us. They are also told that if they do not agree with the amount of penalty we are asking for they should let us know why they disagree. They should provide us with any additional information relating to the delay which might help us in reconsidering their case. See the note headed “General” in the following table.

Table of mitigated penalties on late stamping

Ad Valorem duty cases under one year late

Months late	Up to £300	£305 - £700	£705 - £1,350	£1,355 - £2,500	£2,505 - £5,000	Over £5,000
under 3		£20	£40	£60	£80	
under 6	Nil					£100
	*£20	£40	£60	£80	£100	£150
under 9	*£40	£60	£80	£100	£150	£200

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under 12	*£60	£80	£100	£150	£200	£300
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* or duty if less

Ad Valorem duty cases over one year late

Months late	Under £5,000
under 15	15% or £100 if greater
under 18	25% or £150 if greater
under 21	35% or £200 if greater
under 24	45% or £250 if greater

Percentage amounts are to be rounded **down** to the nearest multiple of £5.

Months late	Over £5,000
under 15	20% or £100 if greater
under 18	40% or £150 if greater
under 21	60% or £200 if greater
under 24	80% or £250 if greater

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Percentage amounts are to be rounded **down** to the nearest multiple of £5.

Ad Valorem cases over two years late

The penalty will be £300 or an amount equal to the duty payable, whichever is the greater.

Fixed duty cases

The statutory rule is that the penalty due on late presentation of a document liable to duty of £5 is a maximum of £5 if it is up to one year late and a maximum of £300 if it is over one year late.

However in practice we will mitigate the statutory penalty due to Nil if the document is presented up to one year late. No penalty will therefore be charged.

The usual penalties that will apply for fixed duty cases that are more than one year late are:

Over one year late but not more than two years late - £10

More than two years late - £25

However the maximum penalty provided for by the 1999 Finance Act is £300. In cases where there appears to be a deliberate policy by the applicant or the person that they represent of failing to stamp fixed duty documents within the 30 day period allowed, consideration should be given to whether the full penalty should be imposed. In any case of this kind the papers should be referred to the Technical Group Adviser.

General

Deviations from the amounts prescribed in this table, say for example down if there is a reasonable excuse for lateness, or up depending on the circumstances, must be agreed by your Technical Adviser who will seek advice from the Technical Group Adviser. It is expected that cases which warrant any deviation from this table will be very rare.

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3.33 It should be noted that Section 15B(5) of the Stamp Act 1891 provides that where there is a reasonable excuse for the delay in presenting an instrument for stamping **no penalty is payable**. See paragraph 3.48 below regarding what constitutes a reasonable excuse.

3.34 When you impose a penalty you are not charging a penalty of £X. Instead you are mitigating the maximum penalty chargeable under the legislation. You are setting the degree of mitigation, if any, which we agree to allow. It is important to bear that distinction in mind.

Documents executed abroad

3.35 There is no penalty upon a document which was **executed abroad** and which has been presented for stamping **within thirty days of receipt in this country**. The customer is required to confirm the date of receipt in this country **in writing**.

3.36 Documents executed in the United Kingdom and sent abroad for completion may be stamped without penalty if presented for stamping within thirty days of re-entry into the United Kingdom. This rule relates to documents which need to be executed by more than one party, one of whom is overseas. If the document is not effective until executed by all the parties to it and is first executed by one party in the UK then is sent abroad for the other party to execute it for the first time this rule will apply. This does not mean that documents which are executed in the UK and become effective instruments at that date may then be sent abroad so as to avoid penalties on late presentation.

Customer enquiries regarding penalties

3.37 Our customer leaflet SO 10 provides our customers with detailed information on our views regarding the charging of penalties and incorporates the table above. You should issue this to anyone enquiring about the likely level of penalty on a particular document which has yet to be submitted for stamping. Do not be drawn into a discussion regarding the level of penalty over the telephone. Issue leaflet SO 10 instead.

Collection of penalties

3.38 When a customer submits a document late he or she is to be advised of the penalty payable and allowed 14 days to make payment. If payment of the penalty is not received by the end of that period the customer is to be informed that if payment is not made within a final 14 days of that date the document will be returned unstamped and any payment held repaid without further warning.

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3.39 The customer's attention should be drawn to the fact that an unstamped document cannot be used for any purpose whatsoever, except production in a criminal action, as a consequence of Section 14(4) of the Stamp Act 1891 and that if it is resubmitted at a later date for stamping, further penalties and interest will be due.

3.40 In the continued absence of payment of the penalty the document should be returned and any payment held should be repaid without repayment interest being added.

3.41 If the customer supplies a reasonable explanation as to why payment of the penalty cannot be made within the requested period you may use your own discretion regarding a short extension of the time allowed for payment.

Documents returned unstamped and re-submitted at a later date

3.42 If a document has been returned unstamped and is later re-submitted for stamping, the question of the penalty payable should be referred to your Technical Adviser as this is likely to be a case where a lesser degree of mitigation than usual is allowed.

Date of delivery

3.43 A document which has been signed and sealed **but not delivered** until after the date of execution is not to have a penalty imposed if presented for stamping within thirty days of its effective date of delivery. If it is delivered subject to conditions then it becomes effective only when the conditions have been fulfilled.

3.44 This is not to be confused with documents **delivered in Escrow** or, in other words, delivered to take effect upon the happening of a specified event or upon the performance of some condition. Such documents are rare but if encountered may be stamped without penalty if presented within thirty days of becoming an operative instrument.

3.45 In documents to which Scots Law applies a similar provision is to be applied to a document held as undelivered until the specified event or condition means it is effectively delivered.

Date of entry in Scottish cases

3.46 In Scottish cases no penalty is to be imposed if **the date of entry** narrated in the document is later than the date of execution and the document is presented for stamping within thirty days of that entry date.

Documents dated in pencil

3.47 We always require the date of execution of an instrument to be entered in ink or typescript. The duty and penalty upon a document may not be assessed until this has been done. Where the date has been entered in pencil you should return the document and ask that it be inked in.

Acceptable reasons for delay

3.48 The law does not say what is a reasonable excuse for not submitting a document within the prescribed 30 day period. We will consider each case on its own merits. A customer will only have a reasonable excuse where an unusual event that is either unforeseeable or beyond their control, has prevented them from sending the document to us or making other arrangements for this to be done.

3.49 The following is a list of examples of reasons which are acceptable as a reasonable excuse for the delay in submitting a document for stamping.

- Serious illness such as a heart attack, stroke or other life threatening condition prevented the solicitor from controlling his or her business and private affairs.
- Death of the solicitor dealing with the transaction.
- Industrial action at the Post Office or other document carrier occurred after the document had been posted to Stamp Taxes or delivered to the document carrier for transmission to Stamp Taxes.

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- The original document was destroyed or damaged beyond use in the solicitors office due to fire or flood or other natural disaster.

Unacceptable reasons for delay

3.50 The following is a list of examples of reasons which are **not** acceptable as a reasonable excuse for the delay in submitting a document for stamping.

- Documents held by another Government Department, for example where the Land Registry have already processed it. A penalty should still be imposed.
- The document has not been submitted to Stamp Taxes because payment is awaited from clients or the duty is being paid by another firm of solicitors.
- A valuation of shares is awaited - such documents should have been submitted to Stamp Taxes while the valuation question was resolved.
- The documents were dealt with by the parties' previous solicitors and have been found to be unstamped.
- The documents were previously dealt with by an employee who has since left the employ of the solicitor and the documents have only now been found to be unstamped.
- There is a disagreement between the two sets of solicitors. The documents have been held until the problem was resolved.
- The delay is due to the Vendor's solicitors for any reason and the Purchaser's solicitors were unable to deliver the documents within 30 days.

Appeals Against the Imposition or Level of a Penalty

Adjudication of the Stamp Duty and penalty

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3.51 Under Section 12(1) of the Stamp Act 1891 anyone may require Stamp Taxes to formally adjudicate upon the question of the duty and/or the penalty payable on a document. In this Chapter we will concentrate solely on the adjudication of the **penalty**, if any, on the late stamping of a document. For detailed instructions relating to the adjudication of the **Stamp Duty**, if any, on a document see Chapter 6.

3.52 Sections 12 and 13 of the Stamp Act 1891 were amended by virtue of Schedule 12 of the Finance Act 1999 and it is important to note that those Sections no longer refer to the 'assessment' of the duty on a document. They now refer instead to the 'Commissioners' decision on adjudication'. It is no longer therefore proper to refer to a Notice of Assessment in an adjudication and we should instead call it a Notice of Decision on Adjudication.

Appeal against a penalty only

3.53 Under Section 13(4) of the Stamp Act 1891 the person who sought adjudication of the document can appeal in respect of the penalty alone. Appeals which only relate to the penalty are to the Special Commissioners. All other appeals are to the High Court.

3.54 If the person who sought adjudication only wishes to appeal against the level or imposition of a penalty, the appeal must be made in writing within 30 days of issue of the Notice of Decision on Adjudication. The duty, penalty and any interest which we say is due must also be paid within that same 30 day period.

3.55 That written appeal must specify the full grounds of appeal. The appellant can only add to the grounds of appeal later if the Special Commissioners are satisfied that the omission was not wilful or unreasonable.

Powers of the Special Commissioners

3.56 The Special Commissioners will then hear the appeal and may reach one of the following four decisions:

- The penalty can be set aside if they feel no penalty should be charged;
- If the amount determined seems to them to be appropriate they may confirm Stamp Taxes' decision;

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- If the amount determined seems to them to be excessive they may reduce it;
- If the amount determined seems to them to be insufficient they may increase it.

Appeal against the decision of the Special Commissioners on a penalty

3.57 If the appellant is dissatisfied with the decision of the Special Commissioners he or she has the right of appeal to the High Court against that decision.

3.58 The only right of appeal against the decision of the Special Commissioners in a penalty only appeal is at the instance of the person who is liable to pay the penalty. Stamp Taxes is not able to appeal to the High Court against the decision of the Special Commissioners.

3.59 The High Court has the same four choices as the Special Commissioners so far as their determination of the penalty is concerned.

General instructions relating to both interest and penalties

Denoting penalties and interest on documents

3.60 Section 15(2) of the Stamp Act 1891 requires Penalties and Interest paid to be denoted by means of a particular stamp. If we were to impress separate duty stamps for the Stamp Duty, the penalty and the interest on a document liable to all three, this would often result in a substantial number of stamps and it would be virtually impossible for the stamping officer to avoid covering some of the text of the document with duty stamps.

3.61 We therefore denote the total of any duty, interest and penalty by one set of duty stamps representing the total paid. If we did not show how that total is broken down into duty, interest and penalty we would encounter difficulties should it become necessary to repay any of the duty on such a document.

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3.62 For that reason, and so as to comply with Section 15(2) Stamp Act 1891, we use a hand held stamp which impresses a small grid on a document with spaces to write in the duty, interest, penalty and total payable. This is known as the DIPT stamp.

3.63 The Stamping Officer only needs to impress stamps for the total but the breakdown of that amount is available for the future if required.

3.64 You need only impress the DIPT stamp on a document if there is either interest or a penalty or both due on it. Documents presented on time together with payment of the correct duty should be marked in pencil in the normal way.

3.65 Because it is important to have a permanent record when the DIPT stamp is used, entries in the grid on that stamp must be made in ink just before the document is stamped.

3.66 When we are in dispute with the customer over the duty, interest or penalty due you should only mark the amounts in light pencil until the dispute is settled and the document is ready to be stamped, whereupon the pencil markings should be erased and replaced in ink.

Documents withdrawn from stamping

3.67 If the level of mitigation has been decided and the DIPT stamp has been impressed on a document but the customer then decides to withdraw it without having it stamped, the pencil markings are to be erased and the stamp left blank.

3.68 Any customer requesting the withdrawal of such a document prior to stamping should be reminded of the terms of Section 14(4) of the Stamp Act 1891 and it should be pointed out to him/her that any subsequent application for stamping will result in a lesser degree of mitigation or, in other words, an increased penalty.

Date of execution

3.69 Since the liability of a document to a penalty upon late stamping and interest on late payment hinges basically upon the date it was executed it follows that evidence of that date is of prime importance. In the absence of any evidence to the contrary you should accept the date of a document as shown upon it, without question.

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3.70 If you suspect that the date has been erased and a fresh date entered, or that it has been altered in some other way, an enquiry should be issued seeking an explanation.

3.71 A common mistake at the turn of the year is for a document to be dated with the wrong year, which is then erased and corrected. In January, any document which has had the year only corrected upon erasure may be accepted without further enquiry unless there is firm evidence that it was executed in the previous year.

Agreement for lease and lease presented together

3.72 If an Agreement for Lease and the Lease in conformity with that Agreement are presented for stamping together, the date of execution for the purposes of calculation of any interest is to be taken as the date of execution of the Lease.

3.73 Likewise, for penalty purposes the Agreement is to be treated as if it had been executed on the same day and in the same place as the Lease. So, if the Lease was executed outside the UK the Agreement for Lease is to be treated as if it too was executed outside the UK and only came into the UK on the day the Lease first came into the UK. The customer would have 30 days from that date to stamp the document without penalty although interest would have started to run from 30 days after the date of execution of the Lease.

3.74 An Agreement for Lease presented for stamping on its own is to be treated for penalty and interest purposes in the same way as any other document.

Free standing penalties

3.75 Under Part I of Schedule 17 to the Finance Act 1999 all administrative fines which were in place under the Stamp Act 1891, the Stamp Duties Management Act 1891 and various Finance Acts prior to 1 October 1999 were, on that date, replaced by free standing penalties. The new legislation provides for a penalty not exceeding the specified amount thereby allowing for imposition of a penalty less than the maximum where appropriate.

3.76 The new maximum penalties and the legislation under which they are charged are now as follows:

- Section 21 Stamp Duties Management Act 1891: Penalty for fraud in relation to duties: £3,000

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- Section 5 Stamp Act 1891: Failure to set out in a document the true facts and circumstances affecting the liability to Stamp Duty of that document: £3,000
- Section 16 Stamp Act 1891: Failure to allow inspection of any rolls, books, etc which would secure payment of duty or lead to the discovery of a Stamp Duty fraud: £300
- Section 17 Stamp Act 1891: Penalty for enrolling a document not duly stamped: £300
- Section 83 Stamp Act 1891: Penalty for issuing a foreign security not duly stamped: £300
- Section 67(1) Finance Act 1963: Penalty for circulating a blank Transfer: £300
- Section 16(1) Finance Act (Northern Ireland) 1963: Penalty for circulating a blank Transfer: £300

Determination of a free standing penalty

3.77 Part II of Schedule 17 to the Finance Act 1999 provides that an officer of the Commissioners may make a determination imposing any of the above-detailed free standing penalties, setting the amount of that penalty as in the officer's opinion is correct and appropriate.

3.78 Note that this does not relate to penalties on late stamping under Section 15B of the Stamp Act 1891. See the instructions earlier in this Chapter regarding calculation and imposition of the penalties on late stamping.

3.79 You may not advise any customer that you intend to impose one of the free-standing penalties detailed in the list above nor may you issue any such determination notice. Authority for the imposition of any of the free-standing penalties rests with the Senior Technical Manager and the Business Director only. If you have a case where you feel it is appropriate to impose one of these penalties you must first refer it to the Technical Group Adviser via your Technical Adviser. You must not suggest to or advise the customer that you consider a penalty of this type is appropriate.

Supplementary penalty on failure to stamp a document following adjudication

3.80 Section 12A(2) of the Stamp Act 1891 provides for a £300 penalty where we have made a decision about the duty due on a document which has been lodged with us for adjudication but the person by whom the adjudication was required does not have the document stamped within 30 days of the issue of our Notice of Decision on Adjudication. This penalty may only be imposed with the authority of the Senior Technical Manager. If the customer can show a reasonable excuse as to why it was not possible to have the document stamped within the statutory 30 day period we may waive the penalty.

3.81 This provision does not override the statutory 30 days allowed for payment of the duty and penalty and/or interest due under the adjudication appeal procedure in Sections 13(2) and 13(3) of the Stamp Act 1891. If we have issued a Notice of Decision on Adjudication and no appeal has been lodged or no payment is made within 30 days of the date of issue of that Notice, all argument as to the liability of the document or documents concerned is at an end.

3.82 The penalty under Section 12A(2) will only be considered in cases where we have issued a Notice of Decision on Adjudication under the statutory adjudication provisions of Section 12 of the Stamp Act 1891.

3.83 In everyday cases where a document has been lodged for adjudication and we have issued an informal statement of the Stamp Duty we calculate to be due but the customer decides to withdraw the document unstamped, we will not apply the supplementary penalty on failure to stamp following an adjudication.

The previous penalty regime

3.84 In considering the penalty and interest, if any, due on late presentation of a document and late payment of the Stamp Duty you need to bear in mind that the old penalty regime will still apply to all documents executed prior to 1 October 1999, even when they are presented for stamping after that date. The new regime only applies to documents executed on or after 1 October 1999.

Interest paid on repayment of Stamp Duty

3.85 See Chapter 7 regarding the interest we pay on the repayment of duty which has been overpaid and in Stamp Allowance cases.

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Chapter 4: Stamp Duty: conveyance on sale duty

Overview

4.1 This Chapter gives information about the Stamp Duty charge on conveyances and other documents which transfer property on a sale. The charge, called ‘conveyance or transfer on sale duty’, is imposed under the provisions of Part 1 of Sch 13 to the Finance Act 1999 and according to the rules detailed in Sections 55 to 58, 60 and 61 of the Stamp Act 1891.

Essentials of a sale

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4.2 The term '**sale**' in common law means the transfer of property by agreement from a willing seller to a willing buyer for an agreed consideration paid or promised. The effect of the Stamp Duty legislation, and in particular Sections 55 to 58, 60 and 61 of the Stamp Act 1891 and Part 1, Sch 13 of the Finance Act 1999, is to widen the meaning of the term 'sale' for Stamp Duty purposes. It is essential to every sale that there should be:

- a vendor (or seller);
- a purchaser (or buyer);
- a thing sold (a house, land, shares, etc); and
- a price (money or other consideration).

Extent of the charge

4.3 The term 'conveyance on sale' for Stamp Duty purposes is given a very wide meaning by Para 1 of Sch 13 to the Finance Act 1999. It includes any document by which **any property**, or estate or interest therein, on a sale thereof is transferred to, or vested in, a purchaser, or another person named by the purchaser.

4.4 The charge may apply to a wide range of documents, such as Conveyances or Dispositions, Land Transfers, Assignments (or Assignations in Scotland), Court Orders, Acts of Parliament, assents and vesting instruments such as general vesting declarations, declarations of trust which effect a sale, and deeds of family arrangement.

Rates of duty on sales of property other than shares and appropriate certificates of value

4.5 Following enactment of the Finance Act 2000 the current rates of duty and 3 levels of Certificate of Value for conveyances and transfers of other than stocks and shares are as follows:

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Consideration up to and including £60,000 with a £60,000 Certificate of Value
Nil Rate.

Consideration over £60,000 and up to and including £250,000 with a £250,000 Certificate of Value 1%.

Consideration over £250,000 and up to and including £500,000 with a £500,000 Certificate of Value 3%.

Consideration over £500,000. No Certificate of Value Allowed. 4%

Where a document does not contain a Certificate of Value even though the consideration shown in it is less than £500,000 the 4% rate of duty will apply. Likewise if a document contains a £250,000 Certificate of Value even though the consideration shown in it is less than £60,000 the 1% rate of duty will apply.

In all the above cases the figure which results from the percentage calculation is to be rounded up to the nearest multiple of £5 to give the amount of Stamp Duty due.

4.6 Appendix C of this manual gives full details of past rates of Stamp Duty.

Transfers of stock or marketable securities

4.7 The rate of Stamp Duty on documents transferring stock or marketable securities is 0.5% rounded up to the nearest multiple of £5. A Certificate of Value is not appropriate in any transfer of stock or marketable securities.

Rounding up of Ad Valorem duty: rates and examples

4.8 The rates of duty are straight percentages ie
For Conveyances of property other than shares
For transfers of shares

1%; 3%; 4%
0.5%

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Once the percentage figure is applied to the chargeable consideration the figure is then rounded up to the nearest multiple of £5. Some examples follow.

Land transfers

1.	Consideration £75,340 (£250,000 c/v)	Duty (1%) = £753.40 rounded up to £755.00
2.	£1,043,620	(4%) = £41,744.80 rounded up to £41,745.00
3.	£260,444 (£500,000 Certificate of Value)	(3%) = £7,813.32 rounded up to £7,815.00

Share transfers

4.	Consideration £500,310	Duty (0.5%) = £2,501.55 rounded up to £2,505.00
5.	£4,031	(0.5%) = £20.15 rounded up to £25.00

Certificate of value must be in document

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4.9 A Certificate of Value is a statement inserted **in** the document. Certificates which are separate from the document, or which are on a separate paper which is attached to it, are **not acceptable**.

4.10 Most certificates follow the wording in Para 6 of Sch 13 to the Finance Act 1999 which is as follows:

“I/We hereby certify that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £60,000”.

4.11 A certificate which refers simply to 'the consideration' instead of to 'the amount or value of the consideration' is **not** acceptable.

4.12 You will need to look for the appropriate Certificate of Value in all documents where one might apply and you should offer the customer the opportunity to add one if it appears to have been overlooked.

Responsibility of parties

4.13 It is the responsibility of the parties to the document, and particularly the vendor, to decide whether a Certificate of Value can properly be included in a document.

4.14 If a Certificate of Value has been left out of a document it may be added later in any convenient space on the document, provided that it is proper to include a Certificate of Value in the document and it is **signed by all the parties to the document**.

Nil consideration

4.15 A document for **no consideration** in money or monies worth is liable to £5 fixed duty subject to the provisions of Section 119 Finance Act 2000 (See 4.53). A Certificate of Value should only be included in a document if there is some consideration. However, if the document can properly be certified as falling within Category L in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987 it will be exempt from Stamp Duty and need not be sent to Stamp Taxes. See Chapter 2 regarding the Regulations.

Goods wares and merchandise

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4.16 A £60,000 Certificate of Value may be inserted in a document chargeable under Para 1 of Sch 13 to the Finance Act 1999 if the overall consideration exceeds £60,000 but the net amount after making certain allowable deductions does not exceed £60,000. The only sums which may be deducted in this way are those which are apportioned to goods, chattels, moveables, loose plant and machinery, stock in trade, cash in hand or at the bank on current account, intellectual property and goods subject to hire purchase less the hire purchase debt thereon. This also applies to the higher levels of Certificate of Value. For example, if the total consideration for a sale was £525,000 but allowable deductions totalled £25,000 the chargeable amount is £500,000 and a £500,000 Certificate could be included in the document where appropriate, so as to take advantage of the reduced rate applicable to that amount. See Para 6 of Sch 13 to the Finance Act 1999.

4.17 If, however, the document concerned includes words of conveyance and therefore actually conveys, assigns or transfers the goods, wares or merchandise then the consideration appropriate to those goods, etc., is chargeable to duty and may take the chargeable consideration over the next certificate of value level.

4.18 Fixtures are regarded in effect as being part of the land. A fixture is an item which is attached to the land or building transferred with the intention of benefiting the use of that land or building. This may be contrasted with loose or moveable items, or chattels such as free-standing cookers, curtains or light shades which have a more temporary attachment to the building concerned. A central heating system and fitted kitchen units are both examples of fixtures. The consideration value for a fixture is chargeable to duty, and must not be excluded for the purposes of a Certificate of Value. The most common test we apply as to whether an item is a fixture or a chattel is whether its removal would damage the property. If it would, it is a fixture.

Sales at a discount by local authorities

4.19 A document which transfers a property from a local authority to the tenant at a discount is chargeable on the discounted price only; and that price is to be used for the purpose of the certificate [Section 107(1) of the Finance Act 1981].

A larger transaction or series of transactions

4.20 Several Conveyance or Transfer documents will form part of a larger transaction if they all stem from a single contract. They will represent a series of transactions if they stem from several contracts which have some degree of interdependence between them. This follows from the case of Attorney General v Cohen [1937] 1 ER 27, CA, where the same purchaser bought 6 separate lots at auction, signed 6 contracts and paid 6 deposits, but where it was held that there was no series of transactions because there was no interdependence.

Several options granted under one contract

4.21 Several options granted under a single contract exercisable at different times are a series for Certificate of Value purposes. When an option is exercised the transaction concerned may be certified by reference to the total value of the consideration for all the options exercised to date.

Types of consideration

Cash consideration

4.22 Most documents we see are sales for a cash consideration expressed in pounds sterling. The Stamp Duty is calculated simply by applying the appropriate rate of duty to the amount of the cash. If the consideration is expressed in overseas currency (such as US\$) then, following Section 6(1) of the Stamp Act 1891, duty is calculated on the value of that money in British currency at the date of the document. If a document contains a statement of the rate of exchange which the parties to the document wish to use for converting the consideration to sterling then, under Section 6(2) of the Stamp Act 1891, you must accept that rate of exchange and assess the document on the consideration in sterling which results. The document is deemed duly stamped unless it can be shown that the statement is untrue or fraudulent.

4.23 If the document does not contain any such statement of the rate of exchange to be used you need to ascertain the rate of exchange for the foreign currency concerned on the date of execution of the document and apply that to make the conversion.

Rates of exchange

4.24 The Financial Times lists rates of exchange daily for the major currencies and weekly for others. The major currencies are detailed in a table headed "Pound Spot - Forward against Pound". The rate of exchange to be used is that for the date of the document. Other currencies are shown in the weekly list headed "The World Value of the Pound". Where the quotation date is not the date of the document the rate to be used is that shown for the quotation date immediately before the date of the document.

'Stock' as consideration

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4.25 If the consideration consists of, or includes, stock or marketable securities the duty is calculated on the value of that stock etc on the date of the document [Sections 6(1)(b) and 55(1) of the Stamp Act 1891 refer]. (Unless the issue or transfer of shares occurs in circumstances where the 'connected persons' legislation applies. See 4.53). 'Stock' is defined in Section 122 of the Stamp Act 1891 and includes units in certain unit trust schemes. This section also says that a 'marketable security' means a security of such a description as to be capable of being sold in any stock market in the UK.

Sections 6 and 55 Stamp Act 1891

4.26 Section 6(1)(b) and 55(1) of the Stamp Act 1891 taken together mean that we need to know the value of the stock which forms the consideration for the sale before the ad valorem duty can be calculated on that value. The stock is to be valued at the date of the document which is its date of execution (or its effective date of delivery if that is later as provided by Section 239 FA 1994).

4.27 Where the consideration for a sale is a security which is not a marketable security (for example a debenture) the amount which is liable to duty is the sum of the principal and interest due at the date of the document [Section 55(2)].

Section 272(3) Taxation of Chargeable Gains Act 1992

4.28 The Inland Revenue values shares for many purposes, the main one being for Capital Gains Tax. To ensure a common approach throughout the Department, and to reduce work, the Capital Gains Tax basis of valuation is used for Stamp Duty purposes too. This basis is set out in Section 272(3) of the Taxation of Chargeable Gains Act 1992.

4.29 This defines market value as the price which assets might reasonably be expected to fetch on a sale in the open market. The market value of securities quoted on the Stock Exchange is either (1) one quarter of the difference between the lower and higher closing prices added to the lower price. Or (2) midway between the highest and lowest prices at which the bargains were marked for the relevant date, whichever is lower. These principles extend to shares traded on the Alternative Investment Market (AIM).

The quarter-up value

4.30 In general the first of these alternatives is usually the lower figure and is the basis used. It is commonly known as the quarter-up value.

Valuation of securities as a single holding

4.31 Where several individual transfer of shares form part of a single collective transaction (as when one company acquires the whole of the issued share of another, it is considered that the whole allotment of consideration shares should be valued as a single holding, each transfer bearing duty on the appropriate proportion of the total value of the holding, with no discount for minority holdings. The shares issued in a single collective transaction should be valued by reference to the property which is acquired in consideration of their issue. There are a string of cases which justify this view [see, for example, *Foster (John) & Sons v IRC* (1894) 1 All ER 617 and *Carlyon Estate Ltd v IRC* (1937) 16 AC 339. This rule produces a common-sense result particularly where the consideration shares are issued by a newly formed company whose only assets are the shares acquired.

4.32 Adjudication is **not** a statutory requirement in cases where the consideration includes unquoted shares. Customers have a statutory right to require adjudication if they wish (Section 12 of the Stamp Act 1891) and many customers ask for adjudication in order to obtain the certainty it gives.

Debt as consideration

4.33 Section 57 of the Stamp Act applies where a sale is in consideration of a debt or subject to a debt.

4.34 It provides for a charge to duty on

- debt released as consideration for a transfer of property
- any debt assumed by the purchaser whether or not that debt is a charge on the property being purchased.
- any money paid or stock transferred either certainly or contingently to which the transfer is subject.

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4.35 The chargeable amount of the debt includes any unpaid interest due upon it as at the date of execution of the document.

4.36 Where **A** owes a sum of money to **B** but instead of clearing the debt by paying cash conveys property to **B** and is thereby released from the debt, the amount chargeable to ad valorem duty is the amount of the debt discharged.

4.37 Section 57 applies equally where the property transferred is a mortgaged business property.

4.38 If the purchaser of a business agrees to meet the vendor's business debts then the amount of those debts must be added to the consideration and charged to ad valorem duty as part of it.

4.39 If a property, say farmland, is conveyed from a sole proprietor to a family partnership, or alternatively, from a family partnership to a fresh partnership bringing in new family members as partners, the amount of the debts undertaken by the new partners is chargeable.

Section 102 Finance Act 1980

4.40 Where the debt is more than the value of the property transferred, duty is charged on the value of the property, not the debt [Section 102 of the Finance Act 1980 and Section 6 of the Finance Act 1898 refer]. Note, however, that Section 102 applies **only** where the property is conveyed to the person to whom the debt is owed. Documents which are granted relief under Section 102 FA 1980 must be adjudicated [Section 102(2) refers].

Statement of Practice (SP 6/90)

4.41 A Statement of Practice (SP 6/90) was published on 27 April 1990 about the application of Section 57. It reads as follows:

Inland Revenue Statement of Practice (SP 6/90, 27 April 1990)

Stamp Duty: conveyances and transfers of property subject to a debt - section 57, Stamp Act 1891

Introduction

1. Since the abolition of the duty on voluntary dispositions in 1985, many enquiries have been received about the Stamp Duty chargeable on conveyances etc subject to a debt where no chargeable consideration (eg money or stock) unrelated to the debt is given by the transferee. This Statement of Practice sets out the Board's view of the correct Stamp Duty treatment of such conveyances.

2. For the sake of completeness it should be noted that where chargeable consideration unrelated to debt is given by the transferee, Section 57 renders the conveyance liable to ad valorem duty on the aggregate of that consideration and the debt whether the transferee assumes liability for the debt or not (*IRC v City of Glasgow Bank* [1881] 8 R 389, 18 SLR 242).

Section 57, Stamp Act 1891

3. The most commonly misunderstood applications of Section 57 arise where:

- a mortgaged property held in the name of one spouse is transferred into the joint names of both spouses;
- a mortgaged property held in the name of one spouse or in their joint names is transferred into the sole name of the other;

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- a mortgaged property business, frequently farmland, is conveyed from a sole proprietor to a family partnership or from a family partnership to a fresh partnership bringing in other members of the family.
- 4. The critical question is whether the transaction to which the conveyance gives effect is or is not a sale. If it is, Section 57 will apply and the conveyance will be chargeable to ad valorem duty on the amount of the debt assumed. If it is not, then Section 57 will not apply and ad valorem duty will not be payable.

Express covenants

- 5. Where property is transferred subject to a debt, the transferee may covenant, either in the instrument or by means of a separate written undertaking, to pay the debt or indemnify the transferor against his personal liability to the vendor. Such a covenant or undertaking constitutes valuable consideration and, in view of Section 57, establishes the transaction as a sale for Stamp Duty purposes.
- 6. Where the transferor covenants to pay the debt and the transferee does not assume any liability for it, no chargeable consideration has been given and there is no sale. The transfer would then be a voluntary disposition - ie an unencumbered gift capable of being certified as Category L under the Stamp Duty (Exempt Instruments) Regulations 1987 (SI 1987 No 516) - and so exempt from the £5 (substituted for 50p) charge that would otherwise arise.

Implied covenants

- 7. Where no express covenant or undertaking is given by the transferee, the Board are advised that, except in Scotland, a covenant by the transferee may be implied. That makes the transaction a sale, as in paragraph 4 above.
- 8. Such an implied covenant may be negated if there is evidence that it was the intention of the parties at the time of the transfer that the transferor should continue to be liable for the whole of the mortgage debt. Where evidence of such a contrary intention exists, the transfer would again be treated for Stamp Duty purposes as a voluntary disposition.
- 9. Where property in joint names subject to a debt is transferred to one of the joint holders (though with no cash passing), a covenant by the transferee to indemnify the transferor may be implied even where both parties were jointly liable on the mortgage.

Amount chargeable

10. Where a conveyance of property subject to a debt is chargeable to ad valorem duty and the express or implied covenant by the transferee relates only to part of the debt, only the amount of that part is treated as chargeable consideration within Section 57. A certificate of value under Para 6, Part 1, Sch 13 [substituted for Section 34(4) Finance Act 1958] may, where appropriate, be included in the conveyance where the relevant amount of the debt does not exceed the amount certified.

Other provisions

11. The foregoing does not affect any statutory exemption from duty that may apply, eg that for transfers to a charity (Section 129 Finance Act 1982) and that available for certain transfers of property from one party to a marriage to the other in connection with their divorce or separation [Section 83(1) Finance Act 1985 and Category H of the Stamp Duty (Exempt Instruments) Regulations 1987].

Procedure

12. Where the applicant is satisfied that the conveyance or transfer is made on sale, it may be sent or taken for stamping with a remittance for the duty payable. If the transfer contains an appropriate certificate of value - see paragraph 10 above - it may be sent direct to the Land Registry in the usual way if appropriate. In either case, if the amount of the debt outstanding is not given in the conveyance or transfer the amount should be stated in a covering letter.
13. Where the conveyance or transfer contains a covenant by the transferor to pay the debt (see paragraph 6) and is certified as within Category L of the Stamp Duty (Exempt Instruments) Regulations 1987 it should also be sent direct to the Land Registry if appropriate.
14. In any other case where the applicant believes that the conveyance or transfer effects a voluntary disposition - see paragraph 8 above - it should be presented for adjudication accompanied by a statement of the facts and any supporting evidence.

Remortgage of a property

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4.42 Conveyances/Transfers of property involving a remortgage are the sort of transactions where, instead of the parties becoming jointly or solely responsible for the continuing mortgage, a fresh mortgage or loan is taken out.

4.43 This fresh borrowing is used to discharge the earlier mortgage or loan, with the result that the transferor is wholly or partly released from any continuing liability in respect of that debt. By their very nature these transactions - the discharge of the existing mortgage, the transfer between the parties and the creation of the new mortgage - are usually contemporaneous.

4.44 In situations such as this Section 57 Stamp Act 1891 does apply, and such conveyances are subject to Stamp Duty on the amount of the transferor's debt which is extinguished plus any chargeable consideration unrelated to the debt which passes between the parties. There is no "magic instant" in which the property transferred is unencumbered.

4.45 Where the transferor has repaid his/her share of the mortgage debt and the transferee has sole responsibility for the reduced mortgage, Section 57 does **not** apply. Only the expressed consideration (if any) is chargeable subject to a £60,000, £250,000 or £500,000 Certificate of Value where appropriate. If that is the case the parties should be required to prove that this was always their intention.

4.46 You should therefore request any documentary evidence of the agreement made between the parties to establish the position. If the agreement has not been reduced to writing you may accept a sworn declaration providing evidence of a pre-existing valid oral agreement.

4.47 In cases of doubt, the Customer should be advised to lodge the document for Adjudication together with appropriate evidence.

4.48 The Land Registry, the Keeper of the Registers of Scotland or the Northern Ireland Land Registry may require adjudication when it is not clear that the document is either exempt or liable to nil duty.

Dividends in specie

4.49 Where a company, let us say, Y Limited, owns shares in X Limited and it is decided to transfer shares in X Limited to the shareholders of Y Limited as the dividend in Y Limited, two situations can arise from a Stamp Duty point of view.

1. Where the dividend is declared to be the shares in X Limited the shareholders in Y Limited never have a right to receive any money. These circumstances are considered to be certifiable under Category L in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

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2. Where Y Limited declares a dividend and agrees that the shares it owns in X Limited are to be transferred in lieu of that dividend, the shareholders in Y Limited have a right to receive money. Section 57 of the Stamp Act 1891 applies and ad valorem duty is chargeable on the monetary value of the dividend payable.

4.50 If such a case arises and you are doubtful as to which set of circumstances apply, the necessary enquiries should be made to clarify the position.

Covenant to improve a property

4.51 A covenant by the purchaser of a property to make, or of his having made, any substantial improvement of or addition to the property, or of any covenant relating to the subject matter of the conveyance, does not attract Stamp Duty.

Consideration consisting of services or building works

4.52 A contract for services is not property for Stamp Duty purposes and so any real property transferred for a consideration consisting of the provision of services is not liable to Stamp Duty in that respect. This includes, in particular, a contract to carry out building works.

Section 119 Finance Act 2000

The issue or transfer of shares in a connected company

4.53 Under the provisions of Section 119 Finance Act 2000, property transferred from a person to a company, where some or all of the consideration consists of the issue or transfer of shares in a company with which that person is connected, is liable to ad valorem duty on the market value of that property.

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4.54 'Person' is the person in the legal sense. This means any legal entity such as another company, a partnership, a trustee of a unit trust or an individual.

4.55 The legislation provides that the question of whether a person is connected with a company is to be determined in accordance with the provisions of Section 839 of the Income and Corporation Taxes Act 1988. There are several definitions given but a main one is that if, at a general meeting, one person's voting rights mean that person can direct the operations of the company, that person has control of the company. A further definition is that two companies are connected if the same person has control of both.

4.56 It should be noted that this provision extends to situations where the shares are not in the company to which the estate or interest in land is transferred.

Transfer to a company connected to the transferor

4.57 A transfer made from a connected person to a connected company may be made for no consideration or at undervalue. In these circumstances duty is charged on the open market value of the property at the date of transfer.

Category L not applicable

4.58 The provisions of category L of the Stamp Duty (Exempt Instrument) Regulations 1987 no longer apply to the transactions covered in paragraphs 4.53 to 4.57 inclusive.

Relieving provision

4.59 The charge to ad valorem duty in both cases is reduced by any part of the actual consideration that does not consist of property. (eg If the transferee company has agreed to carry out building works as part of the consideration then the market value would be reduced by the value of the building works as these are not a chargeable consideration for Stamp Duty purposes).

Exceptions

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4.60 Section 120 Finance Act 2000 details the exceptions to Section 119. These are, using B as the transferor and A as the company with which B is connected:

- Transfer by B as a nominee or bare trustee of A.
- Transfer by B where A is to be the nominee or bare trustee of B.
- Transfer by B as a nominee or bare trustee to A as nominee or bare trustee of the same third party.
- Transfer or vesting out of a settlement in or towards satisfaction of a beneficiary's interest where the beneficiary's interest is not an interest acquired for money or money's worth and the conveyance or transfer is a distribution of property in accordance with the provisions of the settlement.
- Transfers where A is a person carrying on a business which consists of or includes the management of trusts and is to hold the estate or interest as trustee acting in the course of that business.
- Transfers where A is to hold the estate or interest as trustee and, apart from Section 839(3) ICTA 1988, would not be connected with B.
- A transfer where B is a company and the transfer or vesting is, or is part of, a distribution of assets (whether or not in connection with the winding up of B) **and** the estate or interest was acquired by B by virtue of an instrument which is duly stamped.

In the last case, duly stamped includes documents correctly stamped with fixed duty or adjudicated as not liable, in addition to documents stamped ad valorem. The onus is on the applicant to show that the document in question was duly stamped.

Effective date

4.61 The measures described in paragraphs 4.53 to 4.60 inclusive apply to all documents executed on or after 28 March 2000 unless the document gives effect to a contract made on or before 21 March 2000.

4.62 to 4.81 Blank

Consideration for the sale of an interest in land

Section 241 Finance Act 1994

4.81 Section 241 of the Finance Act 1994 applies where an estate or interest in land is transferred or leased in exchange for any other property. It brings within the conveyance on sale head of charge any document transferring or leasing land in exchange for any property. It also ensures that any real property exchanged for the grant of a lease of land is chargeable to ad valorem duty.

4.82 In the case only of the sale of an interest in land, Section 241 means that the consideration which may be taken into account for Stamp Duty purposes includes not only cash, securities or debt but also the market value immediately before the document is executed of any property which is given as consideration.

'Market value'

4.83 The term 'market value' for this purpose means the price which the property might reasonably be expected to fetch on a sale in the open market at the date of the document [see Section 241(2)]. Where two properties are exchanged, or are the subject of mutual sales, Section 241 applies so that there are two charges to ad valorem duty. This may also happen where there is a sale and leaseback.

4.84 If a leaseback is granted not as part of the consideration for the sale but merely as a condition of the contract there is no charge under Section 241. If, on the other hand, a property is sold in consideration of its leaseback, duty is charged by reference to the value of the lease together with any other consideration for the sale.

Exchanges

4.85 Stamp Duty is charged on documents, so Section 241 applies to each document which satisfies its terms. If therefore land A is transferred in exchange for the transfer of land B, the transfer of A is chargeable by reference to the market value of B, and the transfer of B is chargeable by reference to the market value of A.

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4.86 Customers who present transfers on exchange for stamping should state the market values and provide supporting evidence. Where the buyer and seller are connected and the transaction is not therefore at arm's length, we will need to see an independent valuation.

4.87 A Certificate of Value may apply to either transfer, in respect of the market value of the consideration property.

Equality money

4.88 Where the market values of the two properties being exchanged are not equal, a payment of money (or some other consideration) may often be given with the lower value property, so as to equalise the bargain. The treatment of such cases for Stamp Duty purposes will depend on the facts and the effect of the relevant documents.

The single sale route

4.89 A transaction can often be structured as a sale of the more expensive property for a consideration consisting of the other property plus a cash amount. Where a transaction is properly documented as a single sale in that way, Section 241 does not apply and the transfer of the consideration property is chargeable only to £5 fixed duty as a conveyance of any other kind. This is because there is no sale of the consideration property.

Characteristics of a single sale

4.90 For a transaction to be properly documented as a sale of the more valuable land some money must be paid by the purchaser to the vendor, and the amount must be more than merely nominal (*Connell Estate Agents v Begej* [1993] 2 EGLR 35). The contract may be expected, therefore, to state the vendor, the purchaser and the price to be paid. It should also state how much of the price is to be satisfied by the transfer of the purchaser's property, and it should provide for the balance, which must be more than merely nominal, to be paid in money.

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4.91 If a contract describes the transfer of the purchaser's property as a sale (instead of a transfer) duty is chargeable both ways (see paragraph 4.94).

4.92 A single sale of the dearer property is usually completed by 2 documents:

- The transfer of the vendor's property, which is liable to ad valorem conveyance on sale duty and
- the transfer of the purchaser's property, which should recite that the property is transferred in pursuance of an agreement dated....., and which is liable only to £5 fixed duty as a conveyance of any other kind.

4.93 The advice of your local Technical Adviser should be sought where:

- a nominal sum appears in the contract, perhaps because the customer is seeking a reduced liability to duty; or
- you are in any doubt whether the contract satisfies the single sale route.

Contracts for the mutual sale of two properties

4.94 Where an 'exchange' transaction follows from 2 contracts for sale Section 241 does not apply but conveyance on sale duty is chargeable both ways. The case of *Portman Trustees v IRC* [1956] 35 ATC 349 concerned a reciprocal agreement for the sale of freehold properties for cash followed on completion by a single 'deed of exchange'. It was held that the deed was the completion of 2 separate contracts of sale and was therefore chargeable to conveyance on sale duty on both cash amounts.

4.95 Where two equal value properties are transferred, one in consideration for the other, the transaction is charged as an exchange and not a sale, even if a nominal cash sum is paid.

Part exchanges by builders

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4.96 The most common form of 'exchange' is the part exchange offered by some building companies to potential buyers as an inducement to purchase a new property.

4.97 Sometimes (but not in Scotland) a builder acquires not the purchaser's property but instead the next property in the chain. In such a case both the transfers are liable to ad valorem conveyance on sale duty.

Section 55 Stamp Act 1891 stock or marketable securities exchanged for land

4.98 Section 241 does not apply where the property exchanged for the interest in land is otherwise chargeable to duty. The provisions of Section 55 (and Section 6) of the Stamp Act 1891 apply instead where stock or marketable securities are exchanged for the transfer of an interest in land. The provisions of Section 57 of the Stamp Act 1891 apply where the consideration consists of the discharge, transfer or assumption of any debt.

Exempt property sold for a consideration of land

4.99 Section 118 Finance Act 2000 was introduced as an anti-avoidance provision to counter schemes where land was sold for exempt property, eg Gilts. These schemes involved documenting the transaction as a sale of the exempt property for which the land was given in consideration, and as a result the transfer of the land was liable to fixed duty of £5. Such transfers are now chargeable with ad valorem duty on the market value of the land.

4.100 Section 118(4) restricts the liability to the market value of the land if the exempt property is of a greater value. Section 118(5) defines market value as the open market value of the property.

Exchange of shares

4.101 Where 2 share transfers are executed to effect an exchange of shares both documents are liable to ad valorem conveyance on sale duty under Section 55 of the Stamp Act.

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4.102 Each document is chargeable to duty by reference to the value of the shares transferred by the other document. This is reinforced by Section 6(1) of the Stamp Act.

4.103 Where the transaction is properly documented, not as an exchange, but as a sale of the dearer shares in consideration for the transfer of those shares, the transfer of those shares is liable to ad valorem duty but the transfer of the consideration shares is liable only to £5 fixed duty as a conveyance of any other kind. To qualify as a sale of only the dearer shares the characteristics of a single sale must all be present, in particular there must be a cash element which is more than merely nominal.

Statement in the Inland Revenue Tax Bulletin, August 1995

4.104 Tax Bulletin No 18, issued in August 1995, explained Stamp Taxes' view on the application of Section 240 to 243 of the Finance Act 1994. The part relating to Section 241, Exchanges etc, reads as follows:

Stamp Duty

Finance Act 1994

1. We have received a number of enquiries about the Stamp Duty provisions in Sections 240-243 of the Finance Act (FA) 1994. This article aims to give some general guidance on these points. The precise treatment of a particular document will, of course, depend on all the facts of the case and the legal effect of the document.

Exchanges etc - Section 241 FA 1994

2. Section 241 introduced new rules of Stamp Duty on exchanges of interests in land or buildings. Section 241 operates in a similar manner to Sections 6, 55 and 57 Stamp Act 1891. These provisions impose a charge on instruments which implement transactions which would not be characterised as a sale at common law because the consideration is something other than a price in money paid or promised. Pursuant to these provisions, certain kinds of consideration are to be treated for the purpose of the charge as equivalent to a money price, the charge being imposed by reference to the value of the consideration to be given. (In relation to Section 57, Statement of Practice SP 6/90 remains effective.)

3. For the purposes of the charge to duty under the 'conveyance or transfer on sale' heading in the Stamp Act 1891, Section 241(1) attributes a value to the consideration and states that 'the instrument shall be charged with ad valorem duty under that heading' where a charge is not imposed in respect of that consideration by virtue of any other provision.

4. As Stamp Duty is charged on instruments, rather than transactions, Section 241(1) falls to be applied to each instrument which satisfies the terms of the provision. Accordingly, if, for example, the consideration for the transfer of an interest in land is the transfer of an interest in land, each transfer is chargeable by reference to the market value of the interest transferred by the other.

The £60,000 threshold

5. The £60,000 threshold is applied separately to each side of the exchange. For example, if there is a straightforward exchange of one house worth £50,000 for another worth £50,000, both transfers are within the threshold and no duty would be payable on either provided each is certified in accordance with Section 34(4) Finance Act 1958

6. Where there is a multiple exchange - for example, properties A and B are exchanged for property C - the transfers of properties A and B would be regarded as parts of a larger transaction [under Section 34(4) Finance Act 1958]. The threshold would not apply to either of them if the consideration for both was more than £60,000, but would be applied separately to the transfer of property C.

Equality money

7. Where the market values of two properties being exchanged are not equal, a payment of money (or some other consideration) is often given with the lower value property, so as to equalise the bargain. In many cases the wording of the conveyance of the lower value property may not fully reflect the consideration expressed in the original contract or agreement. Where it is clear from the contract that the lower value property has been transferred for the higher value property less the equality money, Stamp Taxes will limit the charge to duty accordingly. For example, if the initial contract provided for an £80,000 house to be exchanged for a £100,000 house, and for £20,000 to be paid as equality money, the amount charged to duty on the transfer of the £80,000 house would be limited to £80,000. In these cases Stamp Taxes needs to see the relevant contract as well as the conveyance.

8. Where there is a multiple exchange of properties, an apportionment on similar lines may be made to determine how much of the consideration is attributable to each of the transfers. For example, two or more properties may be exchanged for one larger property with or without a payment of equality money.

Sales

9. In many cases, transactions which in the past have been structured and documented as an exchange could equally well be carried out as a sale for a price which may be partly satisfied in kind. For example, when a person offers a property for sale, he may receive the price from the buyer in the form either of money, or partly of money and partly of the buyer's existing house. Such a transaction can be carried out and documented (commencing with the initial contract) as a sale. Section 241 does not apply where duty is already imposed under the conveyance on sale head of charge. Accordingly, if the transaction is within the common law concept of 'sale', Section 241 is excluded and duty is simply charged by reference to the price of the sale.

10. Although a sale ordinarily involves a price in money paid or promised (*Littlewoods Mail Order Stores Limited v IRC* [1963] AC 135 at page 152), the Courts have held that the transaction is still a 'sale' if property is taken in satisfaction of part of the purchase price: *Simpson v Connolly* [1953] 2 All ER 474 p477; *Connell Estate Agents v Begej* [1993] 2 EGLR 35.

In the *Connell* case, the purchaser had agreed to purchase land for £109,000. In satisfaction of this price the vendor was 'to receive ownership of 10 Milner Road, Finedon, plus balance of £53,000'. The Court of Appeal held that the transaction was a sale of the more valuable property for the price of £109,000 and that the purchaser's property was part of that price. The Court confirmed however, that a transaction cannot be characterised as a sale unless some money is paid by the purchaser to the vendor and the cash element is more than merely nominal. So if, for example, the buyer is buying a house for £100,000, and pays for it with £30,000 in cash plus his existing house worth £70,000, duty of £1,000 (1% of £100,000) would be charged on the transfer of the £100,000 house.

11. The house which the vendor accepts as part payment for the sale would not be regarded as a separate sale for Stamp Duty purposes. The consideration for the purchaser's property is not the vendor's property but merely the discharge of a potential obligation to pay part of the purchase price on completion. Accordingly, Section 241 does not apply to the transfer of the purchaser's property. Section 57 Stamp Act 1891 does not apply to the transfer of the purchaser's property because the purchaser's property is not conveyed to the vendor in consideration, wholly or in part, of any 'debt due' to the vendor. The word 'due' when used in relation to a debt means due and payable (*Re European Life Assurance*

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[1869] LR 9 Eq 122, and other cases cited in Stroud's Judicial Dictionary 5th Ed Vol 2 pp 781-783). As the purchase price is not payable until completion, a transfer of property by the purchaser on or before completion cannot be said to be in consideration of a debt due. Ordinarily, on completion, the transfer of the purchaser's property will be handed to the vendor's solicitor, together with a cheque or other means of payment, at the same time as the vendor's solicitor hands over the transfer of the vendor's property. For there to be a debt due to the vendor, the purchaser would have to be put in the position of having taken a transfer of the vendor's property without having paid for it.

12. On the basis that there is a sale for cash to be satisfied in part by the transfer of another property, ad valorem Stamp Duty is charged on the consideration for the sale, but not on the transfer of the other property. That transfer would only be charged to the fixed duty of 50 pence. The threshold would not be relevant to this transfer as it is not a conveyance on sale."

4.105 Since publication of the Tax Bulletin there have been the following changes in legislation:

- there are £250,000 and £500,000 Certificates of Value in addition to the £60,000 level of Certificate;
- section 34(4) Finance Act 1958 has been substituted by Para 6 of Sch 13 to the Finance Act 1999; and
- the old fixed duty of 50p has been substituted by £5.

Exchange Documents Presented for Adjudication

4.106 Adjudication is not compulsory. Customers who require adjudication should provide certified copies of the contract(s) and any other writings which are relevant to the transaction in these cases. We should also ask for both original transfers (and certified copies), as we cannot adjudicate half only of a transaction. If in any case the customer is able to demonstrate that such request is impractical a photocopy of the other duly stamped transfer may be acceptable. If, however, it becomes clear that the other transfer was insufficiently stamped, the customer should be asked to provide the original document and to arrange payment of the balance of duty and any penalty arising. If the document has been passed to the Land Registry, that office will usually release it direct to us in these circumstances, if we ask them in writing to do so.

Element of gift

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4.107 An element of gift may arise if A's property was agreed to be transferred to B in consideration of the transfer of B's property to A and a cash payment but B decided instead to direct that A's property be transferred to C (who did not contribute to the cash payment).

4.108 Another example of a transaction with an element of gift is where A and B are the sole owners of their respective houses but B asks for A's property to be transferred to A **and** C where C does not contribute any consideration for the transfer nor does C assume responsibility for any debt. The element of gift to C does not affect the calculation of ad valorem duty and there is no need for a certificate under Category L in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

Sale of land: unascertainable consideration: Section 242 Finance Act 1994

4.109 If the consideration, or any part of the consideration, for the transfer or vesting of an interest in land cannot be ascertained at the time the document is executed then the consideration is taken to be the market value of the interest in the land immediately before the document is executed [Section 242(1) of the Finance Act 1994 refers]. Following Section 242(3)(a), however, this rule does **not** override the contingency principle (see paragraph 4.291 onwards).

Market value

4.110 The definition of 'market value' in Section 241 of the Finance Act 1994 (see paragraph 4.83 above) is used for the purposes of Section 242 [Section 242(3) refers].

Valuations

4.111 In any case where a valuation is required the customer must be asked to provide a professional valuation or their own valuation supported by documentary evidence. We can check these with the District Valuer if necessary

Consideration payable by instalments

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4.112 Section 56 of the Stamp Act applies where any part of the consideration for a sale is payable by instalments. It applies only to periodic payments on which the document concerned is chargeable to conveyance on sale duty. It does not apply to payments (such as service charges) which are incidental to the sale rather than part of the purchase price (Swayne v IRC [1900] 1 QB 172 and IRC v Littlewoods Mail Order Stores Ltd [1962]2 All ER 279 refer).

4.113 Section 56(1) concerns consideration payable periodically over no more than 20 years. Such consideration is chargeable in full. There is no discount for the delay in payment (see Hotung v Collector of Stamp Revenue [1965] AC 766).

4.114 Section 56(2) refers to consideration which is payable by instalments over a time which may exceed 20 years. In that case the chargeable consideration is limited to the total amounts which will or may be paid in the 20 years.

4.115 Section 56(3) refers to annuities and other payments which cease on death. Here the chargeable consideration is the total amount which will or may be paid within 12 years of the date of the document. This 12 year rule applies regardless of the life expectancy of the person(s) on whose death the payment will stop.

4.116 You should apply the following rules when reviewing a document where the consideration is payable by instalments.

Consideration expressed in the Instrument	Procedure
a. A lump sum payable by instalments, with no provision for interest.	a. Subsections (1) and (2) to be applied as appropriate.
b. A lump sum payable by instalments with provision for interest but the	b. Subsections (1) and (2) to be applied as appropriate to instalments of principal only, on

periodical payments in respect of the principal shown separately from the interest.	the ground that the interest is not part of the consideration for the conveyance but a further sum payable by the purchaser for the right to pay the consideration money by instalments.
c. A lump sum payable by instalments with provision for interest, but the total periodical payment stated in the instrument is not expressly apportioned between principal and interest.	c. Subsections (1) and (2) to be applied as appropriate but only to the maximum of the stated lump sum consideration, for the reasons stated at b. above.
d. A lump sum without reference to payment by instalments.	d. If payment by instalments is shown to be part of the original bargain, treat as falling within a, b or c, as appropriate.
e. Periodical payments in an annuity or rentcharge basis.	e. Subsections (1), (2) and (3) to be applied as appropriate.

Rentcharges

4.117 Example e. above refers to a rentcharge. Rentcharges are payable on freehold properties and when they were originally imposed they were payable in perpetuity. They are paid to rentowners whose interest in the land on which freehold homes stand is limited to a right to the rentcharge. In 1977 the Rentcharge Act altered this system, which had been in place for 700 years, by preventing the establishment of any new rentcharges. It also limited all current rentcharges to 60 years and enabled freeholders to buy out existing rentcharges on payment of a lump sum. Rentcharge payments are therefore becoming less and less common but their liability to duty under S56 should be borne in mind on the rare

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occasions when a document which includes a rentcharge is presented for assessment. In Scotland, the equivalent payments are feu duties payable to the Feu Superior, which are also now subject to buy-out.

Estate rentcharges

4.118 The Rentcharges Act 1977 did however provide for another type of rentcharge, namely the Estate Rentcharge. Estate Rentcharges can be created to make all or part of the cost of providing services to the freeholder by the rentowner payable by the freeholder. These are not to be charged to Stamp Duty since they represent a payment for services and not a periodical payment for the conveyance of the property.

Certificate of value

4.119 If the chargeable consideration for a Conveyance on Sale is restricted under Section 56(1) or (2) only the restricted total should be taken into account in deciding whether a Certificate of Value is appropriate. (See Paragraphs 4.5 to 4.12 regarding Certificates of Value.)

Examples

4.120 The following examples illustrate the application of each Subsection of Section 56 Stamp Act.

Example of the operation of Section 56(1):

Conveyance for £60,000 cash plus an annuity of £500 payable for 16 years after the date of execution of the document.

Cash	£60,000	
Annuity £500 × 16		£8,000
	£68,000	Duty £680

Example of the operation of Section 56(2):

Conveyance for £60,000 cash subject to a perpetual rentcharge of £100 per annum reserved to the vendor.

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Cash	£60,000
+ 20 instalments of £100	£2,000
	£62,000
Duty	£620

Example of the operation of Section 56(3):

A transfers property to B in consideration of which B undertakes to pay A an annuity of £5,500 during the period of the life of either party.

Consideration $12 \times £5,500 = £66,000$ Duty £660

Sales effected by more than one document and sub-sales

Section 58 of the Stamp Act 1891

4.121 Section 58 of the Stamp Act 1891, as amended by Section 112 of the Finance Act 1984, indicates how ad valorem Conveyance or Transfer on Sale duty is to be charged in certain specified cases. Section 58(1) and (2) of the Stamp Act provide rules for apportioning the consideration for sales which are completed by two or more documents. Section 58(1) applies where property agreed to be sold for one sum is conveyed in several parcels. Section 58(2) applies where such parcels are conveyed to different people. The parties to the transactions are asked to provide details of the apportionment and the documents may be stamped accordingly.

4.122 Section 58(3) applies where 2 or more documents are required to complete the purchaser's title to the property. Only the leading document is chargeable to ad valorem duty.

Apportionment of consideration

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4.123 The first 3 Subsections of Section 58 are virtually self explanatory. If there is more than one conveyance document used to effect the sale agreed under a single bargain it is up to the parties to decide how the total consideration should be split between the documents. They may apportion the consideration in any way they choose provided the total of all the separate considerations amounts to the total consideration it was originally agreed would be paid.

4.124 We will then stamp the documents with ad valorem duty on the consideration narrated in each. If the total consideration exceeds the Certificate of Value level none of the documents can include a Certificate of Value.

4.125 The position is similar where:

- one purchaser buys the property for himself and one or more others; or
- where he buys it wholly for others; or
- where there is more than one purchaser.

In each of these cases, where the transaction is effected by more than one document to effect the transfer to the various parties, the parties to the transaction are to decide the split of the total consideration and each document is to narrate the appropriate amount. The total of the separate amounts when added together is to equal the total consideration.

Several documents to complete title

4.126 If there is more than one document required to complete a purchaser's title to a property only the leading or principal document can bear the ad valorem duty. The other or ancillary document(s) cannot be charged with any more duty than the principal one. If the principal document can properly include a Certificate of Value and is therefore liable to duty at the Nil rate the other document(s) cannot be charged with any duty, even £5 fixed conveyance duty.

Example

4.127 An agreement for sale covers 3 properties for a total consideration of £60,000. Three separate conveyance documents are made; one for each property. Section 58(1) means the parties to the transaction must show the apportioned part of the gross consideration appropriate to each

property in the appropriate conveyance. The total of these 3 apportioned considerations must amount to £60,000. A Certificate of Value can be inserted in each conveyance rendering them liable to duty at the Nil Rate

4.128 The documents would not be acceptable if they included phrases such as:

'.....in consideration of £60, 000 the vendor transfers to the purchaser the property herein described together with other properties....'. There must be a distinct amount of the consideration set out in the conveyance of each separate property.

4.129 A vendor agrees to sell land to 3 persons jointly for a total of £75,000. In due course separate conveyances are made to each of the 3 persons of separate parts of the whole property. As in the example for Section 58(1) above, the conveyances must each show a separately apportioned part of the total consideration of £75,000. Certificates of Value would not be appropriate.

4.130 to 4.160 Blank

Sub-sales

4.161 A 'sub-sale' is the technical expression for what could perhaps more properly be called an 'on-sale'. This is where property is transferred from A to B but before B obtains a conveyance of the property he agrees to sell it to C and as a result the eventual transfer is direct from A to C.

Chargeable consideration in a sub-sale

4.162 Section 58 means that only the price paid by C is chargeable with ad valorem duty in such a sub-sale transaction. The exception to this rule is where the price paid by C is less than the market value of the property and the transaction is not a sale of a council house at a discount.

Escoigne Properties v IRC

4.163 Without Section 58 the transfer or conveyance from the vendor to a sub-purchaser would be chargeable to duty in respect of the total consideration passing from the purchaser to the vendor and from the sub-purchaser to the purchaser (the speech of Lord Somervell in Escoigne Properties Ltd v IRC [1958] AC 549 refers).

Genuine falls in value

4.164 It sometimes happens that there is a genuine fall in the value of a property which is sub-sold for a purely cash consideration. This means that the sub-sale consideration is less than the original consideration even though no avoidance is intended or involved.

4.165 This can arise for example when a relocation agency obtains a Power of Attorney to enable vendors to sell their properties without incurring a long delay and subsequently sell on to a sub-purchaser at a lower price. This lower price is nevertheless the value of the property immediately before the contract of sale to the sub-purchaser. Section 58(4) therefore still applies and duty is only chargeable on the sub-sale price.

4.166 In any case where the consideration paid by the sub-purchaser is less than that paid by the purchaser you should consider, and enquire where necessary, the basis on which the smaller sum was agreed. If you are satisfied that the cash sum paid is not less than the market value of the property immediately prior to the date of the sub-contract charge ad valorem duty on the sub-sale price only.

Market value of the property

4.167 Section 58(4) applies only where the chargeable consideration equates to the market value of the property at the date of the sub-contract. Chargeable consideration has the normal interpretation, ie cash, shares other property or liabilities assumed or released. If therefore:

- part of the consideration paid by the sub-purchaser is not chargeable with ad valorem duty; and
- the chargeable consideration is less than the market value immediately prior to the date of the sub-contract;

the document **cannot** benefit from the relieving provisions of Section 58(4). It should be assessed **separately** on the considerations paid by the purchaser **and** sub-purchaser.

4.168 Provisos (a) and (b) to Section 58(4) mean that where the purchaser sells the property to a number of different sub-purchasers in different parcels, it is necessary to find out whether or not the total of the chargeable consideration paid by the sub-purchasers is **less** than the market value of the property on the date of **the first sub-sale contract**.

4.169 If you do not have the other documents or contracts to enable you to clarify the position, you should ask the customer to let you have the relevant further information to allow you to consider the case in the light of all the facts.

Examples

4.170 **A** contracts to sell property to **B** for £65,000 but no conveyance document is executed. **B** contracts to sell it to **C** for £62,000. The conveyance is then executed direct from **A** to **C**, with the consent of **B**, narrating the facts above. Enquiries reveal a genuine fall in the value of the property and that £62,000 was its true market value immediately before the sub-sale was agreed. The document is therefore liable to ad valorem Conveyance on Sale duty on the sub-sale consideration of £62,000 only. Duty £620 with a £250,000 Certificate of Value.

If it had been shown that the true market value was over £62,000 the relieving provisions of Section 58(4) would not apply and duty would be due on both considerations, ie £65,000 and £62,000. Duty of £1,270 would therefore be due with a £250,000 Certificate of Value in respect of each consideration.

A vendor contracts to sell property to a purchaser for £190,000 but no conveyance document is executed. The purchaser then contracts to sell it in 3 lots to various sub-purchasers for £60,000, £65,000 and £65,000 respectively. Three conveyances are then executed direct from the original vendor to the respective sub-purchasers with consent of the purchaser, each narrating the facts as above. Duty is chargeable on the considerations payable by each sub-purchaser.

Sub-purchaser 1 - consideration £60,000 - Nil rate with a £60,000 Certificate of Value.

Sub-purchaser 2 - consideration £65,000 - duty £650 with a £250,000 Certificate of Value.

Sub-purchaser 3 - consideration £65,000 - duty £650 with a £250,000 Certificate of Value.

Valuations

4.171 Where a valuation by the District Valuer is required the following should be borne in mind:

- A site inspection should be requested where the value of the property is expected to exceed **£2.5 million in value**.

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- Form 418A can be used when requesting a site inspection.
- A site inspection can also be requested if the District Valuer indicates on form 418 that the proposed value is not acceptable. Section 242 Finance Act 1994 is the legislation that would be most likely to activate requests for a site inspection; although if the value provided by the customer is verified by other writings (surveyors report, etc) the proffered value should be accepted.
- In all other cases where a valuation is required a 'Valuation without inspection' should be requested. Form 418 can be used for this purpose.
- Where the District Valuer needs to comment upon a sub-sale at a lower price (see paragraphs 4.162 to 4.166) the form 418 can be adapted to include the date of the contract between the purchaser and sub-purchaser; as well as the price agreed between the vendor and purchaser and purchaser and sub-purchaser.

Housing Association sub-sales

4.172 Section 107 of the Finance Act 1981 lists the local authorities, housing associations and other bodies empowered to sell dwelling houses to their tenants **at a discount**. Section 58(4)(b) means that where the house is sub-sold at a discount, duty is chargeable **on the discounted price, not the market value** of the property.

Fitch Lovell v IRC

4.173 Note that Section 58(4) requires that the property sub-sold is '**the same**' as the property contracted to be sold. It has been held that property which was altered in character before being 'sub-sold' may not benefit under Section 58 (Fitch Lovell Ltd v IRC [1962] 3 All ER 685 refers).

Sub-sale of other property

4.174 It can also be seen from the Fitch Lovell case that **Section 58(4) is not limited to land**. It extends to other forms of property too. It includes for example stocks and shares, book debts and benefit of contracts.

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4.175 An **agreement** for sale of book debts or the benefits of contracts would be chargeable to duty. **Note** that a **sub-sale of stocks or shares** gives rise to an SDRT charge on the agreement to transfer from **A** to **B**.

4.176 Section 58(5), as amended, makes it clear that a certain device designed to avoid duty cannot succeed. The device included a sub-sale for a nominal consideration from the real purchaser to a nominee. It also involved an agreement for lease, followed by a transfer subject to that agreement, from the nominee to the real purchaser.

Maples v IRC

4.177 There is a special rule for apportioning the consideration in a **part sub-sale**. A part sub-sale happens when part only of a property is sub-sold, the remainder being transferred to the purchaser. Following the decision in the case of Maples v IRC [1914] 3 KB 303, the consideration for the part which is **not** sub-sold is that part of the original purchase price which, having regard to the relative values of the property sub-sold and not sub-sold, may be apportioned to that part of the property conveyed to the purchaser. The apportioned consideration for the conveyance to the purchaser is therefore **not** simply the purchase price of the whole property less the money received for the sub-sale(s). The District Valuer is available to advise on apportionment's in part sub-sale cases.

Certificate of Value in a sub-sale

4.178 In a sub-sale the contracts between a sub-purchaser and purchaser and the purchaser and the original vendor are separate.

4.179 If the consideration for the sub-sale is £60,000 or less, a £60,000 Certificate of Value in the sub-sale document will mean no duty.

4.180 If the consideration is over £60,000 a £250,000 or £500,000 Certificates may be appropriate and duty chargeable (see paragraph 4.5 above).

4.181 If the sub-purchaser pays a chargeable consideration and a further unknown sum, duty will be chargeable under Section 242 Finance Act 1994 (see paragraph 4.109 above).

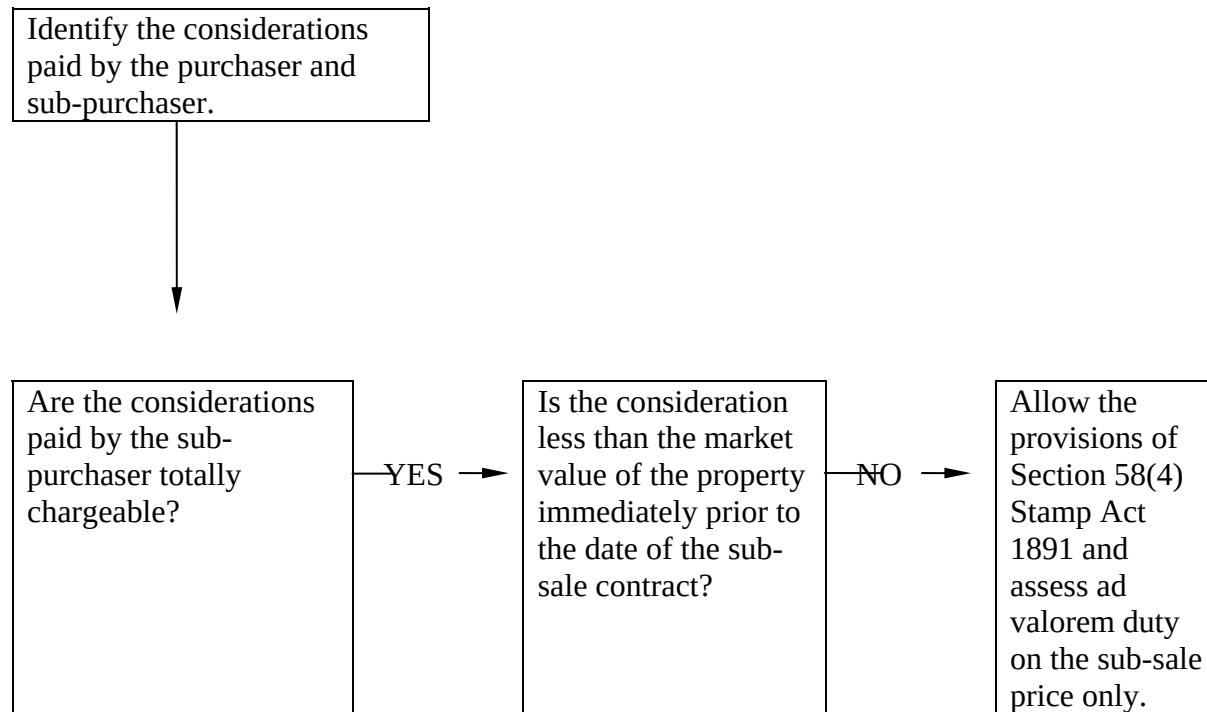
4.182 If there is more than one sub-purchaser, each with a separate contract for the sub-sale of part of the property, a Certificate of Value will be appropriate for each Conveyance.

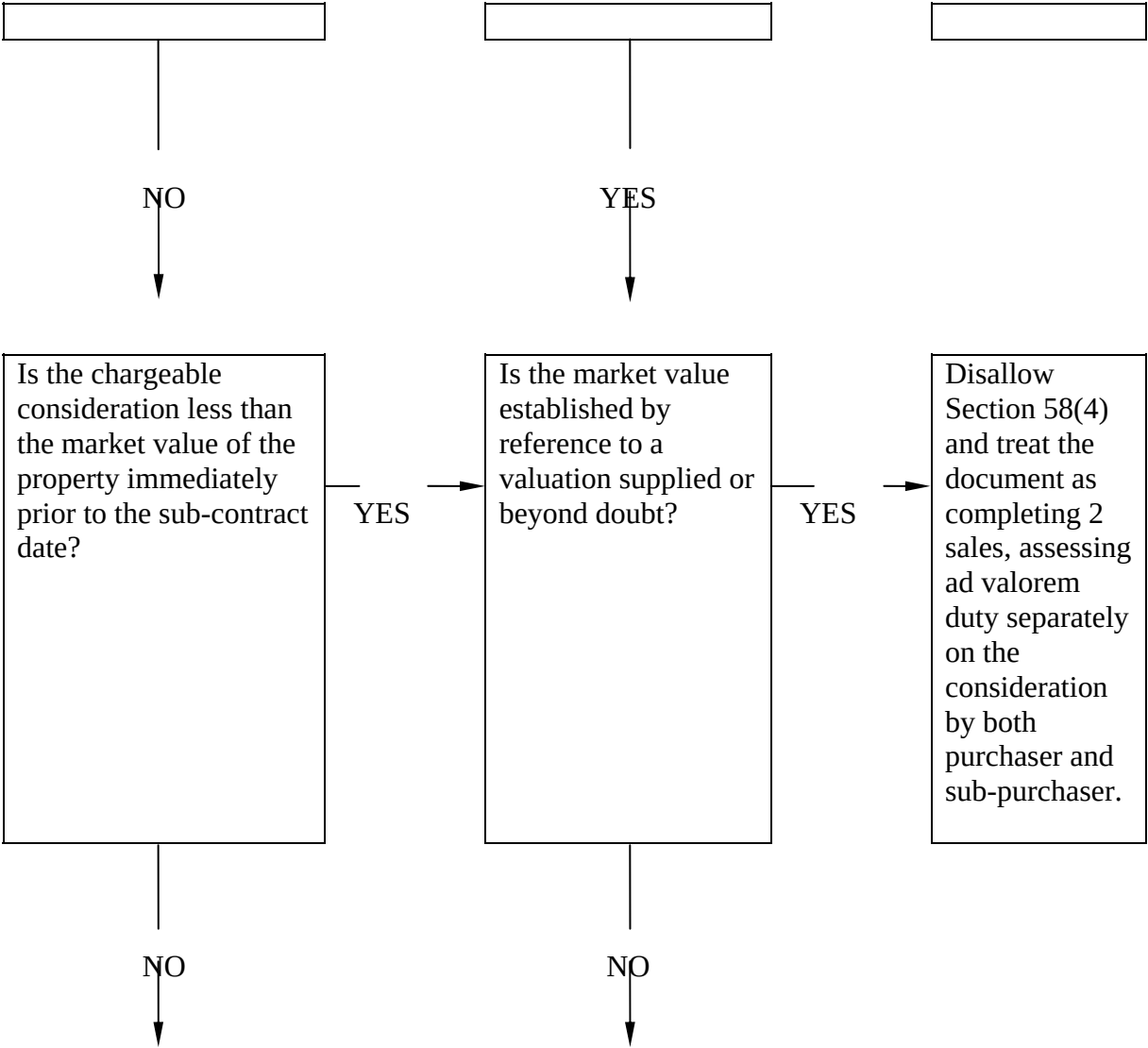
Certificate of Value in a Maples case

4.183 The conveyance of the part of the property not sub-sold is part of the larger transaction between vendor and purchaser and the amount of consideration will determine whether a Certificate of Value is appropriate.

4.184 The following flowchart may be helpful.

Flowchart for documents effecting sub-sales





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Assess ad valorem duty
by reference to the sub-
sale price only.

Advise the customer
to submit the
document for
adjudication.

Agreements for sale

4.185 Agreements for the sale of property are chargeable to duty under Paras 7, 8 and 9 of Sch 13 to the Finance Act 1999, subject to exemption for certain classes of property.

4.186 Agreements and contracts for the sale of shares or real property are not chargeable to Stamp Duty. The liability arises instead on the document which completes the sale, that is the transfer or conveyance. In the case of shares and other chargeable securities there is however a charge to Stamp Duty Reserve Tax (SDRT) in the absence of a duly stamped Stock Transfer Form.

4.187 Ad valorem duty is charged on all agreements or contracts for the sale of:

(a) any equitable estate or interest in property; **or**

(b) any estate or interest in property, **except**

- land;
- goods, wares or merchandise;
- stock or marketable securities;
- patents, trademarks, designs and copyrights;
- any ship or vessel, or a part interest, share or property of or in any ship or vessel; or
- property of any description situated outside the United Kingdom.

4.188 It follows that the main items of property which **attract** duty in an agreement for sale are equitable interests; leasehold fixtures, including tenants' fixtures; goodwill; benefit of contracts; books debts (except where collected by the buyer as agent for the seller); and cash on deposit.

Other property

4.189 Benefit of contracts includes any part of **work in progress** which is the profit element of work done to specific order; any portion of the amount for **motor vehicles and plant** which is the value of unexpired licences and insurances; and the written down value of **goods held on hire purchase** less the hire purchase debt outstanding (Drages Ltd v IRC [1972] 6 ATC 72 refers to the last item).

Non-chargeable items

4.190 The main items of property which are excluded from the charge to duty are legal interests in freehold property and fixtures thereon and leasehold property; any shares, debentures and other securities; patents, trademarks, designs and copyrights; loose plant and machinery, stock-in-trade and other chattels; any overseas property; ships; cash in hand or at bank on current account; and debts secured by mortgage.

Book debts collected by purchaser

4.191 It is normal for a business sale agreement to provide that the purchaser collects the book debts as agent for the vendor and uses them to pay the vendor's debts. If that is done the amount of the debts is not part of the consideration for Stamp Duty purposes. A purchaser may, however, agree to make good any shortfall in the debts collected. This may represent a contingent liability to discharge all the debts and therefore result in duty on the full amount (paragraph 4.291 gives information about the contingency principle).

Property situated outside the United Kingdom

4.192 Property situated overseas may include contract debts where the debtor is resident abroad (English, Scottish and Australian Bank Ltd v IRC [1932] AC 238), goodwill of a foreign business (IRC v Muller & Co's Margarine [1901] AC 217), and money in a bank account kept at an overseas branch.

Breakdown of the consideration on form Stamps 22

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4.193 Usually an agreement for sale will state a global price which is paid for **all** the items sold, whether chargeable to duty or not. In order to calculate the duty, therefore, a breakdown is needed of the global figure. That information is not usually given in the document itself, and it is useful to us as well as to customers for it to be given in this standard format. This is done by the customer completing a form Stamps 22, in Scotland a form 22 Stamps (Scotland), and sometimes by providing further details, for example about work in progress. Guidance about the completion of the form is given in leaflets SO5 and SO5 (Scotland).

4.194 The form has two columns, the left one for the breakdown of the consideration and the right one for the apportionment to the various items. The totals of the two columns must be the same; and the form should be signed and dated by one of the parties (the secretary in the case of a company) or by a solicitor or accountant acting in the sale. Duty is calculated by taking the **full** consideration and then deducting the part which relates to non-dutiable items and charging the balance.

4.195 If the total value of the assets sold, as may be shown in a balance sheet or in the agreement itself, is less than the consideration paid, then the difference will usually be goodwill, which is, of course, chargeable to duty.

Forms Stamps 22 and 22 Stamps (Scotland)

4.196 You will find below copies of both versions of the form ticked to show the chargeable items and those which are taken into account for a Certificate of Value.

Stamp Duty				
Apportionment of consideration under agreement for sale			Charge duty on the Agreement for Sale	Take into account for Certificate of Value purposes
Re	and	Ref No		
Amount of Consideration payable in Cash, or Bills	£		Legal Estates in Freehold Property and Fixed Plant and Machinery and other Fixtures thereon	£
				✓

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Amount of Consideration payable in Shares, Debentures, etc	Legal Estates in Leasehold Property	✓	✓
Liabilities assumed by Purchaser:	Fixed Plant and Machinery on Leasehold Property (including Tenants', Trade and other Fixtures)	✓	✓
Amounts due on mortgages of Freeholds and/or Leaseholds, including interest to date of sale	Equitable Interests in Freehold or Leasehold Property	✓	✓
Hire Purchase Debts in respect of Goods acquired	Loose Plant and Machinery, Stock-in-Trade and other Chattels		)) See) Paras)4.238)and)4.239)
Other Liabilities of the Vendor	Goods, wares and Merchandise subject to Hire Purchase* Agreements (Written Down Value)	✓	✓
Any other Consideration	Goodwill and Benefit of Contracts		
Certificate to be signed by the Vendor or Purchaser (the Secretary in the case of a company) or by an Accountant or Solicitor acting in the sale.	Patents, Designs, Trade Marks, Licences, etc	✓	✓
	Book Debts		
I hereby certify that the particulars shown in this form are in every respect fully and truly stated according to the best of my judgement and belief.	Cash in Hand and at Bank on Current Account, Bills, Notes, etc	✓	✓
	Cash on Deposit		✓
	Shares, Debentures and other investments	✓	✓
Signed	Other Property, viz.	✓	✓

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Address

Date

£

Stamps No 22

*Benefit of Contract ie Value of Goods subject to HP
less the HP Debt

£

Apportionment of consideration under agreement for sale section 59 Stamp Act 1891	
Names of parties	

[illegible]

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It is hereby certified that the particulars shown in this form are in every respect fully and truly stated according to the best of my/our judgement and belief and that no part of the moveable plant and machinery is fixed to the premises.

SIGNED
.....

DATE

ADDRESS
22 Stamps (Scot)

Consideration consisting of, or including, the issue of shares

4.197 The value of unquoted shares in a company which is newly-formed and whose only assets are those acquired is the value of those assets, including intangibles. The consideration for the sale is the total of that value and any other consideration, such as any liabilities of the seller which are taken over by the buyer [Foster (John) & Sons Ltd v IRC [1894] 1 QB 516 and Sections 57 and 55 of the Stamp Act refer].

Companies Form 88(3) (Form 98(3) in Northern Ireland)

4.198 Where shares are issued as consideration for an acquisition, but there is no written agreement for sale, then a form 88(3), [form 98(3) in Northern Ireland], must be completed by the issuing company and sent to the relevant Registrar of Companies. A form 88(3) gives particulars of a contract relating to shares allotted as fully paid or partly paid up otherwise than in cash. It is only to be used when the contract has not been reduced to writing. It is required to be produced to the Registrar of Companies under Section 88(3) of the Companies Act 1985. The form 88(3) is chargeable to duty. If the apportionment details have been given on form 88(3) there is no need for a form 22 to be completed. A form 88(3), or form 98(3) in Northern Ireland, may contain a Certificate of Value.

4.199 When a transfer of foreign shares is executed in the UK and the consideration consists of the issue of shares in a UK company the transfer is liable to UK Stamp Duty (see the case IRC v Maple & Co (Paris) Ltd [1908] AC22) but often the parties will execute and hold the transfer abroad and it will not be sent to us for stamping.

4.200 There is a requirement in these cases to lodge the Agreement for the Sale or a Form 88(3) with the Registrar of Companies because shares are being allotted.

4.201 The Agreement or Form 88(3) should be adjudicated as not chargeable with any duty. Stamp Duty reserve tax is not chargeable because the shares transferred are foreign shares which are not chargeable securities for SDRT purposes. We do not require the transfer of the foreign shares to be stamped before we are prepared to adjudicate the Form 88(3) as not chargeable.

4.202 to 4.230 Blank

Certificate of Value

4.231 A £60,000 Certificate of Value may be inserted in an agreement for sale document if the overall consideration exceeds £60,000 but the net amount after making certain deductions does not exceed £60,000. The same applies for £250,000 and £500,000 Certificates of Value. The only sums which may be deducted in this way are those which are apportioned to cash in hand and/or cash at bank on current account, goods, chattels, moveables, intellectual property, loose plant and machinery, stock in trade, and goods subject to hire purchase less the hire purchase debt thereon.

4.232 Para 7(2) of Sch 13 to the Finance Act 1999, which is somewhat similar in effect to Section 58(4) (see paragraph 4.121), concerns agreements to sub-sell. This type of sub-sale does not take place very often. Para 7(2) applies where the original purchaser has paid for

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the agreement to be stamped but, before the property is transferred, enters into an agreement for it to be sold to a sub-purchaser. Under Para 7(2) Stamp Duty is charged (1) on the second agreement only if the consideration for the sub-sale is greater than that for the original sale and (2) only on that extra consideration.

4.233 Under Paras 7(3) and (4) a conveyance to the sub-purchaser, or to the purchaser, shall have the duty paid on the original agreement denoted upon it or transferred to it. It is not necessarily the first purchaser who will pay the duty on an agreement for sale. The sub-purchaser can pay the full duty if the original purchaser leaves the agreement unstamped.

4.234 Paras 7(3) and (4) apply to agreements for sale generally. They are not restricted to the sub-sales. Where the conveyance mentioned in Paras 7(3) and (4) of Part 1 relates to an item, such as shares, which is not chargeable on the agreement, any duty concerned is charged on the conveyance.

4.235 Under Para 8(1) an unstamped agreement for sale is treated as sufficiently stamped for all purposes if within 6 months, a conveyance in conformity with the agreement is presented for stamping and is duly stamped.

4.236 Para 9 provides that the duty on an agreement for sale is returned if the agreement is rescinded or annulled or not substantially performed or carried into effect. If an agreement has been used in any way then the duty is not repayable.

Fixtures

4.237 As stated in paragraph 4.18 fixtures are regarded in effect as being part of the land. A fixture is an item which is attached to the land or building transferred with the intention of benefiting the use of that land or building. This may be contrasted with loose or moveable items, or chattels such as free-standing cookers, curtains or light shades which have a more temporary attachment to the building concerned. A fitted kitchen unit is, however, an example of a fixture.

Fixtures on leasehold property

4.238 The expression 'goods, wares and merchandise' on the form does not include fixed machinery or other property usually described as 'fixtures and fittings'. Fixtures attached to leasehold property are chargeable to duty on the agreement for sale. If the customer does not produce the agreement for stamping the duty may be charged on the assignment of the lease.

Fixtures on freehold property

4.239 Fixtures, etc., attached to freehold property are part of that property. They are not therefore chargeable to duty on the agreement for sale. Instead their value should be part of the consideration and they are chargeable on the conveyance or transfer.

Property passing by delivery

4.240 Following the article in the Stamp Taxes Bulletin (No.1 August 2001) we no longer require that plant and machinery be in an actual state of severance to be regarded as loose. It is sufficient that they can be relatively easily severed, perhaps by the removal of securing

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screws or bolts. But if removal would damage either the building, the land or both then the plant and machinery should be regarded as fixed and the appropriate duty sought.

Benefit of contract

4.241 The form refers to goods subject to hire purchase agreements and to the hire purchase debts. The amount chargeable to duty, as a benefit of contract, is the written down value of the goods held on hire purchase less the hire purchase debt outstanding at the date of the agreement.

4.242 The consideration for the sale of a leased vehicle may also be shown on a form Stamps 22 as a benefit of contract and is also chargeable to ad valorem duty.

4.243 Where goods, etc are included in a sale and the left column on the form Stamps 22 shows liabilities assumed by the purchaser the customer should be asked whether any of the goods were sold subject to hire purchase agreements and, if so, what was the written down value of those goods and the amount of the hire purchase debt.

Purchase of own shares

4.244 Section 162 Companies Act 1985 empowers a company to purchase its own shares. It is compulsory for a company buying its own shares to make a return to the Registrar of Companies and it is the return Form 169 which must be stamped. This is provided in Section 66 of the Finance Act 1986 which makes the Form 169 liable to duty as if it were a Transfer on Sale. If a Stock Transfer Form has been used to record the sale to the company the applicant should be advised of the requirement for a Form 169 to be completed and stamped. The applicant should also be informed that the Stock Transfer Form does not require stamping. If, however, an applicant insists that the Stock Transfer Form is adjudicated, we will adjudicate it as being not chargeable with any duty.

4.245 There are also circumstances in which the Stamp Duty exemption under Section 42 Finance Act 1930 can apply to a purchase by a company of its own shares. See Chapter 6.

Company Takeovers

4.246 In a takeover a company (the 'acquiring company') offers to purchase the shares in another (the 'target company'). The offer is often made by a bank acting for the acquiring company and details are published in an 'Offer Document'. The consideration for the offer can be either:

- cash (for example, for every share in the target company, 105 pence in cash); or
- shares (for example, for every 2 shares in the target company, 3 shares in the acquiring company); or
- a mix of shares and cash (for example, for every 2 shares in the target company, one share in the acquiring company plus 140 pence in cash); or
- shares with a cash alternative (for example, for every 2 shares in the target company, either 3 shares in the acquiring company, or 210 pence in cash).

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4.247 When the offer is made it is usually conditional upon acceptance by the target company's shareholders in respect of a stated minimum percentage of shares by a given date, often with the proviso that the acquiring company may extend the closing date or decide to accept a lesser percentage. Where the consideration includes shares to be issued, the offer would normally also be conditional upon those shares being listed. The acquiring company may cancel the offer while these (and other) conditions remain unfulfilled. When the conditions are satisfied the company declares the offer unconditional.

4.248 Target company shareholders wishing to accept the offer must complete a 'form of acceptance'. Completed acceptances received by (or on behalf of) the acquiring company on or before the date the offer is declared conditional are conditional contracts until that date.

4.249 Sections 428 to 430 of the Companies Act 1985 provide that where an acquiring company makes an offer for all the shares, or the whole of any class of shares, of another company and the offer is accepted by the holders of 90% by value of the relevant shares, the offeror may, by notice, compulsorily acquire the remaining shares from the dissenting shareholders who did not accept the offer.

Block transfer

4.250 A block transfer is usually executed which consists of a Stock Transfer form with an accompanying schedule showing so many transfers of a certain number of shares together with the considerations and duty payable for each.

4.251 A single Stock Transfer form is executed to cover the total number of shares in the target company to be transferred to the acquiring company and this document is stamped with the total of the separate amounts of duty. This avoids having to stamp a separate Stock Transfer form for each individual transfer.

4.252 Usually there is more than one block transfer. For example, one covering acceptances up to and including the date on which the offer was declared unconditional, one for a specified period after that date and one in respect of dissenting shareholders who originally choose not to part with their holding in the target company but whose shares are eventually compulsorily acquired.

4.253 There should be a certificate, signed to the effect that the signatory is able to verify all the transfers on the schedule are correctly detailed. The Stock Transfer form can be accepted unexecuted if the certificate is on the schedule which is attached to the Stock Transfer.

Forms of consideration

4.254 The following instructions show how to deal with block transfers with the four types of consideration listed above.

Cash

4.255 The consideration per acceptance in the schedule with the block transfer will be the sum paid under the terms of the offer and duty is calculated on that sum.

Quoted shares

4.256 Section 55 of the Stamp Act provides that where the consideration for a sale consists of shares, the transfer is charged with duty in respect of the value of those shares. Under Section 6(1) of the Act the value for Stamp Duty purposes is taken as the value **at the date of the Transfer**. If, as is often the case, the offer provides for the acceptor to grant a power of attorney or authority to a director of the Bank or acquiring company to execute a transfer on his/her behalf the relevant date is simply the date of the block transfer. This is because the block transfer can, in such a case, be regarded as the effective instrument of transfer. If no such power is granted the instructions in paragraphs 4.258 to 4.260 below apply.

Unlisted shares

4.257 Ask the customer to provide:

- a proposed value for the consideration shares
- a brief explanation as to how the value was arrived at; and
- some evidence in support of that value (for example a valuation report and a copy of any relevant accounts).

Block transfer(s) covering acceptances received up to and including the date on which the offer is declared unconditional

4.258 Duty is calculated on the first official quotation of the consideration shares (usually on the date on which the offer is declared unconditional or a day or two later). For interest and penalty purposes the date of execution is to be taken as the date the offer is declared unconditional.

Block transfer(s) covering acceptances received during a specified period after the offer is declared unconditional

4.259 Duty is calculated on the quarter up price of the consideration shares averaged over the period. This price of course will vary for each block transfer according to the period covered by the scheduled acceptances. A typical calculation would look like this:

Period 4/10/99 to 8/10/99

Date	Price Range (Pence)	¼ UP
4.10	205-225	210
5.10	205-225	210
6.10	210-230	215
7.10	205-225	210
8.10	200-220	205
	TOTAL	1,050

Average Price = $1,050 \div 5 =$ 210p

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For interest and penalty purposes the date of execution is taken to be **the last day of the batch of acceptances** covered by the transfer.

Block transfer(s) relating to 'dissenting shareholders', ie target company shareholders who do not accept the offer

4.260 The shares of dissenting shareholders are compulsorily acquired when the acquiring company secures acceptances for 90% of the shares it wants. They will usually be the subject of the final block transfer form. The consideration shares are valued **at the date of that transfer**.

A mix of shares and cash

4.261 The practice for calculating the value of the share consideration is explained above. The cash consideration is added in order to arrive at the 'consideration per acceptance'.

Shares with a cash alternative

4.262 It is often the case that when a target company shareholder chooses the so called 'Cash Alternative' (because he/she does not want to hold shares in the acquiring company) the acquiring company does, in effect, allot shares to him/her but arranges for those shares to be sold in order to raise money to provide the Cash Alternative.

4.263 This type of arrangement can be identified by the following provisions (or something similar) in the terms and conditions of the offer, usually under the heading 'Cash Alternative'.

'[The Bank] hereby makes a separate offer (as nominee and agent for those persons who have agreed to participate in the offer to purchase the new [acquiring company] shares pursuant to the Cash Alternative and as principal to the extent that such arrangements have not been made) on the terms and subject to the conditions set out or referred to in this document to purchase from [target company] shareholders accepting the offer up to X million new [acquiring company] shares at a price of X pence per share, free of expenses'.

4.264 The target company shareholders will also grant a power to the Bank to dispose of the consideration shares allotted to them, for cash. This as in the following example can usually be found under the heading 'FORM OF ACCEPTANCE':

'Each [target company] shareholder by whom or on whose behalf a Form of Acceptance is executed irrevocably agrees

- i. that the execution of the Form of Acceptance constitutes the irrevocable agreement or authority of any director of the [acquiring company, or Bank] as such shareholder's attorney and an irrevocable instruction to the attorney to execute all forms of transfer and/or other documents in relation to:
 - a. the [target company] shares in favour of [acquiring company]
 - b. the new [acquiring company] shares in respect of which the Cash Alternative is accepted which are allotted to the [target company] shareholders.....'.

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4.265 Where such an arrangement exists, the consideration is to be taken to be 'shares' (**not** 'cash') and the instructions at paragraphs 4.256 and 4.257 above apply. Where there is no such arrangement the instructions at paragraph 4.255 above apply.

4.266 If Renounceable Letters of Allotment are used in this type of case there will be a charge to SDRT. Any cases are to be passed to the SDRT Operations, Customer Service. Detailed examination of the offer document may be needed to identify such cases.

Transfer following a failure to lodge a renounceable letter of allotment

4.267 A transfer following a failure on the transferees part to lodge a letter of renunciation within the time allowed should be assessed to £5 fixed transfer duty. If the transfer was required because the selling broker failed to keep his bargain to deliver the allotment letter it will attract ad valorem duty.

4.268 An allottee has either an equitable right to the shares allotted or a conditional right to subscribe for them. He/she can sell that right but if he/she has an equitable right he/she can sell the shares themselves. To charge ad valorem duty we must be able to show that either there was a contract to sell shares or that the shares transferred represent the rights sold.

Schedules

4.269 Each schedule with a block transfer should cover acceptances during a stated period for which a consideration per share has been calculated and should contain the information shown in the following example:

Period: 4/10/99 to 8/10/99

Value of consideration per share: 210p

Number of Forms of Acceptance	Number of shares in each Acceptance	Consideration (£) per Acceptance	Stamp Duty per Acceptance (£)	Total Stamp Duty (£)
10	80	168	5.00	50.00
5	100	210	5.00	25.00
2	120	252	5.00	10.00
10	200	420	5.00	50.00
Total Duty Due £135.00				

Alternatively Stamp Duty can be calculated as follows which avoids the need to calculate duty on each acceptance:

$(0.5\% \times \text{total number of shares} \times \text{price}) + (£2.50 \times \text{number of acceptances})$.

So, in the above example this would give:

$(0.5\% \times 3,540 \times 210) + (£2.50 \times 27) = £104.67$, rounded up to the nearest £5 = *£105.00

* ie one rounding up only.

Principal instrument - Section 61 Stamp Act 1891

4.270 Section 61 applies where two or more documents effect a sale, and provides a simple rule for ascertaining the principal document and therefore the one which is chargeable to duty.

4.271 Under Section 61 any disposition or assignation in Scotland by the seller is the principal document. If, however, there is no such disposition or assignation then it is up to the parties to decide which is the principal document and to pay the duty thereon accordingly.

4.272 This does not however mean that duty can be avoided by splitting a transaction over two documents, executing and keeping one of them abroad and nominating that as the principal document. In those circumstances the document to be used or recorded in the UK is liable to the full ad valorem Stamp Duty unless the other document is duly stamped ad valorem. This follows from the judgement in the Stamp Duty appeal case of Parinv (Hatfield) Ltd v IRC [1996] STC 933; [1998] STC 305(CA).

4.273 to 4.290 Blank

The contingency principle

4.291 The contingency principle applies where the consideration can be ascertained on the assumption that a future event mentioned in the document were or were not to occur. It is based on case law, reference often being made to the decisions in Underground Electric Railways Co of London Ltd v IRC [1905] 1 KB 174 and [1906] AC 21; Underground Electric Railways Co of London Ltd v IRC [1914] 3 KB 210, Coventry City Council v IRC [1979] Ch 14 and L M Tenancies 1 Plc v IRC [1996] STC 880. It means that any basic or prima facie sum which may become payable as consideration on the happening, or not happening, of some future contingency is chargeable to duty. If therefore the total consideration is not fixed at the time the document is executed, but a sum, or sums, are stated to be payable on a contingency, then duty is chargeable on such sum(s).

4.292 The contingency principle applies in the case of Stamp Duty only. It does not apply in calculating the SDRT due on an agreement to transfer chargeable securities. For more information on the SDRT position see Chapter 11, paragraph 11.12.

4.293 Contingent consideration may take one of several forms. The Stamp Duty treatment is as follows:

- Where there is a stated consideration which may vary up or down duty is due on the stated amount;
- Where there is a definite minimum consideration stated or a definite minimum can be calculated from the terms of the document duty is due on the minimum amount;
- Where there is a definite maximum consideration stated or a definite maximum can be calculated from the terms of the document duty is due on the maximum amount.

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- If both a maximum and a minimum sum are stated, or can be calculated from the terms of the document, duty is due on the maximum amount.

4.294 Where no sum is specified so that the consideration is wholly unascertainable at the date of execution of the document there can be no charge to ad valorem duty unless the subject matter of the sale is real property in which case the provisions of Section 242 of the Finance Act 1994 will apply. An artificial minimum amount of consideration shown in a document with a view to avoiding a charge under Section 242 is to be ignored and the provisions of the Section applied.

4.295 Where there are multiple contingencies in a document Stamp Taxes is entitled to the highest amount of Stamp Duty payable on the happening or not happening of any of those contingencies. We are as entitled to ignore a contingency as we are to take account of it in calculating the duty due.

Planning permission

4.296 A simple example of the operation of the contingency principle is the transfer of land for (say) £2m but with a further (say) £1m payable if at some time in the future planning permission is obtained to develop the land. The transfer is chargeable with duty on the full amount (ie £3m) which will be payable if planning permission is obtained.

Independent Television Authority v IRC

4.297 There is an exception to the general rule That is where a small sum which is stated to be payable on a contingency does not really represent the consideration agreed by the parties but was inserted to avoid the market value rule in Section 242 of the Finance Act 1994 (see paragraphs 4.109 and 4.110). Section 242(3)(a) does not apply to such a sum as it does not accord with the statement by Lord Radcliffe in Independent Television Authority v IRC [1961] AC 427 that:

'What is necessary is that it should be possible to ascertain from the agreement that there is some specific sum agreed upon as the subject of payment which may perhaps fairly be called the prima facie or basic payment'.

Delayed consideration, deferred consideration or consideration ascertainable but unascertained

4.298 These descriptions may seem to have similar meanings but in Stamp Duty terms they are quite different and each has its own meaning.

Delayed consideration

4.299 This means consideration ascertained at the date of execution or completion but delayed; for example to ease the cash flow of the purchaser. An example would be the purchase of a business for £1m, of which £500,000 is payable on completion with the balance in 10 monthly instalments of £50,000. One half of the consideration is within the definition of delayed consideration. In this example Section 56(1) of the Stamp Act applies and duty is payable on the full £1m.

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4.300 In any case where the consideration is paid by instalments in cash only, ad valorem duty should be calculated on the total of the initial sum and the further payments, always having regard to the provisions of Section 56 of the Stamp Act 1891. If the further payments are based on accounts for subsequent years and therefore not ascertainable with certainty the contingency principle should be invoked if sufficient data is included in the document to allow us to work out basic figures for these further payments which may vary up or down. Otherwise, consider Section 242 if the property transferred is caught by the section.

Deferred consideration

4.301 This means consideration payable in the future based on events after the document has been executed or after completion. A common example is where company A buys the shares of company B for £1m, payable immediately, plus a further sum payable some time later, the amount of this further consideration depending on the profits for financial years subsequent to execution of the document.

4.302 The contingency principle is applied to Conveyances on Sale through Section 57 of the Stamp Act. In a case involving a deferred consideration we apply Section 57 and have to look for the payment of money or the transfer of stock. The issue of new shares, loan notes or loan stock are not transfers for the purposes of Section 57 and accordingly duty is not payable on consideration consisting of these items.

4.303 If the deferred consideration consists of the issue of shares or cash then duty is payable on the cash sum under the contingency principle.

4.304 Where the purchaser has the option to pay the deferred consideration in cash or shares the cash element/option is to be charged to duty.

4.305 In the above example the further payments depend on the accounts for subsequent years and are not therefore ascertainable with certainty. If there is sufficient data in the document to allow us to work out basic figures which may vary up or down the contingency principle should be applied and ad valorem duty charged on those amounts.

4.306 If the deferred consideration consists only of the issue of shares or loan stock duty is not chargeable under Section 57, even where a minimum or variable number of shares or loan stock could be quantified at the completion date. The shares must be transferred for the contingency principle to apply.

4.307 Under the provisions of Section 126 Finance Act 2000 a consideration consisting of the future issue of shares or loan stock is liable to duty, irrespective of whether the issue is certain or contingent. This applies to all documents executed on or after 29 July 2000.

Consideration ascertainable but not yet ascertained

The 'Wait-and-See' practice

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4.308 Consideration payable in the future but based on events prior to execution of the document or completion where the calculation has not yet been done is chargeable but we need to have all the necessary information before we can assess the Stamp Duty on such a document. In such cases we apply what is sometimes known as the 'Wait-and-See' practice.

4.309 A common example is an agreement for the sale of a business on a particular date where the consideration is equal to the net value of the assets shown by the audited accounts for the year ending on the day before that date. At the date of execution or completion the audit has not yet been completed. Provided no future contingent sum is shown in the agreement and the accounting period is wholly on or before the date of execution, the 'Wait-and-See' practice applies. The practice will also apply if there is a contingent sum shown which limits the 'Wait-and-See' sum. In other words we await preparation of the accounts in question and see what they show as the net value of the assets, charging duty on the appropriate amount.

4.310 If the date to which the accounts are to be prepared is later than the date of execution then strictly the consideration is unascertainable but if the customer suggests adopting a 'Wait-and-See' approach you should not object to this provided only a few weeks delay is involved.

4.311 The 'Wait-and-See' practice only applies to ascertainable consideration which has not yet been ascertained. If there is an unascertainable consideration but a maximum or minimum sum is mentioned then the contingency principle applies. The contingency principle does not apply in 'Wait-and-See' cases.

4.312 The following examples illustrate these instructions:

Example 1

Date of agreement for sale 01.10.99
Completion: 01.10.99
Consideration: Net asset value based on accounts to 30.09.99
Stamp Duty position: 'Wait-and-See' applies. Charge duty on the net asset value once this has been ascertained.

Example 2

Date of agreement for sale 01.10.99
Completion: 01.10.99
Consideration: £1m plus the value of specified assets based on accounts to 30.09.99
Stamp Duty position: 'Wait-and-See' applies. Charge £1m + value of assets when ascertained.

Example 3

Date of agreement for sale 01.10.99
Completion: 01.10.99
Consideration: £1m, such amount to be varied up or down depending on the accounts to 01.09.99
Stamp Duty position: Do not charge on the £1m but wait and see what the final amount is. The contingency principle should not be invoked.

Example 4

Date of agreement for sale 01.10.99

Completion: 01.10.99

Consideration: £1m plus 10% of profits for the year to 31.12.99 up to a maximum of £250,000

Stamp Duty position: Charge on £1m + £250,000 under the contingency principle. 'Wait-and-See' does not apply.

Example 5

Date of agreement for sale 01.10.99

Completion: 01.11.99

Consideration: £1m plus value of specified assets included in accounts to 30.11.99

Stamp Duty position: Charge on £1m only since the remaining consideration is unascertainable, unless the subject matter of the sale is land or an interest in land, in which case Section 242 Finance Act 1994 will apply and duty will be due on the market value of the property sold. Duty would, in that case, be on the Land Transfer, not the Agreement for Sale.

Example 6

Date of agreement for sale 01.10.99

Completion: 01.10.99

Consideration: Net asset value based on accounts to 30.09.99 subject to a maximum of £1.5m

Stamp Duty position: Do not charge on the £1.5m but wait and see what the final amount is. The contingency principle should not be invoked.

4.313 You could have a situation where the Wait-and-See practice and the contingency principle apply to the same document in respect of different parts of the consideration eg initial and deferred considerations.

Interest

4.314 Since interest is charged on the late payment of Stamp Duty, the customer may want to lodge a payment on account in a wait and see case. See Chapter 3 for more information on the interest position in these cases.

4.315 Interest is paid on repayment of Stamp Duty in certain circumstances - see Chapter 7 for more information.

Provisional stamping

4.316 If the customer requests provisional stamping in a 'Wait-and-See' case, so that the transfers can be registered, this is acceptable. You should calculate the provisional duty on either an estimated consideration figure supplied or on a variable sum stated in the document.

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4.317 You must obtain a written undertaking from the customer prior to release of the provisionally stamped documents, to resubmit the documents and pay the additional duty and any interest due immediately the total consideration is known. This undertaking must be on behalf of the firm which submitted the document. It must not be qualified as being given on behalf of the client or subject to payment by the client. The additional duty and any interest due can then be impressed by up-stamping the document(s). If the amount provisionally stamped was more than is eventually due the duty will be reduced and a repayment of duty and interest (at the lower rate) made. No time limit is to be imposed on the repayment in these circumstances, unlike a standard Stamp Allowance claim (see Chapter 7).

4.318 In adjudication cases no adjudication stamp is to be impressed while the stamping remains provisional.

4.319 Blank

Grant of an option

4.320 A document under which an option is granted or released is chargeable under Para 1 of Sch 13 to the Finance Act 1999 (*George Wimpey & Co Ltd v IRC* [1975] 2 All ER 45) on the amount paid for the grant.

Compulsory purchase: general vesting declarations

4.321 Certain bodies which have the power to acquire land compulsorily may do so by making a general vesting declaration (or GVD) which may cover several properties acquired from different owners [Section 1 of the Compulsory Purchase (Vesting Declarations) Act 1981 refers]. The GVD is chargeable to duty as follows:

- if the compensation has been wholly agreed or determined duty is calculated separately on the total compensation paid to each owner, subject to any Certificate(s) of Value
- if none of the compensation is agreed or determined Section 242 of the Finance Act 1994 will apply, and the duty is calculated separately on the market value of each property, subject to any Certificate(s) of Value
- if part only of the compensation is agreed or determined Section 242 will apply and the duty is calculated separately on the market value of each property, unless the compensation is wholly agreed or determined for any particular property in which case duty is calculated on that compensation, in each case subject to any Certificate(s) of Value.

4.322 The definition of 'market value' in Section 241 of the Finance Act 1994 (see paragraph 4.83) is used for this purpose [Section 242(3) refers]. Compensation falls to be determined on the basis that the property was unblighted, ie that no compulsory purchase order was in place or contemplated, so the market value is also to be prepared on that basis.

Compliance

4.323 From time to time a review of GVDs where the valuation has been supplied by an independent valuer will be made, prior to stamping. The District Valuer will be asked to

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give an informal valuation of the properties involved to check the figures proposed. The Technical Group Adviser will arrange this.

Certificate of Value

4.324 Any Certificate of Value must take into account the compensation/market values for all the properties acquired from the same owner under the same GVD.

4.325 This means that a single GVD document with many properties acquired from several different owners can benefit from more than one Certificate of Value. We allow the usual form of wording of the Certificate of Value to be amended slightly in these cases so it can be made clear which certificate relates to which properties.

Example

4.326 A local authority acquires a terrace of 8 properties from the 6 owners under a Compulsory Purchase Order. At the date of the General Vesting Declaration the compensation payments for only some of the properties had been agreed, details being as follows:

Property	Owner	Agreed payment £	Stamp Duty
1	A	70,060	705 with £250,000 Certificate of Value.
2	B	59,950	Nil with a £60,000 Certificate of Value.
3	C	25,000	Once the market value of property 4 is known duty is charged on the total, subject to a possible Certificate of Value. Nil if a £60,000 Certificate of Value is given.
4	C	None Agreed	
5	D	Part agreed at 40,000	Duty is charged on the market value, when known, subject to a possible Certificate of Value.
6	E	35,000	Nil with a £60,000 Certificate of Value.
7	F	35,000	Once the market value of property 8 is known duty is charged on the total. Nil if a £60,000 Certificate of Value is given.
8	F	Part agreed at 24,500	

The Council should be asked to supply a statement of the open market value, as provided by Section 242 Finance Act 1994, in respect of properties 4, 5 and 8 (unblighted) at the date of the GVD. Let us say that the Council then advise that the IR District Valuer estimates the value of property 4 at £30,000, property 5 £61,000 and property 8 £30,000.

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This means the aggregate chargeable amount for properties 3 and 4, both owned by C, is £25,000 plus £30,000 = £55,000. A Certificate of Value can then validly be given and duty charged at the nil rate.

Owner D has one property, number 5, the open market value is £61,000, so £610 duty is chargeable with a £250,000 Certificate of Value. Although compensation has been partly agreed; this should be ignored, because Section 242 Finance Act 1994 is imposed.

The aggregate chargeable amount for properties 7 and 8, both owned by F, is £35,000 and £30,000 = £65,000. Duty of £650 is chargeable with a £250,000 Certificate of Value. The fact that compensation for property 8 has been partly agreed is ignored.

If the compensation is subsequently determined as a higher amount than the open market value figure previously accepted, there is no further liability to Stamp Duty. If the open market value figure is lower, a repayment of Stamp Duty must not be made.

Production

4.327 Section 12 Finance Act 1895 requires that the GVD be produced to Stamp Taxes and that a stamp be affixed denoting that this has been done. Each Stamp Office holds such a stamp. Whenever GVDs effect Conveyances on Sale they also require to be produced under Section 28 Finance Act 1931, as amended.

4.328 A single particulars delivered form is acceptable for each declaration provided it is accompanied by a separate schedule listing the properties, the 'vendors' and the payments (if any) determined at the date of execution. When a declaration has been stamped with ad valorem duty both produced stamps are required before it is 'duly stamped' within the meaning of Section 14(4) of the Stamp Act 1891.

Sale of an annuity or right not before in existence - Section 60 Stamp Act 1891

4.329 Section 60 has a narrow application. A purchased life annuity from an insurance company is no longer chargeable (Section 173 of the Finance Act 1989) but a contract to buy a perpetual annuity for cash, or for stock or shares, is normally chargeable to duty. A document is chargeable under Section 60 if there is the sale of an annuity or other right; that right was not already in existence but originated with the sale, and the sale of the right is capable of being completed by grant or conveyance (Great Northern Rly Co v IRC [1901] 1 KB 416 refers).

4.330 The grant of a perpetual annuity for money is chargeable under Section 60 even if the transaction is described as a 'borrowing' of money (Mersey Docks and Harbour Board v IRC [1897] 1 QB 786).

4.331 An annuity which is granted in consideration for the transfer of other property is not created on its 'sale', and is not chargeable under Section 60 (Blandy v Herbert [1829] 9 B & C 396 and Mestayer v Biggs [1834] 1 Cr M & R 110).

Sale (or Lease) of land with a contract to build - builder vendor/builder lessor

4.332 Transactions which comprise a contract for sale (or lease) of land which includes, or is associated with, an agreement to build on the land, sometimes called 'builder/vendor' (or less commonly 'builder/lessor') cases have been the subject of several court cases about the liability to Stamp Duty.

Prudential Assurance v IRC

4.333 The most recent case is Prudential Assurance Co Ltd v IRC [1992] STC 86. It concerned 3 documents entered into on the same day between the Prudential and 2 development companies: (1) an agreement for the sale to the Prudential of substantially developed freehold land, (2) a development agreement under which the 2 companies completed the development and Prudential paid certain development costs; and (3) the transfer of the land. The court held that (1) the sale was of the land and the buildings as they were at the time of the sale, and (2) the consideration for the sale for Stamp Duty purposes was the price for the land and the building works which had been completed at that time.

Statement of Practice (SP 8/93)

4.334 Following the decision in the Prudential case Stamp Taxes issued a detailed Statement of Practice (SP 8/93, dated 12 July 1993). The Statement explains Stamp Taxes' practice about Stamp Duty chargeable on the transfer, or lease, of new, or partly constructed, buildings where at the time of the contract, or lease, building work had **not** been completed. The text reads as follows:

Inland Revenue Statement of Practice (SP 8/93, 12 July 1993)

Stamp Duty: new buildings

This Statement sets out the practice the Board of Inland Revenue will apply in relation to the Stamp Duty chargeable in certain circumstances on the conveyance or lease of a new or partly constructed building. It affects transactions where, at the date of the contract for sale or lease of a building plot, building work has not commenced or has been only partially completed on that site but where that work has started or has been completed at the time the conveyance or lease is executed.

This Statement reflects the advice the Board have received on this subject in the light of the decision in the case of Prudential Assurance Co Ltd v IRC ([1993] 1 WLR 211). The Statement does not apply to the common situation where the parties have entered into a contract for the sale of a new house and that contract is implemented by a conveyance of the whole property. This Statement replaces the Statements of Practice issued in 1957 and 1987 (SP 10/87) on this subject which are now withdrawn.

The Board are advised that, whilst each case will clearly depend on its own facts, the law is as follows:

1. Two Transactions/Two Contracts

Where the purchaser or lessee is entitled under the terms of a contract to a conveyance or lease of land alone in consideration of the purchase price or rent of the site and a second genuine contract for building works is entered into as a separate transaction, the ad valorem

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duty on the conveyance or lease will be determined by the amount of the purchase price or rent which the purchaser or lessee is obliged to pay under the terms of the first contract. In these circumstances it does not matter whether any building work has commenced at the date of the conveyance or lease. The consideration chargeable to ad valorem duty will still be only that passing for the land.

2. One Transaction/Two Contracts

Where there is one transaction between the parties but this is implemented by two contracts, one for the sale or lease of the building plot and one for the building works themselves, the amount of ad valorem duty charged on the instrument will depend on the amount of the consideration, which in turn will depend on whether those contracts can be shown to be genuinely independent of each other.

- i. If the two contracts are so interlocked that they cannot be said to be genuinely capable of independent completion (and in particular where if default occurs on either contract, the other is then not enforceable) ad valorem duty will be charged on the total consideration for the land and buildings, whether completed or not, as if the parties had entered into only one contract.
- ii. If the two contracts are shown to be genuinely independent of each other, ad valorem duty will be charged by reference to the consideration paid or payable for the land and any building works on that land at the date of execution of the instrument. It follows that, where the instrument is executed after the building works are completed, ad valorem duty will be charged on the consideration for the land and the completed building(s).

3. Sham or Artificial Transactions

This Statement does not apply to cases where the transaction concerned, or any part of it, involves a sham or artificial transaction.

Contracts already entered into

Where unconditional contracts have been entered into before or within 28 days of the date of this Statement and the duty payable on the resulting conveyance or lease would have been less under the earlier Statements of Practice, Stamp Taxes will accept duty in the lesser amount. In such cases the instrument should be submitted together with all the evidence to support the claim that unconditional contracts were entered into within this transitional period.

Procedure for submitting documents

Where a person accepts that a conveyance or lease of a building plot is chargeable on the total price paid or payable for the land and the completed building, it should be submitted for stamping in the usual way together with a covering letter giving the aggregate price and a payment for the duty appropriate to that price.

Where the total price does not exceed the amount up to which the instrument is liable to nil duty (currently £60,000) and a Certificate of Value is included in the instrument, a conveyance may be sent direct to the Land Registry in England and Wales or, in Scotland,

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to the Keeper of the Registers of Scotland. A lease will need to be stamped in respect of the rent.

Where the total price exceeds the threshold at which duty becomes payable but the taxpayer takes the view that duty is payable on some smaller sum, the instrument should be submitted to Stamp Taxes. This applies even where the taxpayer believes that the amount potentially chargeable to ad valorem duty is below the threshold and a Certificate of Value is included in the instrument. The instrument should be accompanied by a copy of the agreement(s) for sale etc and a letter stating the amount which the taxpayer regards as chargeable consideration, identifying separately any amount attributable to building work. Details of any contractual arrangements not covered by the agreement(s) should also be given in the covering letter.

This Statement does not affect in any way a taxpayer's rights of appeal.

Conveyance in contemplation of a sale - Section 90 Finance Act 1965

4.335 Under Section 90 of the Finance Act 1965 a transfer which is **not** a conveyance on sale, but which was executed in contemplation of a sale (before a contract for the sale is made) is chargeable with duty as if it were a conveyance on sale for a consideration equal to the value of the property transferred.

William Cory & Son v IRC

4.336 The Section closed a loophole which had become apparent following the decision of the House of Lords that a transfer of shares to a company which held an outstanding option to purchase was not chargeable to duty (William Cory & Son Ltd v IRC [1965] 1 All ER 917). A document must be adjudicated to be duly stamped under Section 90.

Repayment

4.337 If a document is stamped under Section 90 but there is no sale, and the property is transferred back to the original owner (or to his representative on death or bankruptcy) the duty is repayable. If there is a sale but for a price less than the value on which duty was paid the excess is repayable. In each case a claim must be made within two years of the date of the original transfer.

4.338 Where a document transfers other property in addition to property transferred in contemplation of a sale then it is chargeable to duty under Section 90 on the property transferred in contemplation of a sale and under Para 1 of Sch 13 to the Finance Act 1999 on the other property.

Patents, copyright licences and trademarks

4.339 Patents, copyright licences, design rights and trademarks are forms of property which are sometimes referred to collectively as intellectual property. The duty payable on this type of property was abolished by Section 129 Finance Act 2000 for documents executed on or after 28 March 2000.

4.340 The definition of intellectual property is as follows:

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- (a) any patent, trade mark, registered design, copyright or design right
- (b) any plant breeders rights and rights under Section 7 Plant Varieties Act 1997
- (c) any licence or other right in respect of anything within paragraph (a) or (b)
- (d) any rights under the law of a country outside the United Kingdom that correspond with or are similar to those within paragraphs (a), (b) or (c)

4.341 Although the definition does not specifically mention domain names, the benefit of pending trade mark or patent applications or supplementary protection certificates, the exemption does apply to these types of intellectual property.

4.342 It is sometimes the case that goodwill attaches to intellectual property. Trade Marks, for example, are often sold with the goodwill associated with the trade mark. Where goodwill is derived from intellectual property it will be regarded as falling within the exemption.

4.343 In any case where, for example, a business is sold which includes a mixture of Intellectual Property and other chargeable property together with the whole goodwill of the business, the customer may supply a just and reasonable apportionment of the goodwill between that derived from the Intellectual Property and that from the business generally.

4.344 Section 129 Finance Act 2000 is subject to the provisions of Schedule 34 Finance Act 2000, which relates to the duty payable where any agreement for sale includes, as part of the property agreed to be sold, Intellectual Property. Schedule 34 provides that the apportionment of the consideration between the Intellectual Property and the other property must be 'just and reasonable'. If the apportionment is not made in a just and reasonable manner we are entitled to charge duty as if the apportionment had been just and reasonable. The Schedule also provides that the part of the consideration relating to the Intellectual Property may be disregarded for certificate of value purposes.

4.345 to 4.370 Blank

Bulk purchases of shares by PEP and Investment Portfolio managers

4.371 The managers of some Personal Equity Plans and Investment Portfolios will often purchase shares in bulk on behalf of a number of their clients. These bulk purchases are registered in the name of the managers or a nominee. The share transfers used to effect these bulk purchases should be assessed to ad valorem duty on the consideration paid.

4.372 Some managers, however, then charge the individual plan holders or clients Stamp Duty at 0.5% on the consideration which each pays for his/her portion of these shares. When each of these individual clients is separately charged to 0.5% duty rounded up to the nearest £5 this results in an amount of Stamp Duty being paid by the individuals which is more than that stamped or charged on the transfer to the managers or the manager's nominee.

4.373 If the documents or some other information you receive shows that there has been joint registration in the name of the manager and plan holder or multiple registrations in the names of each client your calculation should be made on the basis of a block transfer. In other words you should obtain details of the separate considerations and calculate duty on each separately, stamping the Stock Transfer form with the total of these amounts.

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4.374 Managers should be asked to confirm that they have not accumulated the excess duty as a result of charging each individual client. Under the provisions of Section 2 Stamp Duty Management Act 1891, payment of this excess should be sent to Stamp Taxes immediately.

Transfer of partly paid up shares

4.375 Shares are sometimes allotted at a fixed price but upon payment, initially, of only part of that sum. The balance of the price will be due to be paid at some later date or, perhaps, in more than one instalment on a number of dates. These are known as partly paid shares and the liability to pay the further sums, when called upon to do so by the company, falls upon the registered holder of the shares at the date of the further call.

4.376 Partly paid shares can be transferred. The assumption of the liability to pay the further calls is not treated as part of the consideration for the transfer, under Section 57 of the Stamp Act. Only the consideration expressed on the Stock Transfer form is to be charged to duty.

Exception

4.377 There is one exception. If there is an agreement to sell the partly paid shares and subsequent to its execution but prior to the transfer a call is paid and the shares are expressed to be transferred paid up to an extent greater than when the bargain was made, the amount of the calls paid between the bargain and the transfer is to be included as part of the consideration.

Transfers of loan capital

4.378 Section 78(7) of the Finance Act 1986 defines 'Loan capital' as meaning:

- Any debenture stock, corporation stock or funded debt by whatever name issued by a body corporate or other body or persons including a partnership (which is an unincorporated body of persons) any local authority or body formed or established in the UK or elsewhere.
- Any capital raised by such a body if the capital is borrowed or has the character of borrowed money, and whether it is in the form of stock or any other form.
- Stock or marketable securities issued by the Government of any country or territory outside the UK.

4.379 Normal overdraft borrowing is not loan capital.

4.380 Where a Transfer on Sale of loan capital does not fall within one of the exemptions listed below it is liable to the normal rate of duty for stock, shares and marketable securities, ie 0.5% rounded up to the nearest £5.

General exemption - Section 79 Finance Act 1986

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4.381 Section 79 of the Finance Act 1986 gives from 1 August 1986 a general exemption from Transfer on Sale duty for transfers of loan capital.

4.382 The Section lists a number of particular cases where the exemption is specifically allowed or excluded. The first two may be summarised as follows:

- The issue or transfer of loan capital in bearer form is exempt. Section 79(2).
- Transfers of loan capital issued by a. the Organisation for Economic Co-operation and Development, b. the Inter-American Development Bank and c. designated international organisations such as the Asian Development bank and the African Development Bank. Section 79(3).

4.383 The legislation then provides, in Section 79(4), that all other transfers of loan capital are exempt unless they are caught by the provisions of Section 79(5) or Section 79(6). These subsections list the exceptions to the exemption. They may be summarised as follows:

- Loan capital which can be converted into ordinary shares or other securities or which carries a right to acquire shares or other securities including loan capital of the same description. Section 79(5).
- Loan capital which carries a right to interest which exceeds a reasonable commercial return on the nominal amount of the capital. Section 79(6)(a).
- Loan capital which carries a right to interest linked to the profitability of any company or the value of any property. Section 79(6)(b).
- Loan capital which carries a right on repayment above par and which is not reasonably comparable with what is generally repayable under the terms of issue of loan capital listed on the London Stock Exchange. Section 79(6)(c).

4.384 Any loan capital or stock falling within any of the four exceptions detailed in the previous paragraph cannot benefit from the exemption and ad valorem duty is payable on any transfer on sale of it. However, Section 133 Finance Act 2000 extends the exemption to Loan Capital where return bears an inverse relationship to results.

4.385 Although Section 79(6)(a) provides that there is no exemption if the loan capital carries a right to a higher than commercial rate of interest, Section 79(7) then provides that if the rate of interest is linked to the Retail Prices Index, over roughly the same period as the life of the loan capital, this does not disqualify it from the exemption.

Section 79(6)(a)

4.386 Section 79(6)(a) refers only to a reasonable commercial return at the time when the right to interest is created and loan capital does not lose exemption because of subsequent changes in interest rates over which the issuer has no control.

4.387 The same applies to an issue of a further tranche of an existing stock which comes within the scope of the exemption provided the further tranche will be on all fours with the original issue.

4.388 Where there is an issue of existing loan stock which falls within the exemption afforded by Section 79(4), and the issuer (ie the debtor) is changed then, provided the other material conditions of the securities (eg remaining term to redemption, interest rate, credit security, payment schedule etc) remain unaltered, the loan capital exemption will be preserved.

4.389 But it is important - if this outcome is to be achieved - that the old loan capital continues to exist ('albeit decked out in new finery': as stated by Brightman J in *Associated British Malsters Ltd v IRC* (1972) TR53 rather than the change being effected by the creation of new loan stock (however similarly constructed).

4.390 There is no restriction on the period of the loan for the purposes of the loan capital exemption. Any short term loan, for whatever period, may qualify for the exemption upon transfer provided it comes within the other conditions in Sections 78(7) and 79 of the Finance Act 1986.

Section 79(6)(b)

4.391 Where loan capital carries a right to interest linked to the results of, or of any part of, a business or to the value of any property the exemption does not apply, unless the return bears an inverse relationship to results. (Section 133 Finance Act 2000).

4.392 Where the terms of a particular loan capital link the amount of interest to be paid on it to the Financial Times All Share Index (FTA Index) the exemption does not apply. It is caught by the exception in Section 79(6)(b) on the basis that the interest will depend 'to any extent' on the results of the business.

Section 79(6)(c)

4.393 Loan stock carrying a right on repayment to an amount exceeding the nominal amount of the capital and which is not reasonably comparable with the terms of issue of loan capital listed on the London Stock Exchange does not qualify for the exemption.

Other specific loan capital exemptions

4.394 Transfers of loan capital issued by the following are also exempt from Stamp Duty under separate legislation:

- The International Bank of Reconstruction and Development
- The EEC
- The European Coal and Steel Community
- The European Atomic Energy Authority
- The European Investment Bank

Convertible Notes

4.395 Transfers of Convertible Notes are liable to Stamp Duty. Sometimes building societies have or issue Convertible Notes which automatically convert into Permanent Interest Bearing Shares (PIBS) within a few months. The Notes are loan capital but the conversion rights attached to them deny the exemption applicable to the transfer of loan capital by virtue of Section 79(5) Finance Act 1986. These transfers should not be confused with the transfers of PIBS which are exempt. See paragraph 4.409 below.

A to A transfers of shares

4.396 A Stock Transfer relating to shares in an English company where the transferor and transferee are the same person has no operation known to law and is outside the scope of the Stamp Act. This is also true of transfers which evidence the re-allocation of shares between designated accounts of the same legal owner, usually a bank nominee company.

4.397 The company registrar may press for the Stock Transfer form to be stamped with duty but this must be refused and the documents returned unstamped together with a form Stamps 925 which explains the Stamp Duty position. Adjudication is not required. If necessary, registrars can be advised, by a letter via the customer, that they are free to register and action upon such transfers without incurring a fine under Para 3(5) of Sch 17 to the Finance Act 1999.

4.398 Form Stamps 925 draws attention to the fact that although the Stock Transfer form is not liable to duty there may be cases where the transaction has been effected by related documents (eg Letters of Direction) which are liable to Stamp Duty as transferring a beneficial interest, and they should be submitted for stamping.

4.399 Since Stamp Duty Reserve Tax was introduced in 1986, all transactions evidenced by A to A transfers need to be more carefully considered and details of any you encounter should be passed to the Audit and Compliance Unit in London. See Chapter 11, paragraph 11.46 regarding the use of CREST Flag 5 in A to A transfers within CREST.

4.400 A charge to SDRT arises when a written or oral agreement to transfer chargeable securities is entered into. The date that agreement becomes unconditional determines the date the charge is payable. If the agreement is completed by a duly stamped document between the parties then Stamp Duty cancels the SDRT charge.

4.401 When returning Share Transfers which are A to A, we need to find out whether the shares are sold for any kind of consideration and, if so, whether there is a stampable document.

4.402 If there is no document then full details of the transaction should be passed to the SDRT Operations, Customer Service to pursue, if payment of the tax has not been made.

4.403 In Scotland the position is quite different. In certain circumstances a person may transfer property to himself in a different capacity. A Scottish company may accept that a person or persons hold its shares in a trust or representative capacity unless it is prevented from doing so by its articles. The duty chargeable will depend upon the particular

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circumstances of the case. A transfer, for example, given merely to effect a change in the designation of a shareholding in the name of a bank nominee company will not be charged with any duty where there is no change of beneficial ownership but, merely a change in the branch of the bank at which the beneficial owner keeps his account.

Shares transferred by way of dividend

4.404 There is a difference between **interim** and **final** dividends.

4.405 A director's resolution to pay an interim dividend can be varied or rescinded at a later meeting of the board. As soon as a final dividend is properly declared it is a debt payable to the members.

4.406 Two situations can arise from a Stamp Duty point of view where a company, say, Y Limited, owns shares in X Limited and it decides to transfer shares in X Limited to the shareholders of Y Limited as the dividend in Y Limited.

4.407 Where the interim dividend is declared to be the shares in X Limited, a debt has not been created. This is a dividend in specie and the transfer document may be certified as exempt under the provisions of Category L of the Stamp Duty (Exempt Instruments) Regulations 1987.

4.408 Where Y Limited declares a final dividend and agrees that the shares it owns in X Limited are to be transferred in lieu of that dividend, the shareholders in Y Limited **have** a right to receive money. Section 57 of the Stamp Act applies and ad valorem duty is chargeable on the monetary value of the dividend payable.

Permanent Interest Bearing Shares (PIBS)

4.409 PIBS are building society shares which count as capital. Being mutual institutions, building societies do not and cannot have a 'share capital' in the same way as public limited companies. Building society 'shares' are effectively debt deposits carrying amongst other things limited voting rights to the surplus of a Society on dissolution.

4.410 Section 109(e) Building Societies Act 1986 exempts from Stamp Duty:

'any other instrument whatsoever which is required or authorised to be given, issued, signed, made or produced in pursuance of this Act or of the rules of a Building Society'.

4.411 Section 109(b) and (c) exempt building society shares and bonds respectively. Therefore the transfers of PIBS issued by a building society are exempt from Stamp Duty and do not need to be stamped.

4.412 These transfers should not be confused with the transfers of convertible notes which automatically convert into PIBS. Such transfers are liable to Stamp Duty (see above).

4.413 to 4.440 Blank

Partnerships

4.441 The statutory definition of the term 'partnership' is 'the relationship which subsists between persons carrying on a business in common with a view to profit'. [Section 1(1) of the Partnership Act 1890]. Except in Scotland, a partnership is not a separate legal entity.

4.442 A partner cannot claim to be the owner of any particular asset or, indeed, any specific share in an asset. A partner's interest is a peculiar form of property known as an interest in a unum quid or, in other words, in an indivisible whole. This is not a share in any goods, money or other assets. It is merely a right as a partner, with others, to control the partnership assets and affairs so long as the partnership exists and, upon dissolution, a right to have the assets liquidated, the liabilities discharged and a division of any surplus.

4.443 Each partner is jointly and severally liable for the debts of the partnership but the partners may agree between themselves what shares of the debts they will each be liable for.

Formation of new partnership/introduction of a new partner

4.444 A document which is executed purely to set up a new partnership is generally not chargeable to Stamp Duty because the simple pooling of assets on the formation of a partnership is not a sale, there being no consideration from a purchaser. Similarly, any document executed wholly to introduce a new partner to an existing partnership is generally not chargeable with ad valorem duty, provided that any price for membership consists of assets contributed to the partnership and not paid directly or indirectly to the existing partners.

4.445 Where a new partner pays cash or its equivalent in shares etc to the existing partners, there is a sale, and the document concerned is chargeable with duty under Para 1 of Sch 13 to the Finance Act 1999 and Section 57 Stamp Act 1891 or under Para 7(1)(a) of Sch 13 to the Finance Act 1999 and Section 57 Stamp Act 1891. This is also the case if the money etc is paid to the partnership as new capital and an associated cash withdrawal is made by one or more of the existing partners.

Dissolution of a partnership: Macleod v IRC

4.446 A document under which a partnership is terminated exactly as detailed in the agreement which set up the partnership does not involve a sale, and is therefore not chargeable to duty, other than a £5 fixed duty. (Macleod v IRC [1885] 22 SLR 674) where; either

- all the assets are sold, all the debts are cleared and the surplus is shared among the former partners - a partition (see paragraphs 4.458 to 4.463 below); or
- some, or all, of the partnership assets are distributed to the partners, perhaps with a cash payment for equality - a distribution in specie (see paragraph 4.464 below).

Dissolution on other terms

4.447 A dissolution of a partnership takes place whenever a partner leaves the partnership. A document under which one or more partners leave and merely withdraw their original

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capital is not generally chargeable to duty. More usually, however, retiring partners require the discharge of their existing partnership debts and an indemnity against any future ones, and perhaps also the payment of the full value of their interests. The document for such a dissolution of a partnership is chargeable to duty. Where the dissolution of a partnership is on different terms from those detailed in the partnership agreement the document concerned will attract duty either (i) as an assignment under Para 1 of Sch 13 to the Finance Act 1999 and Section 57 Stamp Act 1891 or (ii) as an agreement for sale of an equitable interest under Para 7(1)(a) of Sch 13 to the Finance Act 1999 and Section 57 Stamp Act 1891. Any Land Transfer of partnership property will attract £5 if (i) applies or require denoting under Para 7(4)(a) of Sch 13 to the Finance Act 1999 if (ii) applies.

Evaluating a document effecting the introduction of a new partner

4.448 When a document is submitted for stamping which effects the introduction of a new partner we need the following information:

- the amount paid or payable by the incoming partner for his share of the partnership
- whether this sum was paid direct to the existing partner or to the capital of the partnership
- the amount of any simultaneous withdrawal of money by the existing partner
- the shares in which the partners are entitled to the assets and liable to the debts of the partnership
- the total amount of the liabilities secured by mortgage or charge
- the total amount of the trade liabilities
- the total amount of the liquid assets, ie stock in trade, cash and book debts.

4.449 In all Offices, except Edinburgh, a standard letter is provided which sets out these questions and provides space for the customer to enter the appropriate answers and return it to Stamp Taxes.

4.450 Duty is due on the amount or value of the consideration but to arrive at that consideration we need to know the share of the liabilities of the business, if any, assumed by the new partner. That share is also liable to ad valorem Conveyance or Transfer on Sale duty but after having allowed a set-off of any liquid assets of the firm such as stock in trade, cash and book debts against trade liabilities. Work in progress is not to be deducted.

Examples

4.451 The two examples which follow illustrate the calculation of Stamp Duty in the case of an incoming partner. You will also need to consider the interest and penalty position (see Chapter 3).

Example 1

The following information is provided in answer to the questions raised in our standard letter:

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1. £48,000 paid by the incoming partner.
2. Paid direct to two existing partners.
3. No withdrawal of any other money by existing partners.
4. Partners, including new partner, entitled and liable to 1/3rd of assets and debts each.
5. £18,000 liabilities secured by mortgage.
6. £30,000 trade liabilities.
7. £6,000 liquid assets.

The chargeable consideration therefore amounts to the sum paid by the incoming partner plus his share (1/3rd of the secured liabilities and net trade liabilities). In other words $£48,000 + (1/3\text{rd of } £18,000) + 1/3\text{rd } (£30,000 - £6,000) = £48,000 + £6,000 + £8,000 = £62,000$. Duty of £620 is therefore payable with a £250,000 Certificate of Value (see paragraph 4.5 above).

Example 2

The following information is provided in answer to the questions raised in our standard letter:

1. £48,000 paid by the incoming partner.
2. Paid direct to two existing partners.
3. No withdrawal of any other money by existing partners.
4. Partners, including the new partner, entitled and liable to 1/3rd of assets and debts each.
5. £39,000 liabilities secured by mortgage.
6. £5,000 trade liabilities.
7. £10,000 liquid assets.

The chargeable consideration therefore amounts to the sum paid by the incoming partner plus his share (1/3rd) of the secured liabilities. There are no net trade liabilities to take into account because the liquid assets value exceeds the amount of trade liabilities. You should **not** off-set that excess against any other chargeable figure. In other words, duty is due on $£48,000 + (1/3\text{rd of } £39,000) = £61,000$. Duty of £610 is therefore payable with a £250,000 Certificate of Value.

Evaluating a document effecting a dissolution of partnership or retirement of a partner

4.452 When a document is submitted for stamping which effects the dissolution of a partnership we need the following information. You should call for a copy of the original partnership agreement and of the balance sheet or statement of account between the partners as at the date of dissolution. The original partnership agreement may have been amended over the years if the partnership has been in existence for some time and of course any amending documents should also be submitted and taken into account. If the balance sheet as at the date of dissolution has not been prepared when the dissolution document is sent for stamping the previous years balance sheet should be requested. Although not always essential in straightforward cases the above documents should always be called for, especially when a document effecting a dissolution of a partnership is lodged for adjudication.

4.453 You should also ask for the following information:

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- the amount paid or payable to the outgoing partner (if not already stated in the instrument)
- the shares in which the partners were entitled to the assets and liable for the debt of the partnership
- the total amount of the liabilities secured by the mortgage or charge
- the total amount of the trade liabilities
- the total amount or value of the liquid assets, ie stock in trade, cash and book debts.

4.454 In all Offices, except Edinburgh, a stock draft letter is provided for this which sets out these questions and provides space for the customer to enter the appropriate answers and return it to Stamp Taxes.

4.455 The procedure of setting off liquid assets against trade liabilities for the purpose of arriving at the dutiable consideration applies equally to a dissolution of partnership. This procedure is not however applied where, for example, it is narrated that the retiring partner has already passed his share of goods, chattels, etc capable of manual delivery, and the document only concerns assets of the partnership other than these. In other words there is no set-off in such cases.

Examples

4.456 The two examples which follow illustrate the calculation of Stamp Duty in the case of a dissolution or the retirement of a partner. You will also need to consider the interest and penalty position (see Chapter 3).

Example 1

The following information is provided in answer to the questions raised in our standard letter:

1. £50,000 paid to the outgoing partner.
2. Partners entitled and liable to half of the assets and debts each.
3. £24,000 liabilities secured by charge.
4. £42,000 trade liabilities.
5. £22,000 liquid assets.

The chargeable consideration therefore amounts to the sum paid to the outgoing partner plus his share (half) of the secured liabilities and net trade liabilities. In other words $\text{£}50,000 + (\frac{1}{2} \times \text{£}24,000) + \frac{1}{2} \text{ of } (\text{£}42,000 - \text{£}22,000) = \text{£}50,000 + \text{£}12,000 + \text{£}10,000 = \text{£}72,000$. Duty of £720 is therefore payable with a £250,000 Certificate of Value.

Example 2

The following information is provided in answer to the questions raised in our standard letter:

1. £50,000 paid to the outgoing partner.
2. Partners entitled and liable to half of the assets and debts each.

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3. £24,000 liabilities secured by mortgage.
4. £12,000 trade liabilities.
5. £22,000 liquid assets.

The chargeable consideration therefore amounts to the sum paid to the outgoing partner plus his share (half) of the secured liabilities. There are no net trade liabilities to take into account because the liquid assets value exceeds the amount of trade liabilities. You should **not** off-set that excess against any other chargeable figure. In other words, duty is due on £50,000 + ($\frac{1}{2} \times £24,000 = £62,000$). Duty of £620 is therefore payable with a £250,000 Certificate of Value.

Procedure in Scotland

4.457 Since the partnership firm is a separate legal entity under Scots law the **firm's** liabilities are to be disregarded when calculating the dutiable consideration on a document whereby the whole interest of an outgoing partner is assigned.

Partition or division

4.458 A partition or division of any estate or interest in land may take place when:

- there are mutual exchanges of part of formerly jointly-owned property; and
- as a result there is a transfer for consideration of that property.

4.459 A partition or division is not a sale and the legislation which applies to conveyances on sale does not apply to instruments of partition (*Henniker v Henniker* [1852] 1 E & B 54).

4.460 A document which effects a partition or division is to be charged with ad valorem duty under Para 21 of Sch 13 to the Finance Act 1999 or, if no such duty arises, to £5 fixed duty.

4.461 Section 241 Finance Act 1994 amended Section 73 of the Stamp Act 1891 which was substituted by Para 21 of Sch 13 to the Finance Act 1999 in two ways. It reduced its scope so that it no longer applies to exchanges (which are now dutiable as sales) and it extended the application of the provision to cover leasehold property (previously the provisions applied only to exchanges and partitions and divisions of freehold property).

4.462 Para 21 of Sch 13 now applies to all partitions of land where there is an equality payment exceeding £100. Where a partition results from an exchange of properties of unequal value it is normal for the contract (in Scotland, the Missives) to provide for a payment for equality of values to be made by the person(s) transferring the cheaper property.

Partition on the dissolution of a partnership

4.463 A dissolution of a partnership is the most common transaction which falls within the Partition or Division provisions. The most straightforward partnership dissolution is the final winding up when the partnership ceases to trade and its assets are sold. The partnership liabilities are satisfied out of the sale proceeds and the balance is divided among the partners in accordance with the Articles of the partnership. A document under which property is partitioned on the winding up of a partnership is not dutiable as a sale, but is

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chargeable under the provisions of Partition or Division (Macleod v IRC [1885] 12 R 1045, 22 SLR 674).

Distribution of partnership assets in specie

4.464 The winding up of a partnership may be arranged by distributing part or all of the partnership properties among the partners instead of selling all the partnership assets and then distributing the net proceeds. Such a distribution may fall within Para 21 of Sch 13 to the Finance Act 1999. If it is done precisely in accordance with the Articles of the partnership the division may attract no more than £5 fixed duty. These cases need careful examination to ascertain the precise position before assessment of the Stamp Duty due. Any deviation from the previously agreed method of winding up the partnership may give rise to a liability to ad valorem duty.

A Sale of a Partnership Business is Not a Dissolution of a Partnership

4.465 A document by which the whole of the business of a partnership is transferred to another group of partners is chargeable as a sale of a business, and **not** as the dissolution of a partnership.

Value Added Tax and Stamp Duty

4.466 In certain circumstances the consideration payable for a conveyance or transfer of commercial property can be subject to Value Added Tax.

4.467 A mandatory charge to VAT has been applied to the sale of new non-residential property since 1 April 1989. Broadly speaking 'new' property is taken to mean commercial buildings completed on or after 1 April 1989. Since 1 August 1989 owners of non-residential property have had the option of charging VAT on sales of old buildings.

4.468 The position in technical terms is that the sale of old commercial property is in fact exempt from VAT. The vendor can however elect to waive that exemption, thereby rendering the conveyance liable to VAT. An election to waive the exemption to VAT cannot be exercised retrospectively. If the vendor has not made an election to waive the exemption to VAT before completion, or in Scotland conclusion of the Missives, has been effected he cannot subsequently make such an election. Therefore there is no contingency in which VAT can be charged and ad valorem duty is restricted to the net price. There is no VAT on residential property sales.

4.469 When a conveyance, transfer or disposition is presented for stamping and it is not clear what the position is in respect of VAT, the following enquiries should be made and you should proceed as follows:

- Is the property commercial property?
- If it is, does the consideration include VAT?
- If it does, charge duty on the gross figure including VAT.
- If it does not, establish whether the option to tax has been exercised.

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- If an election is in place on the date of the document gross up the consideration to include the VAT element and charge duty on the VAT-inclusive figure.

4.470 An election is made on a building by building basis. A building for VAT purposes is a block or complex which is linked structurally; for example, a shopping complex or linked units on an industrial estate. This may be significant if a number of documents are submitted relating to the same development and a VAT charge is indicated on one element. In those circumstances you should clarify the position on the other documents.

4.471 A Group of companies can register with the Department of Customs and Excise as a 'VAT Group'. Thereafter they can transfer property amongst themselves without charging VAT, even where the option to tax has been exercised on the property. Where a customer states that VAT has not been charged because such a registration is in force this should be accepted and duty charged only on the consideration actually passing. If companies are in a 'VAT Group' relief from Stamp Duty may be available under Section 42 Finance Act 1930 (as amended) provided that the relationship test is met.

4.472 A sale of a business or part of an undertaking capable of continuing as a viable concern will not be liable to a charge to VAT if the purchaser is to continue the same type of business and is or immediately becomes registered for VAT.

4.473 It is not generally possible for customers to obtain advance clearance from Customs & Excise that a transfer of a business will qualify as a transfer of a going concern. When a business sale agreement is presented for stamping and the customer maintains that it is a transfer of a going concern and therefore no VAT will be added to the consideration they should be asked to provide written confirmation that:

- the transaction is believed to involve the transfer of a going concern and consequently no VAT has been added to the consideration in the document;
- they have advised the client that the client is obliged to tell Stamp Taxes if the position changes, in line with their obligations under Section 5 of the Stamp Act 1891; and
- that the client undertakes to arrange for the document to be returned to Stamp Taxes and to pay the extra duty if VAT does become payable.

4.474 A written undertaking to that effect from the client should be enclosed with their letter. If these requirements are met the agreement may be stamped on the VAT-exclusive consideration.

VAT exempt properties

4.475 The following properties are generally exempt from VAT:

- Residential.
- Residential providing accommodation for children.
- Residential providing accommodation for the disabled, aged, those dependent on alcohol, drugs or having mental disorders.

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- Residential - a hospice.
- Residential providing accommodation for school pupils and students.
- Residential providing accommodation for members of the Armed Forces.
- Residential - a monastery or a nunnery.
- Residential - an institution which is the main residence for at least 90% of its residents (excluding a hospital, hotel, prison or inn etc).

VAT liable properties

4.476 The following are examples of transactions generally liable to VAT:

- Sale of new buildings or those in the course of construction (not designed for residential or charitable purposes-freehold interest only).
- Sale of freehold interest or grant of leasehold interest in holiday accommodation where the purchaser/lessee does not have continuous right of occupation, ie during a specified period where the owner is excluded, usually for general maintenance to be done.
- Grants of other rights in land, ie
 - i. of a parking space/garage/mooring;
 - ii. right of easement;
 - iii. grant of mineral rights;
 - iv. use of a market pitch;
 - v. use of an advertising hoarding;
 - vi. use of a hall,
 - vii. use of warehouse facilities.

4.477 Since it will save time and is therefore to their own advantage, customers should be encouraged to confirm in the document itself, or in a covering letter to accompany the document when it is first sent for stamping, whether the conveyance, transfer or disposition is of a commercial or residential property and whether the payments narrated in it include VAT.

4.478 Following the judgement in the case known as Glenrothes Development Corporation v Commissioners of Inland Revenue such a charge to Stamp Duty does not produce double taxation against which the courts might be expected to lean, since different taxes are involved.

VAT as part of the consideration for a sale

4.479 If the consideration for a transfer on sale includes VAT and this brings the consideration into a higher band of duty then that rate applies.

Statement of Practice - Interaction of VAT and Stamp Duty

4.480 Stamp Taxes published a Statement of Practice (SP 11/91) on 12 September 1991 about the interaction of VAT and Stamp Duty. The text reads as follows:

Inland Revenue Statement of Practice (SP 11/91, 12 September 1991).

Stamp Duty and Value Added Tax (VAT) - Interaction

1. This Statement is a revised version of the Statement about Stamp Duty and VAT issued on 22 July 1991, and replaces it.

Introduction

2. To comply with a judgement of the European Court of Justice in June 1988, standard rate UK VAT has been applied to non-residential construction with effect from 1 April 1989 (Section 18 of the Finance Act 1989). VAT is compulsory on sales of buildings treated as new for this purpose, which are mainly buildings under three years old that have been completed after March 1989. And owners of non-residential property were given the option from 1 August 1989 of charging VAT on sales of old buildings and on leases.
3. These new charges have prompted a number of enquiries about the relationship between Stamp Duty and VAT where both taxes arise on a sale or lease of commercial property or, occasionally, other assets.

Sales of new non-domestic buildings

4. The Board are advised that for Stamp Duty purposes the amount or value of the consideration for a sale is the gross amount inclusive of VAT. Therefore where VAT is payable on the sale of new non-residential property, Stamp Duty is calculated on the VAT-inclusive consideration.

Other non-domestic transactions

5. Transactions in non-residential property other than sales of new buildings are exempt from VAT. These include:
 - sales of old buildings
 - the assignment of existing leases, or the creation of new leases, in old or new property.

However, the vendor or lessor can elect to waive the exemption.

6. The Board have received legal advice that where the election has already been exercised at the time of the transaction, Stamp Duty is chargeable on the purchase price, premium or rent including VAT.

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7. The Board propose to follow this advice, which will result in a change of practice: in the past, Stamp Taxes did not seek to include the VAT element in the Stamp Duty charge in cases where an election to waive the exemption from VAT had not yet been exercised. The new practice applies to documents executed on or after 1 August 1991.
8. Neither a formal notice of election made to HM Customs and Excise, nor any notification to the purchaser or lessee that such an election has been made, will attract Stamp Duty.

Rent

9. Where VAT is charged on the rent under a lease, and is itself treated as rent under the lease, Stamp Duty at the appropriate rate according to the length of the term will be charged on the VAT-inclusive figure. If the lease provides for payment of VAT on the rent otherwise than as rent, duty will be charged on the VAT element as consideration payable periodically (Section 56 Stamp Act 1891). In either case the rate of VAT in force at the date of execution of the lease will be used in the calculation.
10. In the case of a formal Deed of Variation or similar document varying the terms of the original lease so as to provide for payment of VAT by way of additional rent, further Stamp Duty may be payable [Para 20, Part III, Sch 13 substituted for Section 77(5) Stamp Act 1891].

Agreements for lease

11. Paragraphs 5 to 10 above also apply to an agreement for lease if that is the instrument to be stamped (Para 14, Part II, Sch 13 substituted for Section 75 Stamp Act 1891).

Procedure

12. Applicants for stamping are requested to make clear, either in the conveyance or lease document itself, or in a covering letter to Stamp Taxes, whether the property is commercial or residential.
13. Deeds of Variation etc (paragraph 10 above) should be presented for adjudication together with a copy of the original lease.

No VAT on Stamp Duty

14. It is sometimes suggested that Stamp Duty might itself attract a charge to VAT. This is not the case. The value for VAT depends on the amount (consideration) obtained by the supplier from the purchaser, less the included VAT itself. Stamp Duty is paid by the purchaser/lessee of property direct to the Inland Revenue and not to the supplier; it does not therefore form part of the consideration for VAT purposes.

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Chapter 5: Stamp Duty: leases

Overview

5.1 This Chapter gives information about the Stamp Duty charge on leases, including agreements for lease and other similar documents, such as tenancy agreements. The charge, commonly known as 'lease duty', is imposed under the rules in Section 112(3) of The Finance Act 1999 and Part II of Schedule 13 to the Finance Act 1999.

Lease or licence

5.2 A lease is a document by which a person, (known as the 'lessor' or 'landlord') grants exclusive possession of land or a property, such as a house or a shop, to another person (called the 'lessee' or 'tenant'), usually for a fixed period of time normally corresponding with the term of the lease for Stamp Duty purposes. This may be contrasted with a licence which, unlike a lease, does not give exclusive possession of a property and does not grant an interest in land. A licence is not liable to Stamp Duty. But documents called 'licences' should be examined carefully in case they are in fact leases.

Distinguishing between tenancies and licences

5.3 There are several factors which help to determine whether an instrument effects a licence or a lease. They have evolved from a plethora of judgments in this field. Terms which indicate that a lease or tenancy agreement has been granted are as follows.

- The right of the occupier to exclusive possession of the property.
- An authorisation to enter upon, use and enjoy the premises.
- A fixed term.
- An obligation on the occupier to repair the premises.
- An obligation not to 'waste' the property, a term of art meaning that the reversion is not to be damaged or prejudiced.
- An obligation on the occupier not to alter the premises.
- An obligation to allow the owner 'at all reasonable times to enter the premises to inspect them and for all other reasonable purposes'.
- An obligation on the occupier to 'deliver up' the premises at the end of the agreement period.
- An obligation on the occupier to insure the premises.
- A covenant on the part of the owner to afford the occupier 'quiet enjoyment' of the premises.
- The owner's right to re-enter and determine the agreement.
- A prohibition on sub-letting.
- An obligation on the occupier to pay for services, such as gas and electricity.

5.4 Terms which indicate that no more than a licence has been granted are as follows.

- Possession for part only of each day or for specific days each week.
- An obligation on the occupier not to impede the owner or his agents in the exercise of his rights of possession and control of the premises.
- A right for the owner to install additional occupiers.
- An obligation on the occupier to share with other occupiers installed by the owner.
- An obligation on the occupier not to cause nuisance to the other occupiers.
- A reference to the licence being personal to the licensee.
- An obligation on the occupier to pay a daily rate for the premises.
- A requirement that visitors are to leave by a certain time.
- No notice period required of the occupier.

In addition to any or all of the above matters the court will take all the surrounding circumstances into account when deciding whether a lease or a licence has been effected.

Licences are favoured by some landlords because they effectively avoid both security and rent control provisions which safeguard the occupier's position.

The charge to Lease Duty

5.5 Lease Duty is charged when a new lease is granted or, if there is an agreement document executed prior to the actual grant of the lease, when that agreement is executed. It does not apply when an existing lease is sold (or, to use the more technical terms, 'transferred' or 'assigned'), as 'conveyance on sale' duty will then be charged (see Chapter 4).

5.6 Lease duty applies separately to both the premium and rental elements of a lease. See also Para 5.96 later which covers Variation of Lease documents which create a new lease.

Basis of the charge

5.7 The Stamp Duty on a lease depends on the premium paid, the yearly or average rent payable and the length of the term of the lease. The premium is the capital sum paid by the lessee for the grant of the lease. It is usually given in money, but sometimes it consists of other chargeable consideration, such as stock, securities or other property. Stamp Duty on premiums and rents are charged at a percentage rate and the figures which result are then rounded up to the nearest £5.

5.8 Where a lease is granted for a premium and a rent we calculate the duty on each of these elements, add the figures which result together and then round the total up to the nearest £5. We do not round the two figures up to the nearest £5 and then add them together. There is only one rounding up allowed.

Duty on a premium

5.9 You will see from the above that the duty on a premium in a lease is the same as a Conveyance on Sale for the same amount. In other words the premium attracts duty at 1%, 3% or 4%. Note that the document is not assessed as a Conveyance on Sale. It is instead liable to the same duty as a Conveyance on Sale document.

5.10 The consideration or premium need not be cash. It can also be some other chargeable consideration defined in the Stamp Act. In such rare cases the consideration or premium is valued in the same way as if it were the consideration for a sale unless the consideration is unascertainable. Where we know a premium is to be paid but all or part of it is unascertainable as at the date of execution of the lease, Stamp Duty is instead charged on the open market value premium for the lease. This is provided in Section 242(1) of the Finance Act 1994.

Certificate of Value in respect of the premium

5.11 A Certificate of Value can apply to the premium for a lease. If the premium is £60,000 or less and the rent is £600 per annum or less, a £60,000 Certificate of Value may properly be inserted in the document. This will render the premium liable to duty at the Nil Rate. There will of course be duty chargeable on the rent, if any, in such a case. If the premium is £60,000 or less but the rent exceeds £600 per annum a £60,000 Certificate is not appropriate. Such a lease may however include a £250,000 Certificate of Value if appropriate.

5.12 Rent of £600 or less in such documents means an average annual rent of £600 or less. (See Paras 5.91 regarding the calculation of average rents.)

5.13 In order to disallow a £60,000 Certificate of Value in a lease you must be able to show that the average annual rent reserved will necessarily exceed £600 a year. If the rent is £600 per annum plus a further unascertained sum which will definitely be payable in the future the aggregate rent is more than £600 per annum. A £60,000 Certificate of Value would not therefore be appropriate although a £250,000 Certificate could be inserted.

5.14 Most Certificates of Value follow the wording in Section 34(4) of the Finance Act 1958, as follows:

I/We hereby certify that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £60,000.

5.15 Where there is any inter-dependence between two or more leases a £60,000 Certificate of Value is only appropriate if the aggregate of the premiums in all of them amounts to £60,000 or less and then only in any where the rent is £600 per annum or less. The following example will illustrate this rule:

5.16 Two leases of property are inter-dependent on each other. Property A is let at a rent of £610 per annum with a premium of £40,000. Property B is let at a rent of £80 per annum with a premium of £10,000. Since the rent of property A exceeds £600 per annum a £60,000 Certificate of Value may not be given in that document. The aggregate of the premiums in the two documents is, however under £60,000 and since the rent of property B is less than £600 per annum a Certificate of Value may be inserted in that lease only. The £600 rent limit applies only to the rent reserved in respect of the property comprised in that particular letting. A common example of such a transaction is the lease of a house with the lease of a separate garage.

5.17 If there is no Certificate of Value in the document and it appears that one could properly be inserted you should ascertain the circumstances in which it has been omitted and, if there is no reason why the document should not be certified, you should offer the customer the opportunity to add one. There is no rent limit relating to the £250,000 and £500,000 Certificates of Value in a lease, therefore no matter what the average annual rent, either of these Certificates can be included provided it is proper to the premium and the document is not part of a larger transaction which takes the premium over that amount.

Lump sum paid when lease ends

5.18 A lump sum to be paid when a lease ends is chargeable to duty as a premium, subject to any valid certificate of value (but do not confuse this with a free-standing reverse premium to surrender a lease by delivery).

Premium payable by instalments

5.19 In the rare case of a lease where the premium is payable in instalments this constitutes a consideration consisting of periodical payments chargeable to duty under Section 56 of the Stamp Act.

5.20 The Certificate of Value in those circumstances would be by reference to the total consideration payable except where the chargeable amount is restricted under Section 56(1) or (2). In those circumstances only the restricted total is taken into account in deciding whether a Certificate of Value is appropriate.

Duty on the rent

5.21 Paragraphs 11 to 14 of Part II, Schedule 13 to the Finance Act 1999 impose different Stamp Duty charges on leases depending upon the circumstances.

The most common type of lease

5.22 Para 12 of Sch 13 to the Finance Act 1999 concerns the most common type of lease duty. It applies to leases for **a definite term** of a year or more, or for any indefinite term. The duty is charged on the average annual rent at one of four rates of duty depending on the length of the term of the lease. These rates are as follows:

Length of Term	Rate of Duty
Not More than 7 Years	1%
More than 7 Years but Not More than 35 Years	2%
More than 35 Years but Not More than 100 Years	12%

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Over 100 Years	24%
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The sums which result from applying the percentages shown are rounded up to the nearest £5.

See paragraphs 5.226 to 5.228 regarding the Stamp Duty treatment of leases for a term of exactly 7 years in the period immediately following the 1999 Budget and the Press Release mentioned in paragraph 5.228.

Peppercorn rent or unquantifiable rent for all or part of the term

5.23 Problems can arise when the rent for part of the term of a lease is not quantifiable and the allowance of the benefit of a Certificate of Value is in question. For example, a lease is granted for a term of 125 years. The rent for the first 5 years will be a monetary rent and for the remainder of the term a peppercorn is reserved. We need to enquire whether the actual rent payable for the first 5 years is known at the date of the lease. If it is, then we have two known rents reserved for the whole of the term which we can average over the term. The amount of the average rent will determine whether the benefit of a Certificate of Value can be allowed.

5.24 If any part of the rent is not quantifiable at the date of the lease we need to enquire about the market rent in accordance with Section 242(3)(b) of the Finance Act 1994.

5.25 It is important to establish the market rent for the whole term in order to calculate the annual rent which will determine whether the benefit of a Certificate of Value may be allowed.

5.26 Statutory Instrument 1985 No. 1688 provided that documents effecting sales for considerations below the certificate of value threshold should be sent direct to the Land Registry with a form L(A)451. That Office would impress the produced stamp prior to completing the registration of the new title. Those provisions specifically exclude Leases. Such documents should be dealt with in Stamp Taxes whether or not ad valorem duty is charged.

Peppercorn rent for the whole term

5.27 Most leases reserve a rent. Where the rent is only a peppercorn for the whole of the term, then duty is charged only on the premium allowing the benefit of a Certificate of Value where appropriate.

Contingent rents

5.28 If there is a stated maximum or minimum sum or if there is a stated sum which may vary up or down this is to be taken as a measure of the rent, for Certificate of Value purposes, under the contingency principle.

5.29 For example, in a lease reserving a rent of £570 per annum plus an additional minimum, or maximum, rent of £30 per annum, the aggregate rent would be treated as not exceeding £600 per annum. If the additional rent is a maximum of £40 per annum or say

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£40 certain for the first 3 years and thereafter to fluctuate, the aggregate rent would be treated as exceeding £600 per annum and no Certificate of Value would be appropriate.

5.30 Sometimes a lease may state a rent for part of a term. The following example shows an example when Section 242 Finance Act 1994 is not applicable.

5.31 A lease for 10 years reserves a rent of £1,000 per annum for the first 5 years. Provisions are provided for review. The lease also cites that whatever is decided upon review, the rent will not fall below that firstly reserved ie £1,000 per annum. In other words there is an upward only rent review. Duty should be charged on the term of 10 years at £1,000 per annum. Because of the clause underpinning the rent, the sum of £1,000 per annum can be charged contingently.

5.32 If, however, the lease remained silent on the rent for the final 5 years (ie there was no provision for an upward only review) Section 242 Finance Act 1994 should be invoked.

5.33 to 5.40 Blank

Agreements for lease

5.41 Any agreement for lease is chargeable as a lease, by virtue of Para 14 of Schedule 13 to the Finance Act 1999. In Scotland agreements for lease are almost exclusively constituted by means of an exchange of missives whereby agreement is reached between the landlord and tenant as to the whole terms and conditions of the demise. Those Missives (which constitute a lease in Scots law) are stamped in the same way as an agreement for lease.

Lease in conformity with agreement

5.42 Usually an agreement for lease is followed by a lease which conforms with it. For such lease to be effective it has to be 'denoted' to show that the correct duty has been stamped on the agreement (Section 240(A) Finance Act 1994) and so we need to see the agreement with the lease. If the terms of a lease differ from those of the agreement the duty is recalculated to accord with the terms of the lease. This may result in extra duty which, when paid, will be stamped on the lease. If the duty on the agreement exceeds that on the lease the excess is not repaid.

Alteration of the parties to the transaction

5.43 If a lease is presented for stamping and any of the parties to it was not a party to the agreement for lease you should ask why the parties are different. If it can be shown that the new party has acquired a proper title, for example by having been assigned the benefit of the agreement, the lease can be accepted as being in conformity with the agreement. But, in accordance with Stamp Duty legislation, the assignment document may only be accepted as evidence if it has been properly stamped. Otherwise, the lease must be charged as a new lease, without any credit for the duty stamped on the original agreement.

Several leases following one agreement for lease

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5.44 An agreement for lease which relates to more than one lease must be stamped with the duty appropriate to all the leases at the time that the agreement is first presented for stamping. It is not possible to stamp in respect of each lease as it is granted.

5.45 If several leases are executed pursuant to one duly stamped agreement, each for a separate part of the property in the agreement and each with an apportioned part of the total rent, each lease must be denoted with the whole of the duty impressed on the agreement.

Certificate required if no agreement

5.46 If there is no agreement then duty is chargeable on the lease. In those circumstances for the lease to be effective it must contain a certificate that there is no agreement to which it gives effect (New Section 240(A) Finance Act 1994 which was substituted by Para 4 of Schedule 12 to the Finance Act 1999). If the certificate was originally omitted from the lease it may be added to the document provided that it is signed by the parties. A certificate which is separate from the document, and/or not signed by the parties, is not acceptable. In Scotland the wording of the certificate may be slightly amended to say that there are no Missives of Let (constituting a lease) to which the lease gives effect.

Service charges

5.47 Service charges are not liable to Stamp Duty except in the case where a single sum is reserved as rent both for the demise of the property and the right to services. Such cases are rare but would be chargeable under Para 12 of Schedule 13 to the Finance Act 1999.

5.48 Where service charges are described as rent but are separately reserved they are not a consideration for the lease. They are consideration for a right to services and cannot therefore be brought within the charge to duty. The same applies to 'rents' in respect of insurance premiums, income tax, water rates, utilities or other such payments which do not enhance the value of the property. When you examine a lease you should assume that all rents mentioned are occupation rents unless they are actually described as service or insurance rents or the customer objects when advised of your view and provides evidence that part of the sum shown is in the nature of a service rent.

Amenity rights

5.49 Rent payable to a management company or similar body as consideration for the demise of amenity rights such as a right of access over common parts of a block of flats can be brought within the Lease Head of Charge. Rights such as these are known as 'incorporeal hereditaments'.

Furnished lettings

5.50 Para 11.1 of Sch 13 to the Finance Act 1999 concerns leases of furnished dwellings for a definite term of less than a year and for a rent more than £5,000 for that term. The duty on such documents is only £5. If the rent is £5,000 or less no Stamp Duty is payable.

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5.51 This provision only applies to property or apartments furnished as and to be used as domestic accommodation. If, a dwelling-house were furnished for use as an office and let for business use it would not be within this provision.

What is a 'definite term less than a year'?

5.52 An agreement to let from, say, 1 July in one year to 30 June in the next is not an agreement for a definite term of less than one year. It is instead an agreement to let for one year and is chargeable under Para 12 of Schedule 13 to the Finance Act 1999.

5.53 For the document to be considered as an agreement for less than a year it would have to specify the term as 1 July in one year to 29 June in the next or, in other words, one year less one day.

5.54 The position is different again if the document contains words such as 'for 5two weeks from 1 July to 30 June' or 'from 1 July in one year to 30 June in the next being one year less one day'. In those statements the words '5two weeks' and 'one year less one day' are taken to indicate the intention that possession is not to be enjoyed for the whole of the days mentioned, and that the term is therefore less than a year.

5.55 Should the term be expressed to commence at midnight and continue until midnight - for example from 12/10/99 to 11/10/2000 - the term is less than one year. This is because 12/10/99 is effectively outside the term of the lease. If, on the other hand, the term commences at noon on 12/10/99 and continues until 11/10/2000, then the term would be one year. The fact that only part of the first day is included is not material as fractions of a day are not recognised, counting instead as whole days.

5.56 You should bear in mind when charging such a document that if it provides for the letting for a term of less than a year but also provides for its continuation thereafter until determined the term for Stamp Duty purposes includes the minimum period which must elapse before the earliest date at which it can be determined. This could take the document to a term of one year or more and would mean it was outside the provisions of Para 11.1 of Sch 13 to the Finance Act 1999. It would instead be liable under Para 12.

5.57 It is also important to remember that if the document was not executed until after the date stated as the commencement of the term the period prior to the date of execution is ignored for Stamp Duty purposes. This can mean that a term of one year or more can be reduced to less than a year and falls within Para 11.1. (Always provided of course that it is for a furnished domestic letting.)

5.58 Occasionally an agreement for letting of furnished accommodation will also contain separate provisions in respect of an adjoining garage. In that case if the rent for the garage is separately reserved as an amount exceeding £5000 it should be separately charged with duty under the provisions of Para 12 of Sch 13 to the Finance Act 1999.

5.59 Para 11.2 applies to leases, other than leases of dwellings, granted for a definite term of less than a year. Except where the rent is £5000 or less (in which case the duty is nil), the duty on such a lease is 1% of the total rent payable over the term rounded up to the nearest £5.

Grant of a lease to a connected company

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5.60 Section 121 Finance Act 2000 mirrors the provisions of section 119 as detailed in 4.53 to 4.61 of this manual and the duty on such leases should be calculated accordingly.

5.61 to 5.75 Blank

Leases liable to £5 fixed duty

5.76 Para 13 of Sch 13 to the Finance Act 1999 applies to leases of any kind which do not fall within Paras 11.1, 11.2, 12 and 14. These are leases which are granted for a peppercorn, or nil rent or for other consideration which is not money, stock, securities or other property. Such leases are chargeable with £5 fixed duty. Para 13 does not apply to leases where the rent is not ascertainable at the time the document is executed. Under Section 242 of the Finance Act 1994, such leases are charged to duty in respect of the open market rent (see paragraph 5.80 below).

Surrender of existing lease

5.77 Para 20 of Schedule 13 of the Finance Act 1999 applies only to an instrument which increases the rent but leaves the original lease in existence. It does not apply where a lease is surrendered and a new lease granted at an increased rent, or to any instrument increasing a lease's rent if it results in a surrender and regrant eg if the term is varied or additional land is demised.

Review in terms of original lease

5.78 When an original lease includes provisions for an increase in rent and a supplementary document is executed fixing the rent exactly as provided for in the lease the supplementary document is not liable to any Stamp Duty eg declaring the rent agreed or determined by arbitration in such circumstances would not be liable to Stamp Duty.

Deeds of Variation

5.79 A Deed of Variation or similar document which varies an original lease so that VAT is paid as additional rent may attract duty under Para 20 of Sch 13 to the Finance Act 1999.

Premium and/or rent not ascertainable from lease (Section 242 Finance Act 1994)

5.80 If the premium, or any part of the premium, and/or the rent or any part of the rent, for the grant of a lease cannot be ascertained at the time the lease is executed then the consideration for the grant of the lease is taken to be the market value of the lease immediately before its execution (Section 242(1) and (2) respectively of the Finance Act 1994).

5.81 If we invoke Section 242 in any particular case we do not charge contingent VAT (see paragraphs 5.202 to 5.219 below), in addition to the market value premium or market rent.

5.82 The market values may be different from any figures quoted in the lease, either greater or less, but we **must** use the market values if we invoke Section 242.

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5.83 Customers are asked to provide professional valuations, or their own valuations supported by documentary evidence. These can be checked with the District Valuer in appropriate cases.

5.84 Blank

Contingent premiums and/or rent

5.85 The rules in Section 242(1) and (2) Finance Act 1994, do **not** override the contingency principle. This is particularly the case under Section 242(3)(a), for that provision states that those rules do not apply where the premium or rent can be ascertained on the assumption that any future event mentioned in the lease were or were not to occur. The contingency principle is based on Stamp Duty legislation and case law, reference often being made to *Underground Electric Railways Co of London Ltd v IRC* [1905] 1 KB 174 and [1906] AC 21; *Underground Electric Railway Company of London Limited v IRC* [1914] 3 KB 210, *Coventry City Council v IRC* [1979] Ch 14, and to *LM Tenancies 1 Plc v IRC* [1996] STC 880. The contingency principle means in particular that any basic or prima facie sum which may become payable as a premium or as rent on the happening, or not happening, of some future contingency is to be charged to lease duty. If therefore the total premium or rent is not fixed at the time a lease is executed, but a sum, or sums, are stated to be payable on a contingency, then the contingent payment(s) is/are charged to lease duty.

5.86 There is an exception to this general rule. That is where a small sum is stated to be payable on a contingency, and that sum does not genuinely represent the consideration agreed by the parties but was inserted to avoid the market value rules to minimise the duty. We consider that Section 242(3)(a) does **not** apply to such a sum as it does not accord with the statement by Lord Radcliffe in the case of *Independent Television Authority v IRC* [1961] AC 427 that: 'What is necessary is that it should be possible to ascertain from the agreement that there is some specific sum agreed upon as the subject of payment which may perhaps fairly be called the prima facie or basic payment'. For advice about the application of the contingency principle to a lease with a rent review clause by reference to the rate of change in the Retail Prices Index see Paras 5.171 to 5.180.

The term of a lease

5.87 The term of a lease for Stamp Duty purposes is the period specified in the document where the document is executed on or before the commencement of the term. If an Agreement or a Lease is executed after that date then the period prior to execution is ignored for Stamp Duty purposes. Any rent paid prior to execution is disregarded in working out the average annual rent, see below.

Average rent

5.88 The charging provisions for leases state how duty is to be charged when the rent is expressed as a yearly rent or is at an average rent. This means that when the rent set out in a lease varies over the term of the lease you must work out the average rent before it is possible to charge the duty payable.

When is the calculation required?

5.89 An average rent calculation is required where the rent changes at least once during the term of the lease and there is a specified or ascertainable figure for at least 2 stages.

5.90 If part or all of the rent is unascertainable, a market rent is the basis of charge (Section 242 FA 1994), see Para 5.80.

Calculating an average rent

5.91 An average rent is calculated as follows:

- Ignore any period prior to the date of execution of the document at every stage of the calculation.
- Multiply each annual rent payable by the period over which it is payable.
- Total the figures which result.
- Divide this total by the term over which the rent is to be averaged.

Example

A lease executed on 10 October 1999 creates a term of 20 years from 1 November 1999 to 31 October 2019. It provides for a rent of £10,000 per annum from 1 November 1999 to 31 October 2009 and £18,000 per annum from 1 November 2009 to 31 October 2019.

The average rent is therefore:

$$\frac{(\pounds 10,000 \times 10) + (\pounds 18,000 \times 10)}{20}$$

This gives an average annual rent of £14,000.

Lease duty @ 2% based on average annual rent of £14,000 is payable or, in other words, £280 duty.

In practice the term over which the initial amount of rent is payable will rarely be an exact number of years. In those circumstances it is necessary to treat any number of days, at all stages of the calculation, as a fraction of a year. For example, a rent of £2,650 per annum for two years 90 days followed by a rent of £3,150 for 3 years amounts to an average rent calculated as follows:

$$\begin{aligned} & \frac{(\pounds 2,650 \times 2.2466) + (\pounds 3,150 \times 3)}{(2.2466 + 3)} \\ & = \pounds 5,953.42 + \pounds 9,450.00 \\ & \quad 5.2466 \end{aligned}$$

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$$\begin{aligned} &= £15,403.42 = £2,935.89 \\ &5.2466 \end{aligned}$$

Lease duty @ 1% based on average annual rent of £2,935.89 is payable = £29.35 rounded up to the next £5 = £30.00.

Definite term followed by an indefinite term

5.92 Sometimes a lease is granted for a fixed period followed by an indefinite period subject to notice of termination. The term of such a lease for Stamp Duty purposes is the fixed period plus the shortest further time which may pass before termination of the lease (Para 15 of Schedule 13 to the Finance Act 1999).

Lease for life

5.93 Occasionally a lease may be granted for life, or for a fixed period determinable with life or lives or on the marriage of the lessee. In England and Wales the term of such a lease is regarded as 90 years. This is because of Section 149 of the Law of Property Act 1925. This Act does not extend to Scotland or Northern Ireland so the term of such a lease there is regarded as indefinite.

Option to extend and option to terminate

5.94 A lease for a specified term but with an option for a further term is regarded as a lease for the specified term only. A lease for a specified term with an option to terminate before the end of the specified term is also regarded as a lease for the specified term (see *Cummins Engine Co Ltd v IRC* [1981] STC 604).

Option to Lease

5.95 An Option to Lease is not an agreement to lease and is not therefore liable to Stamp Duty as if it were a lease. The grant of the option for a consideration may render it a conveyance on sale for Stamp Duty purposes but it is not an agreement to lease. The date of the Agreement for Lease for Stamp Duty purposes is the date the option is exercised. We require sight of the document whereby the option was exercised to prove that date.

Fresh document

5.96 Where the term of a lease is extended by means of a fresh document, such as a deed of variation, that document will be chargeable to lease duty. The new term may include part of the unexpired term of the original lease but, if so, no credit is allowed for duty charged on the original rent.

5.97 Under Section 149(3) Law of Property Act 1925 (which does not apply in Scotland) a document which is to take effect more than 2one years from its date of execution has no legal effect. Any document extending the term of a lease must therefore be drafted and executed so as to have effect within that period.

The surrender of a lease

Agreements to Surrender and Surrender Documents

5.98 A deed under which a tenant surrenders, or agrees to surrender, a lease in exchange for chargeable consideration (whether paid by the landlord or by a new tenant) is liable to duty as a conveyance on sale. Where a tenant surrenders a lease in exchange for valuable consideration paid by the new tenant, and there is no surrender document, ad valorem conveyance on sale duty is taken on the payment on the new lease, in addition to any lease duty.

Payment to landlord by tenant

5.99 A document under which a landlord agrees to the surrender of a lease in exchange for consideration paid by the tenant is liable to £5 fixed duty as a surrender under Para 23 of Sch 13 to the Finance Act 1999.

Surrender of lease by operation of law

5.100 A lease may be surrendered by operation of law without any surrender document. Section 128 Finance Act 2000 states that any document evidencing the surrender or renunciation of a lease is treated as a document executed at the time of the surrender or renunciation.

5.101 Should any such document be presented for stamping please note that it is the date of surrender of the lease which is the operative date for penalties and interest. If the document does not state the date of surrender then enquiries should be made to establish the date of surrender.

5.102 This legislation affects surrenders which took place on or after 29 July 2000.

5.103 to 5.116 Blank

Grant of a new lease for the surrender of an old lease

5.117 Any document by which a landlord makes a payment to a tenant in consideration of the surrender of the lease is chargeable to conveyance on sale duty. Following Section 241 of the Finance Act 1994, (see Chapter 4 Stamp Duty: Conveyance On Sale Duty) a document under which a lease is surrendered in exchange for the grant of a lease of the same or other land is also chargeable to conveyance on sale duty, charged by reference to the market value of the new lease. The new lease is chargeable to lease duty in the usual way.

Lease back

5.118 Section 241, Finance Act 1994 affects the way in which a lease back to the vendor of a property may be charged to Stamp Duty. For example:

If the freehold of a house (unencumbered by a legal charge) is gifted by A to B and a lease back over the same property is granted by B to A for a term of 40 years at a peppercorn

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rent, the instrument effecting the gift can be certified within the provisions of the Stamp Duty (Exempt Instruments) Regulations 1987 (Category L). The lease will attract £5 fixed lease duty under Para 13 of Sch 13 to the Finance Act 1999.

5.119 Where a contract for the sale of a house for £100,000 from A to B states that, as a condition of the sale a lease back will be granted by B to A for a premium of £40,000 plus a rent of £50 per annum for a term of 40 years, duty will be charged in the usual way on the conveyance and lease documents.

The conveyance would attract duty on the sum of £100,000. The lease back, with a Certificate of Value, would be charged on the reserved rent of £50 per annum, under the provisions of Para 12 of Sch 13 to the Finance Act 1999.

Because the lease back does not form part of the consideration for the sale of the freehold property, but is merely a term or condition of the contract, a liability under Section 241, Finance Act 1994, does not arise.

5.120 If, however, A transfers a freehold property to B for a consideration consisting of a leaseback of the same property, either alone or together with a sum of money, duty is assessed on the transfer by reference to the value (if any) of the lease plus any cash element. Duty would also be assessed on the lease by reference to any amount by which the value of the property transferred exceeded the cash consideration.

5.120A Tax Bulletin No 18, issued in August 1995, explained Stamp Taxes' view on the application of Sections 240 to 243 of the Finance Act 1994. Paragraphs 13 to 17 of that article, which related to the surrender and regrant of leases and Sale and Leaseback read as follows:

Surrender and regrant of leases

13. Where a lease is granted in consideration only of the surrender or abandonment of an existing lease of the same property, Section 77(1) Stamp Act 1891 provides exemption from duty. If the new lease is granted in consideration of a premium and/or rent as well as the surrender of the existing lease, there is a grant of a lease which is partly exempt (the surrender) and partly chargeable to duty (the premium and/or rent). Stamp Taxes would not seek to refuse exemption under Section 77(1) Stamp Act 1891 merely on the grounds that there were some minor changes in the property subject to the lease, provided that these could be regarded as de minimis. The same treatment would apply where a variation of a lease takes effect in law as a surrender and regrant.

14. Where the lease on one property is being replaced by a lease on another property, the Stamp Duty treatment will depend on the facts of the case and the effect of the document. But if, for example, the document granted a new lease on one property and the consideration was the surrender of a lease on another property, duty would be charged on the grant of the new lease, by reference to the market value of the lease surrendered (as premium/consideration) and any other payment by way of premium or rent.

15. The Stamp Duty treatment of the surrender of the old lease will similarly depend on the facts and the documents. In most cases where there is a surrender and regrant, Stamp Taxes' experience is that no deed of surrender is submitted for stamping either because the new lease simply supersedes the old one by operation of law and there is no surrender

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document, or possibly because any surrender document is not submitted for stamping.

Sale and leaseback

16. Where there is a sale and leaseback, Stamp Taxes normally sees a contract of sale for a price, and an agreement for lease (followed by the grant of a lease), rather than an exchange of one for the other. In that case, the sale would be liable to duty in the normal way by reference to the price and the agreement for lease would be charged by reference to any premium and rent.

17. If, however, the property is transferred in consideration of a leaseback of the same property, alone or together with a sum of money, duty would be assessed on the transfer by reference to the value (if any) of the lease plus any cash element. Duty, would also be assessed on the lease by reference to any amount by which the value of the property transferred exceeded the cash consideration.

See Chapter 4, paragraph 4.104 for paragraphs 1 to 12 of this article.

Section 77(1) Stamp Act 1891

5.121 Section 77(1) of the Stamp Act 1891, which refers to penal rents, may come into play if a lease is granted in consideration of the surrender of a lease of **the same property**.

Exemptions

Associated Companies Relief

5.122 Following Section 151 of the Finance Act 1995, a lease which is granted by one 'body corporate' to another may be exempt from duty. There are several conditions to the grant of the relief, including the adjudication of the lease. For more information about this relief see Chapter 6 (Adjudication and Stamp Duty Relief Claims).

Crown exemption

5.123 Section 55 of the Finance Act 1987 exempts from duty any lease (or conveyance or transfer) to a Minister of the Crown or the Treasury Solicitor.

Charity exemption

5.124 Any lease (or conveyance or transfer) to a **charity** is exempt from duty under Section 129 of the Finance Act 1982, subject to adjudication.

Disadvantaged areas

5.124a The premium payable for a lease may qualify for relief under the provisions of Section 92 Finance Act 2001. For more information about this relief see Chapter 6 (Adjudication and Stamp Duty Relief Claims).

Shared ownership leases

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5.125 A shared ownership or equity sharing scheme is an arrangement which enables a tenant to buy a property (sometimes at less than market value) gradually from a housing association by not having to pay the full price initially. The scheme is employed mainly by local authorities, new town development corporations and housing associations but other bodies use it.

5.126 Under the scheme the housing association grants a long lease for a premium equivalent to the value of the share acquired, with rent payable on the remaining portion. Some leases allow the tenant to acquire the reversion so that he/she can become the freehold or leasehold owner in due course. Others deny the right to acquire the freehold reversion but provide for a maximum proportion on leasehold.

5.127 The Stamp Duty legislation in these cases gives the tenant the choice between paying what is chargeable under the original legislation for the separate parts as each is purchased or what would be chargeable if the whole house were purchased. The legislation also provides that if duty is paid at the outset as if the whole house were purchased this will mean no further duty is due when the reversion is eventually purchased.

The Legislation

5.128 Following Section 97 of the Finance Act 1980, as amended by Section 108 of the Finance Act 1981 and Section 54 of the Finance Act 1987, shared ownership transactions may be relieved from the extra Stamp Duty charge which can arise if the reversion is acquired separately at a later date. Section 108 amended Section 97 to ensure that it applied to sales at a discounted price and some leasehold cases that were not previously covered. The legislation now extends to leases granted by a private landlord who has taken over a public housing estate and preserves a tenant's right to be granted a shared ownership lease when an estate is privatised.

Conditions for a Shared Ownership Lease to be Charged as a Conveyance

5.129 Where such an agreement for lease is granted by one of these bodies it will be chargeable as a Conveyance on Sale on the market value of the property at the date of the grant of the lease provided that:

- it is a lease of a dwelling for the exclusive use of the lessee or lessees
- it is granted partly in consideration of a premium calculated by reference to the market value and partly in consideration of a rent
- it provides for the lessee to acquire the reversion. (Where the lessee can acquire only an enhanced leasehold interest, the Section does not apply)
- it contains a statement of the market value or discounted value of the dwelling at the time of the grant and
- it contains a statement that it is intended that Stamp Duty should be charged in accordance with Section 97 Finance Act 1980 by reference to that market value.

The last 3 items must be shown in the document. If any of them is not shown lease duty is chargeable in the normal way.

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5.130 You need not make any enquiries as to whether or not the property is a dwelling for the exclusive use of the lessee(s), unless there is firm evidence that this condition is not satisfied.

5.131 If the lease provides for payment of an additional sum to the lessor in the event of assignment of the lessee's interest within a specified period this sum is to be disregarded for the purpose of any charge to duty as a premium. This is in accordance with Section 107 of the Finance Act 1981.

5.132 If the conditions are satisfied charge:

- at the outset on the full market value (or the discounted market value, if appropriate) as if the property were being bought outright. A certificate of value for £60,000, £250,000 or £500,000 may be appropriate.

5.133 If Section 97 does not apply charge:

- on the premium (or discounted premium), ie the amount which the tenant is actually paying for the initial purchase and on the rent reserved.

Acquisition of leasehold interest

5.134 If the tenant is buying the full, or an enhanced, leasehold interest then Section 108 may apply and he/she can pay:

- on the full market value (or discounted market value) and the minimum rent reserved provided a 108 statement is included on the document.

5.135 If Section 108 does not apply then charge:

- on the premium (or discounted premium) and the reserved rent.

A certificate of value as above may be applicable.

Addition or deletion of the statement under Section 97 Finance Act 1980

5.136 If a document satisfies the requirements of Section 97 Finance Act 1980, as amended, or Section 108 Finance Act 1981 it must be stamped in accordance with the relevant provisions. If the customer decides to delete the statement required under the legislation or to add it if it is not already included this may be allowed provided the document has not already been stamped and provided it is at the instigation of the customer. Addition or deletion of the statement after stamping is not allowed.

5.137 You may, however, ask a customer to amend a statement which is obviously meant to comply with the legislation but which does not properly comply with it.

Purchase of further portion

5.138 The purchaser in a shared ownership transaction may want to purchase a further share or tranche of the property some time after the original document is executed but still without purchasing the whole. For example, the original document may have provided for a

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premium equal to 50% of the market value and a rent for the other 50% of the property. The purchaser might want to pay a further premium for another 25% and in consequence the rent will be reduced to that for the remaining 25% of the property. Any deed which merely varies the terms of the lease on payment of a further sum, with an adjustment of the rent, is not liable to any Stamp Duty.

5.139 It is important to note that if further duty is to be avoided, the purchase of the further share must be made by means of a document amending the original lease, not by a surrender of the original and a fresh demise. The important point is that an amendment which is made exactly as provided for in the first lease would not give rise to any liability to duty whereas a fresh lease following a surrender of the original would be chargeable.

Acquisition of freehold reversion

5.140 In due course, the purchaser may want to pay a final premium or lump sum to acquire the freehold reversion. The document transferring the reversion to the lessee is not liable to any Stamp Duty provided it contains a statement that it has been executed in pursuance of a lease in respect of which duty has been paid in accordance with Section 97(1) of the Finance Act 1980. If the document does not contain such a statement and the customer asks to be allowed to add one this may be permitted prior to stamping only. The statement can be inserted into the wording of the document or added at any convenient space. A statement inserted into the wording need only be initialled by the parties to the document. A statement added at some other place, say at the end of the document, must however be signed by the parties.

5.141 A document transferring a reversion which does not contain such a statement is chargeable as a Conveyance on Sale on the consideration payable for the transfer of the reversion.

5.142 For Certificate of Value purposes this consideration is to be aggregated with the premium for the lease and any other premiums or capital payments made in consideration of a reduction in the rent. You will therefore need to make suitable enquiries to find out these previous amounts where necessary. Where the lease was stamped to lease duty, ie not in accordance with Section 97, Conveyance on Sale duty is payable on the amount being paid for the freehold reversion. The Certificate of Value is determined by reference to the sum of all capital payments.

5.143 Section 97 Finance Act 1980 is unequivocal. The tenant must be able to obtain the freehold reversion. If the tenant only has the right to acquire a limited percentage, Section 97 will not apply. Section 108 Finance Act 1981 can however be invoked. Section 108 does not insist that the tenant should, ultimately be able to obtain a full leasehold interest.

5.144 Where a Section 108 statement is included in such a document and, for example, the initial market value is cited as £100,000 with a proposed minimum rent of £600 per annum, which can only be staircased to a maximum of 80%, duty should be assessed on an £80,000 premium and the minimum rent of £600.

Agreement for lease or leases not including a reference to Section 97 Finance Act 1980

5.145 Some Councils draft these documents in terms that include details of the premium paid but with the rent reserved supposedly unascertainable. In these transactions it is very

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unusual for the initial rent not to have been agreed at the date of the grant of the lease. You should make enquiries to clarify the position. Only if it can be established without doubt that the rent particulars were not agreed at the due date should the provisions of Section 242 FA 1994 be charged in addition to duty on the premium.

Shared ownership transaction example

5.146 Lease dated 1 October 1999

Initial Market Value	£66,250
Premium	£33,125 (50%)
Gross Rent	£1,248
Specified Rent	£624 (50%)
Term	99 years from 1 December 1998
Certificate of Value	£60,000

The deed provides that Stamp Duty is to be charged in accordance with Section 108 Finance Act 1981 by reference to the Initial Market Value (ie £66,250) and the Minimum Rent (ie peppercorn).

Duty	Certificate of Value
£ 665	£250,000
£1660	£500,000
£2320	not included

(Note: When other half of property purchased no further duty is payable provided the document contains the required statement)

If the lease had not contained any reference to Section 108, Finance Act 1981, then we would have charged:

Lease duty on:

(1)the premium actually paid	£		
ie £33,125 @ 1%		=	331.25
(2)the rent reserved			
ie the specified rent of £624 per annum for			
a term exceeding 35 years but not exceeding			
100 years @ 12%		=	74.88
	TOTAL	=	406.13
Rounded up to the next £5		=	410.00
(There is only one rounding up for leases)			

(3) When the other half of the property was purchased there would be a further charge to Stamp Duty in such a case, unless it was exactly in terms narrated in the original lease.

A £60,000 Certificate of Value is NOT allowable on £33,125 as the annual rent of £624 exceeds £600 but a £250,000 Certificate would be allowable (see Chapter 4).

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(4) Often the specified rents are subject to a yearly review. If these provisions make reference to the RPI this needs to be taken into account. See paragraphs 5.150 to 5.180 later in relation to RPI rent reviews.

Where a document already contains a Section 97 or Section 108 Certificate there is no need to take the RPI into account when calculating the Stamp Duty due.

5.147 If the lessee had the right to acquire the full freehold reversion and the document stated that Stamp Duty was to be charged in accordance with Section 97 Finance Act 1980 then we would have charged:

Conveyance on Sale duty on the Initial Market Value	
ie £66,250 @ 1%	= £662.50
Rounded up to the next £5	= £665.00
(No further charge when other half of property purchased.)	

5.148 If the document had NOT contained a statement that duty was to be charged in accordance with Section 97 Finance Act 1980 then we would have charged lease duty on the premium and rent payable under the terms of the instrument.

5.149 The counterpart of a shared ownership lease where the original is liable to more than £5 duty is not 'duly stamped' unless it also bears the duplicate denoting stamp.

5.150 If the customer chooses the shared ownership basis, and the document contains the appropriate statement, any RPI clause in the lease is disregarded. If there is no statement, and the customer chooses to have the lease assessed as an ordinary lease, an RPI clause will be taken into account in calculating the contingent annual rent, as detailed in paragraphs 5.171 onwards, below.

5.151 to 5.170 Blank

Retail Price Index

Rent reviews by reference to the RPI

5.171 Sometimes a lease provides for a rent review by reference to the rate of change in the Retail Price Index ('RPI').

Applying the contingency principle in RPI lease cases

5.172 In these cases we can sometimes invoke the Stamp Duty contingency principle to calculate the projected rent at the first rent review date. This may increase the average annual rent under the terms of the lease for Stamp Duty purposes. We are not entitled to use the current rate of change in the RPI as the basis for projecting the future rate of change and so we cannot calculate future contingent rent levels on that basis. It is however proper to consider any change in the RPI which has already occurred between the date of commencement of the lease and its date of execution where these are different.

5.173 In many leases this minor uplift in the rent makes no difference to the Stamp Duty chargeable when averaged out over the whole term but it may have a substantial impact in

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a few very large leases, which is why we have to take it into account for compliance purposes.

5.174 Where a lease has a rent review clause by reference to the RPI, or any similar index, the future rent levels are considered to be unascertainable except for any contingent increase which has resulted from a period prior to execution.

5.175 This will mean that part of the rent over the whole term of the lease is unascertainable and so the provisions of Section 242 Finance Act 1994 will apply unless, as in the majority of leases we deal with, there is an upward only rent review. Where an upward only rent review is specified, this contingency overrides the fact that part of the rent is unascertainable. We will therefore take the latest ascertainable rent as the rent for the remainder of the term and charge duty on the contingent average annual rent which results.

Base date for the RPI review specified in the lease

5.176 We do not take any change in the index prior to the base date specified in the rent review clause into account. If the base date is on or after the date of execution of the document we cannot take any change in the index into account at all. Example 1 below relates to a document of that type. This means that the following particular cases would be dealt with as described:

Base Date Prior to Execution

5.177 Where the rent is to be reviewed by reference to the change in RPI from a base date prior to execution of the document, we can take into account any change in the RPI between the base date and the date of execution of the document. This known change should be applied at the first review date, if that is after the date of execution, to calculate the contingent average annual rent. Example 3 below relates to a document of that type.

Base date prior to the start of the term

5.178 Where the base date is earlier than the date shown as the start of the term it can still be used to calculate the known increase between the base date and the date of the document. Indeed, if we did not do so this would open a substantial avenue for the avoidance of duty. Example 7 below relates to a document of that type.

The importance of the rent review clause

5.179 In all cases of this type you must apply the provisions of the rent review clause as it appears in the document. We cannot look at any change in the index during any period outside those provisions or after the date of execution of the document.

Rent review date already passed

5.180 In the unusual case of an Agreement for Lease or Lease which has not been executed until after one or more rent reviews have already happened, we know the amount by which the RPI had changed at the date of execution and can use that figure in calculating the contingent average annual rent. Example 6 below relates to a document of that type.

Examples

Example 1

Residential Lease for 125 years. Premium £45,000. Initial Rent £350 per annum. First rent review, by reference to RPI, after 20 years and thereafter every 25 years. Upward only reviews specified. The Agreement for Lease and Lease are executed on or before the commencement of the term.

Duty of £84 on the £350 rent rounded up to £85. No duty on the premium with a £60,000 Certificate of Value.

Example 2

As for Example 1 but with no mention of an upward only rent review.

Since the rent from the first review onwards is unascertainable the Agreement for Lease and Lease fall to be assessed to duty under the terms of Section 242 of the Finance Act 1994. The customer should be asked to supply an open market value annual rent for the Lease with supporting evidence. If this rent is £600 per annum, or less and the evidence is acceptable, duty will be due on the rent at 24% rounded up to the nearest £5 and there will be no duty on the premium with a £60,000 Certificate of Value.

Example 3

Residential Lease for 100 years. No Agreement for Lease. Lease executed on 1 January 2000. Term commenced 1 January 1997. Premium £100,000. Rent £1,000 per annum. First rent review, by reference to RPI, after 10 years and every 10 years thereafter. Upward only rent reviews specified. RPI increased by 9.45% between January 1997 and December 1999.

We know that between the date the term commenced and the date of execution of the lease RPI had increased by 9.45%. This increase, which is certain at the date of execution of the lease, can be considered to be a basic or prima facie sum under the contingency principle. In the following 7 years, before the first rent review, the RPI may go up or down but applying the contingent 9.45% will increase the £1,000 initial rent to £1,094.50 (ie £1,000 + 9.45%). Since the reviews are upward only the rent will never fall below that contingent £1,094.50 for the remainder of the term. For Stamp Duty purposes we otherwise ignore the period prior to execution.

The average rent is calculated as follows

7 years at £1,000 = £7,000

90 years at £1,094.50 = £98,505

Total rent over the 97 years = £105,505

Divided by 97 to give the annual average £1,087.68

Duty at 12% of £1,087.68 = £130.52.. With a £250,000 Certificate of Value the duty on the premium will be £1,000 making total duty of £1,130.52. This is then rounded up to the nearest £5 to give £1,135 duty due.

Example 4

As for Example 3 but with no mention of an upward only rent review

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Since the rent from the first review onwards is unascertainable the Lease falls to be assessed to duty under the terms of Section 242 of the Finance Act 1994. The customer should be asked to supply an open market value annual rent for the Lease with supporting evidence. If the evidence is acceptable and shows the open market value rent to be, say, £1,600 per annum, duty will be due on the rent at 12% of that amount = £192 and with a £250,000 Certificate of Value duty on the premium would be £1,000 making total duty of £1,192. This is then rounded up to the nearest £5 to give £1,195 duty due.

Example 5

As for Example 3 but with annual rent reviews. The rent review clause shows an alternative of rent increases by reference to the rate of change in the RPI or 5% per annum, whichever is the higher, on 1 January every year.

In this case the 5% per annum is a contingent maximum increase which is known at the date of execution of the Lease.

An increase of 5% per annum in the £1,000 rent from the date the lease begins to the date it was executed means the rent at the date of execution, 1 January 2000, has already increased to £1,157.62 per annum. This is then increased by a further 5% every year for the remaining 97 years of the term and the average calculated by adding the contingent rent for each year divided by 97. This gives a contingent average annual rent of £26,874.98. Duty at 12% on that sum = £3,221.76. Duty on the premium with a £250,000 Certificate of Value = £1,000 making a total of £4,221.76 which, when rounded up to the nearest £5 gives £4,225 duty due.

Example 6

Commercial Lease for 30 years. No Agreement for Lease and no premium. Term commenced on 1 January 1995. Lease was executed on 1 January 2000. VAT exclusive rent £250,000 per annum. Rent reviewed annually on 1 January each year in line with the change in RPI. Upward only reviews specified. Between January 1995 and December 1999 RPI increased as follows:

January 1995 to December 1995	141.3 to 146.0 = 3.33%
December 1995 to December 1996	146.0 to 150.7 = 3.22%
December 1996 to December 1997	150.7 to 154.4 = 2.46%
December 1997 to December 1998	154.4 to 160.6 = 4.02%
December 1998 to December 1999	160.6 to 164.4 = 2.37%

The rent has therefore increased as follows:

$£250,000.00 + 3.33\% = £258,250.00$
 $£258,250.00 + 3.22\% = £266,565.65$
 $£266,565.65 + 2.46\% = £273,123.16$
 $£273,123.16 + 4.02\% = £284,102.71$
 $£284,102.71 + 2.37\% = £290,835.94$

So as at 1 January 2000 the rent will be £290,835.94 and will not fall below that figure. We ignore the first five years for Stamp Duty purposes and assess the document as a Lease for

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25 years at an annual rent of £290,835.94 + VAT (since it is a commercial lease) = £341,732.22 per annum.

Duty at 2% of that amount = £6,834.64 which when rounded up to the nearest £5 gives £6,835 duty due.

Example 7

Residential Lease for 10 years. No premium. No Agreement for Lease. Lease executed on 1 January 2000. Term commenced 1 January 2000. Rent £ 10,000 per annum. Rent to be reviewed annually on 1 January each year in line with the rate of change in the RPI between January 1998 and each review date. Upward only rent reviews.

We can apply the change in the RPI which is known as at the date of execution, 1 January 2000, ie between January 1998 (the base date specified in the rent review clause) and December 1999 (the month before that in which the lease was executed) to calculate the contingent rent at the first review.

RPI increased 6.5% between January 1998 and December 1999. So at the first review date the contingent rent is £10,000 + (6.5% of £10,000) = £10,650. The contingent average annual rent will therefore amount to one year at £10,000 plus 9 years at £10,650 divided by 10 = £ 10,585. The Stamp Duty will be at 2% of that amount = £211.70 which, when rounded up to the nearest £5 gives £215 duty due.

5.181 to 5.201 Blank

Value Added Tax and leases

5.202 Since 1 April 1989, following a ruling of the European Court in 1988, it has been compulsory to charge VAT on leases (and sales) of 'new' non-residential property (a 'new' property is regarded as one which is first sold or leased within 3 years of construction). VAT may also be charged, at the landlord's option, on the creation of a new lease of 'old' property. Where VAT is payable on the premium or rents charged under a lease then it will attract Stamp Duty as if it were part of the premium or rent.

5.203 Since an agreement for lease is to be assessed to duty as if it were a lease the provisions relating to VAT on non-domestic leases apply equally to agreements for lease.

5.204 There is no VAT on leases of residential property. The premium and/or the rent payable under a lease of other (ie commercial) property may, however, be subject to VAT. Where the landlord may charge VAT to the tenant, the sum on which Stamp Duty is chargeable includes VAT at the rate in force at the time the lease was executed. The current rate of VAT, which has been in force since 1 April 1991, is 17.5%. The previous rate was 15%.

5.205 Stamp Duty is charged on the gross amount of any VAT-inclusive premium. If no VAT was paid in addition to the premium we cannot charge it contingently.

5.206 The position in technical terms is that the assignment of an existing lease or the creation of a new lease in old or new non-residential property is in fact exempt from VAT. The lessor can however elect to waive that exemption, thereby rendering the lease liable to

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VAT. Accordingly, the contingency principle is applied and the Stamp Duty is charged on an amount which includes the VAT that may arise later following an election to waive the exemption. An election to waive the exemption to VAT has effect from the beginning of the day on which it is made or any later day it specifies. The election cannot be exercised retrospectively. We cannot therefore apply the contingency principle to any VAT-exclusive sums paid on the date of a lease where at that date the election has not been made. The formal notice of election made to Customs and Excise does not itself attract Stamp Duty, nor does any notification to the lessee that such an election has been made.

Properties exempt from VAT charge

5.207 Properties exempt from a VAT charge include:

- residential
- residential providing accommodation for children
- residential providing accommodation for the disabled, aged, those dependant on alcohol or drugs, and those having mental disorders
- residential - a hospice
- residential providing accommodation for school pupils and students
- residential providing accommodation for members of the armed forces
- residential - a monastery or a nunnery
- residential - an institution which is the main residence for at least 90% of its residents (excluding a hospital, hotel, prison or inn etc).

Transactions Subject to a Statutory Charge to VAT

5.208 Transactions subject to a statutory charge to VAT include:

- sale of new buildings or those in the course of construction (not designed for residential or charitable purposes - freehold interest only)
- sale of freehold of, or grant of a lease in, holiday accommodation where the purchaser or lessee does not have a continuous right of occupation; there being a specified period where the owner is excluded, usually for general maintenance to be done
- surrender of a lease; and if ad valorem duty is charged because payment is made by the landlord the charge is on the grossed up amount
- the grant of one of the following rights in land (note that if the document creates a lease, rather than a licence, ad valorem duty is charged on the gross amounts):
 - i use as a parking space, garage or mooring
 - ii right of easement

iii mineral rights

iv use as a market pitch

v use as an advertising hoarding

vi use as a hall

vii use as a warehouse.

5.209 Stamp Duty on the grant of a lease is charged on VAT inclusive amounts where the landlord is entitled to charge VAT to the tenant as part of the premium and/or rent by virtue of the terms of the lease or Section 89 VAT Act 1994. Where a landlord elects to charge VAT in relation to a lease after the lease is made, VAT is added to the consideration for the lease, unless a term of the lease displaces Section 89 by referring to it, or to VAT. For example, a landlord would not be entitled to add VAT to the consideration for a lease, and VAT would not be taken into account for Stamp Duty purposes, where the lease, or agreement for lease specifically provides that:

- the tenant is not liable for any VAT which is or may be charged in relation to the lease; or
- the rent and premium include VAT and Section 89 VAT Act 1994 does not apply to the lease; or
- the landlord shall not at any time opt to charge VAT in respect of the lease.

Glenrothes Development Corporation v IRC

5.210 A useful case to refer to on the question of our right to charge duty on VAT inclusive amounts is that of Glenrothes Development Corporation v IRC [1994] STC 74.

Ascertaining the true VAT position

5.211 When a lease is presented for stamping and it is not clear what the position is in respect of VAT the following enquiries should be made, and you should proceed as follows:

- is the property commercial property?
- if it is, does the premium/rent include VAT?
- if it does, charge duty on the gross amount including VAT
- if it does not, establish whether the option to tax has been exercised

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- if an election is in place on the date of the lease, gross up the premium/rent to include the VAT element, and charge ad valorem duty on the gross amounts. The VAT-inclusive rent should be averaged if appropriate
- you should regard the VAT as reserved as rent unless the document specifically states otherwise, in which case the VAT should be aggregated with the premium in accordance with Section 56 of the Stamp Act 1891 and charged to duty accordingly
- if no election has been made at the date of the lease, charge duty on the net amount of the premium and on the grossed up rents payable after the date of the lease, on the basis the contingency principle applies. If, unusually, a rent payment is also due on the lease date, the net amount should be included in the average rent calculations.

Binding agreement not to charge VAT

5.212 Where it is claimed that there is a binding agreement that the exemption will not be waived, you must see the agreement and be satisfied that it is binding, and that it is valid for the whole of the term of the lease for one of the reasons set out in Para 4.59, before you stamp the lease on the basis of VAT-exclusive amounts.

5.213 An agreement which refers to a period shorter than the lease leaves the contingency open, so part of the term is chargeable in respect of VAT-inclusive rent.

5.214 It is not necessary for the words ‘throughout the term’ to be stated in the text. For example, the words ‘the lessor shall at no time elect to charge VAT on the rent or any other payment under the lease’ are acceptable.

5.215 A binding agreement can form part of the document, or be in a separate letter. If the agreement not to charge VAT is in a separate document, it is acceptable only if it is executed on or before the date of the lease. An agreement between the parties that no election to waive the exemption in respect of the property concerned will be made is acceptable.

5.216 Duty should be charged on the net rents reserved in the lease only where it is clear that the parties had an agreement that VAT would not be charged.

VAT charge barred for all or part of term

5.217 A lease should be examined to see if there is a provision to bar the charging of VAT during part or all of its term. If you are not sure if such a provision is effective consult with your line manager.

Building complex

5.218 An election to charge VAT is made on a building by building basis. A ‘building’ for VAT purposes includes a block or complex which is linked structurally; for example a shopping complex, or linked industrial units. This may be significant if a number of documents relate to parts of the same development, and VAT is charged for one document. In that case you should ask the customer to clarify the position on the other documents.

VAT groups

5.219 A group of companies can register with Customs and Excise as a 'VAT Group'. The Group companies can then transfer properties amongst themselves without charging VAT, even if the option to tax has been exercised for the property. Where a customer states that VAT has not been charged because such a registration is in force duty is charged on the VAT-exclusive amounts actually passing, unless group relief is available.

Other leases

Leases granted by councils, charities and insurance companies

5.220 Leases granted by local authorities, charities and insurance companies are not exempt from VAT and do not enjoy any special treatment; so normal rules apply. The contingency principle is to be applied in the usual way unless there is a binding agreement that VAT will not be charged. Insurance companies must not charge VAT on their insurance policies, but that does not extend to their investment properties. The fact that a party is not registered for VAT at the time of the lease is no reason not to invoke the contingency principle. The party concerned could register for VAT at any time during the term of the lease, and so the contingency principle is in point.

Quarrying and mining leases/licences

5.221 A document which allows the grantee to enter land for mining, or quarrying purposes or otherwise removing minerals, sand, gravel, etc; may only be a licence, and therefore not liable to duty, if it simply authorises entry onto the property for that purpose.

5.222 If, however, it confers an interest in the land which amounts to a letting and is drawn in the form of a lease reserving a rent and/or royalties you should charge it as a lease.

Royalty payments as rent

5.223 Royalty payments in respect of the removal of any material which constitutes part of the land are considered to be payments in respect of the lease interest and are therefore liable to ad valorem duty. Bear in mind the application of the contingency principle and Section 242 FA 1994 (unascertainable rent) if the terms of the document are such that the royalty payments can be brought into the charge.

Leases operating as voluntary dispositions

5.224 It might be thought that a lease by way of a gift without premium or rent could be certified under category L in the schedule to the Stamp Duty (exempt instruments) regulations 1987. That is not so and fixed duty of £5 under Para 13, Part II, Schedule 13 of the Finance Act 1999 is due.

Tenancy at will

5.225 A common provision in some building agreements is for the builder to be a tenant-at-will until a formal lease is granted. Builders may contend that the document merely acts as

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a licence to occupy until a formal lease is granted. That is not so and the document should be assessed as an agreement to lease, even if it contains a provision that no tenancy is initially to be created.

5.226 to 5.228 Blank

Sub-agreements to lease

5.229 Where A agrees to lease property to B, then B subsequently agrees with several tenants, say C, D and E to sub-let separate parts of the property to them, the leases may be granted direct from A to C, D and E respectively.

5.230 In such cases we will stamp the Agreements between B & C, B & D and B & E and denote the separate leases by A to C, D and E with the duty paid on the Agreement between B and that tenant.

5.231 It is important to note that in such cases we do not normally insist that the Agreement between A and B is stamped before we are prepared to stamp any of the Agreements to Lease between B and any of the eventual sub-tenants.

Private finance initiative projects and Stamp Duty

5.232 An article on the Stamp Duty treatment of the documents likely to be encountered in a typical PFI scheme appeared in Tax Bulletin No 43 of October 1999.

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Chapter 6: Stamp Duty: adjudication and Stamp Duty relief claims

Overview

6.1 This Chapter gives detailed information about the adjudication procedure which is most commonly used either for settling Stamp Duty disputes or in cases where a formal adjudication is required by law as a condition for the granting of a Stamp Duty relief.

6.2 This Chapter does not cover the appeals procedure where the only matter in dispute is the level of penalty charged on the late presentation of a document for stamping. For instructions relating to the appeal procedure in that type of case see Chapter 3.

6.3 There is no appeal procedure relating to the interest charged on the late payment of Stamp Duty.

General adjudication procedure

Adjudication means the mouth of the revenue is shut forever

6.4 The following extract is from a judgment of the Lord President of the Court of Session in a Scottish Stamp Duty case known as Lord Advocate v Caledonian Railway Co [1908] SC 574/5. It succinctly sums up the current situation so far as the assessment of Stamp Duty is concerned. It reads as follows:

'We have had a long enquiry in this case, which I do not think I need detail, but it comes to this, that for the convenience of everybody - and I have no doubt it is most convenient and a perfectly proper plan - the Inland Revenue are in the habit of allowing persons to bring their deeds which are going to be stamped, and to have a sort of provisional opinion given as to what the stamp should be. It is only a provisional opinion, because everybody knows that it does not carry finality. If a person wants to be perfectly certain of the amount, and to be perfectly certain that that amount will never be questioned thereafter by the Inland Revenue, there is a well-known and statutory way of doing it, namely, by asking for an adjudication stamp, and, of course, if he gets an adjudication stamp, then the mouth of the Inland Revenue is shut forever upon the question of the amount of the stamp. But side by side with that which is the method when it is wanted to make the thing absolutely certain, there is the very convenient method which I have described.'

The reasons for adjudication

6.5 Adjudication is an important part of the Stamp Duty machinery. It may be necessary where:

- the customer disputes our calculation of duty and wishes to appeal; or
- the customer wishes to satisfy a third party that the document is regarded as duly stamped; or

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- the Land Registry or a company registrar has demanded that the customer have the document adjudicated before it is registered to ensure there will be no breach of Section 17 of the Stamp Act 1891.
- the Stamp Duty is charged by reference to the value of some stocks or shares and submission for adjudication will allow us to agree this value with the customer, in certain cases through Shares Valuation Division;
- a document has been produced in evidence and the Court has required some party or his solicitor to undertake to have it stamped, or alternatively, the document is a Court Order which requires Adjudication.

6.6 The only formal way of settling a disputed Stamp Duty question is by way of an appeal to the High Court (or in Scotland the Court of Session). Unlike other tax appeals, Stamp Duty appeals cannot be dealt with by the Special or General Commissioners of Income Tax, although questions relating solely to the value of land may be brought before the Lands Tribunal or the Lands Tribunal for Scotland.

6.7 Unlike other taxes the facts in a Stamp Duty case are seldom in dispute and the duty payable will almost always depend upon the wording of the document and the interpretation of the legislation under which it is considered to be liable.

6.8 In strict legal terms, the majority of our assessments to Stamp Duty are informal or in other words we give an opinion on the amount of duty, if any, chargeable on duly executed documents. There is no right of appeal against an informal notification, although the customer is quite entitled to disagree with our view.

A 'particular stamp'

6.9 Under Section 12 any person can ask us to express a formal opinion of the Stamp Duty charged upon an executed document. When the document is stamped with the duty assessed upon it a further stamp is impressed which denotes that it is then 'Adjudged duly stamped'.

6.10 If the document is:

- not liable to any duty;
- liable at the Nil rate; or
- exempt from duty;

it may be stamped with a stamp denoting that it is 'Adjudged Not Chargeable with any duty'.

6.11 These two particular stamps are known as the Adjudication Stamp and the Non-Chargeable Adjudication Stamp. They are more generally known as the AS and the NCAS (or the Exempt stamp).

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6.12 The AS and NCAS are conclusive and preclude any question being raised by us as to the sufficiency of the stamping of the document concerned. Under no circumstances should you suggest to any customer that an Adjudication assessment is wrong. A document bearing the AS and NCAS is to be considered 'duly stamped' within the meaning of Section 14(4) of the Stamp Act even though it may appear to have been wrongly stamped. In the unlikely event that an adjudication needs to be reopened, this must be authorised by an officer of Grade CL.

6.13 It is therefore important when calculating the duty due on a document lodged for Adjudication, that all the background information be considered before any calculation is made. You are entitled to call for any information you consider necessary to enable you to make your assessment. If a customer refuses to provide any necessary information we can refuse to adjudicate the document concerned. (Section 5 and 12(2) Stamp Act 1891).

Adjudication of copy documents

6.14 A copy document should not normally be stamped and must never be impressed with an adjudication stamp. If you consider that the grounds for not presenting the original are reasonable you should refer the matter to a senior officer. Where, exceptionally, a copy document is to be stamped the customer must certify it to be a true and accurate copy of the original.

The formal notice of decision on adjudication

6.15 Under Section 13 of the Stamp Act any person who is dissatisfied with our decision on an adjudication under Section 12 of the Stamp Act 1891 may appeal against it. For an appeal to be lodged, however, Stamp Taxes must first have issued a Formal Notice of Decision on Adjudication within the meaning of Section 12 of the Stamp Act. An informal statement of duty, which should be typed on plain paper, is not a Formal Notice of Decision on Adjudication.

6.16 In each case, it is important to make clear to the customer the difference between an informal statement of duty and a Formal Notice of Decision on Adjudication. Any informal statement of duty is to be typed on plain paper headed in bold type - 'Informal Statement of Duty - Note this is NOT a Formal Notice of Decision on Adjudication'. A Formal Notice of Decision on Adjudication is prepared in a particular format designed specifically for that purpose. A Formal Notice should not be issued without the prior approval of the Solicitor of Inland Revenue.

The mechanics of adjudication

6.17 Customers lodging a document for Adjudication should send their documents in a particular way, as detailed in the following paragraphs.

6.18 Section 12(2) of the Stamp Act 1891 requires everyone who sends us a document for adjudication to let us have a complete and accurate abstract of the document. We encourage all customers to provide a photocopy since this is the most convenient way to do so for everyone involved. Applicants should provide as much information about the

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transaction as possible when lodging the document(s) and draw our attention to any particular points of contention.

6.19 Customers sending adjudication applications can send them to any of our Stamp Offices located at Birmingham, Bristol, Edinburgh, Manchester, Newcastle and Worthing. Any adjudication application received at the Bush House London Counter should be referred to Worthing. If you receive an application which originates in Scotland you should send it to the Technical Adviser in Edinburgh. Likewise, applications which originate in Northern Ireland should be sent to the Belfast Stamp Office if received in any other Stamp Office.

6.20 to 6.35 Blank

Informal notification of the duty due

6.36 When you are able to calculate the duty due on the document(s), you should prepare an informal statement of your calculation of the duty due, including any penalty and interest, for issue to the customer.

6.37 In any informal notification of the duty payable you must:

- Clearly identify both the document and the parties concerned.
- Set out fully and clearly the basis of your calculation.
- Show the total amount payable including any penalties upon late presentation of the document, any interest upon late payment of the Stamp Duty due and after deducting any payments already made on account.

6.38 Our opinion of the Stamp Duty due on most documents we adjudicate is accepted by the customer without the need for a Formal Notice of Decision on Adjudication and an appeal. You should strive to settle any Stamp Duty dispute by agreement without the need for a Formal Notice.

Authority to issue a formal notice of decision on adjudication

6.39 Where necessary, however, a formal assessment should be made, but not before the papers have been seen by the Technical Group Adviser and authority given. Any request that the document be stamped without the adjudication stamp so that an appeal may be deferred should not be accepted.

The appeal procedure

6.40 The appeal procedure following a formal assessment under Section 12 is laid down in Section 13 of the Stamp Act. Under that legislation any customer who is dissatisfied with the opinion of the Commissioners may require the Commissioners to 'state a case' for the opinion of the High Court or, in Scotland, the Court of Session. It is an essential prerequisite of a request for a stated case that the customer must first have paid the full amount of duty as formally notified by the Commissioners. The customer has 30 days from

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the date of issue of the Formal Notice of Decision on Adjudication to appeal and request a stated case.

6.41 Under Section 13B(3) the Commissioners are responsible for stating the case for the opinion of the Court. In practice the Solicitor of Inland Revenue will prepare the case, setting out the Revenue's view of the liability of the document(s) concerned in full and considering all the arguments advanced. This will be submitted in draft form to the appellant to invite any comments thereon. The draft may be amended as a result of any representations made.

6.42 When it has been finalised it is then prepared in proper legal form and sent to the Board of Inland Revenue for signature. After signature it is passed immediately to the appellant who has 30 days to lodge it in Court for a hearing. In a Stamp Duty stated case it is unusual for witnesses to be called but evidence is sometimes produced in affidavit form. Counsel for the appellant has the right to begin the case by setting out their arguments and thereafter Counsel for the Revenue sets out the Revenue's argument.

6.43 Following any subsequent replies by Counsel the Court is required to say with what duty, if any, the document or documents are liable. In other words the Court will determine the question of the liability or otherwise of the documents and assess any duty to which they are liable. If a repayment is ordered the Court is not empowered to award interest on the sum overpaid but interest will be added to any repayment under the provisions of Section 110 Finance Act 1999.

6.44 As mentioned above, the appellant must lodge the appeal within 30 days. There is no specific timetable for such cases to then come to a hearing but recent cases have typically taken a year before being heard.

6.45 When a Formal Notice of Decision on Adjudication is issued the papers are to be examined again in 21 days. If after that time no appeal has been received the customer is to be reminded as a matter of urgency that to be valid, an appeal must be lodged, and payment made, within 30 days of the date of the Notice of Decision on Adjudication and that there are only 9 days left during which to appeal.

6.46 When an appeal with payment is received in good time the document is to be stamped and returned to the customer, a photocopy of the entire stamped document is to be taken and retained on the file, and the papers are to be submitted to the Board's Solicitor.

6.47 An appeal outside the 30 day period specified in Section 13(2) cannot be accepted. This is a statutory time limit which cannot be extended.

6.48 The judgment of the High Court on a Stamp Duty appeal may be challenged within 4 weeks but the appellant must obtain leave of the High Court to appeal to the Court of Appeal. Where leave to appeal is granted the case is heard by the Court of Appeal. Finally, with the leave of the Court of Appeal, the case may be referred to the House of Lords. Cases in Scotland go direct from the Court of Session to the House of Lords.

6.49 Where duty and any penalty is ordered to be repaid under Section 13B(4) of the Stamp Act, interest will be added to the repayment, where appropriate, under the terms of Section 110 Finance Act 1999.

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Penalty for failure to stamp an instrument in accordance with the Commissioners' decision on adjudication

6.50 Section 12A of the Stamp Act 1891 provides that a document on which formal adjudication was required must be stamped within 30 days after the date on which the Commissioners gave notice of their decision as to the duty payable. If it is not stamped within that time, or any longer period which the Commissioners may allow, the person who requested the adjudication is liable to a maximum penalty of £300. No penalty will be imposed if there is a reasonable excuse for the failure to stamp the document. A separate £300 maximum penalty will apply to every document upon which adjudication has been requested in any particular case.

6.51 We will only consider imposing a penalty in an adjudication case where we have issued a Formal Notice of Decision on Adjudication. This penalty will never apply where only an informal statement of duty has been issued locally and the customer decides not to proceed with the stamping and withdraws the document from the adjudication procedure. It will apply where we have issued a Formal Notice of Decision on Adjudication and the customer, at any stage thereafter, withdraws the document unstamped. We will look to the solicitor, accountant or other agent who submitted the document and requested the adjudication for payment of the penalty. If a solicitor, accountant or other agent submitting a document with a request for adjudication confirms in writing that the request for adjudication is at the instance of the client, liability to pay this penalty, should it arise, will fall on the client.

6.52 Where any case reaches the stage where we seek the authority of the Board's Solicitor to issue a Formal Notice of Decision on Adjudication, the person seeking the adjudication is to be alerted to the need to ensure stamping following issue of the Notice, if the penalty is to be avoided.

6.53 The calculation, notification and collection of this penalty must be authorised by the Technical Group Adviser.

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Compulsory adjudication

6.71 Adjudication is **compulsory** for **claims to exemption** from duty under:

- **Section 42 of the Finance Act 1930**, as amended and **Section 151 of the Finance Act 1995**
('Transactions between associated companies');
- **Sections 75, 76 and 77 of the Finance Act 1986** ('Company reconstructions and acquisitions');
- **Section 90(3) of the Finance Act 1965** ('Conveyance in contemplation of a sale');
(See Chapter 4)
- **Section 102 of the Finance Act 1980** ('Conveyance in consideration of debt'); (see Chapter 4)

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- **Section 98 of the Finance Act 1980** ('Maintenance Funds for historic buildings')
- **Section 129 of the Finance Act 1982** ('Charities etc.');
- **Section 95 of the Finance Act 1997** ('Mergers of authorised unit trusts');
- **Section 96 of the Finance Act 1997** ('Demutualisation of insurance companies').
- **Section 80A of the Finance Act 1986** ('Sales of Stock to intermediaries');
- **Section 80C of the Finance Act 1986** ('Stock lending');
- **Regulation 7 of Statutory Instrument 1997 No 1156** ('The conversion of an authorised unit trust to an open ended investment Company');
- **Regulation 9 of Statutory Instrument 1997 No 1156** ('The amalgamation of an authorised unit trust and an open ended investment Company');
- **Section 130 of the Finance Act 2000** ('Transfers to Registered Social Landlords');
- **Section 12 of the Limited Liability Partnerships Act 2000**
- **Section 92 of the Finance Act 2001** ('Land transactions in Disadvantaged Areas');

Time limit of two years

6.72 Sometimes customers have documents stamped and only later realise that a particular Stamp Duty exemption might apply and only then do they lodge the document for adjudication as exempt.

6.73 Where a claim under any of the Sections listed in paragraph 6.71 above is made in respect of a document which has already been stamped the duty can be refunded (see Chapter 7). No repayment will be made, however, unless the claim was made within two years of the date of the document (Section 10 of the Stamp Duties Management Act 1891 and, in relation to duty paid on a conveyance in contemplation of a sale, Section 90(3) of the Finance Act 1965). This is a statutory time limit which cannot be extended.

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Intra group relief from Stamp Duty

6.81 One of the most important of the transaction reliefs for Stamp Duty purposes is that for transfers and leases between associated bodies corporate. The legislation which sets out

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this group relief in relation to conveyance and transfer documents in Scotland, England and Wales is Section 42 of the Finance Act 1930, as amended by Section 27 of the Finance Act 1967 and Section 149 of the Finance Act 1995. In Northern Ireland it is Section 11 of the Finance (Northern Ireland) Act 1954 as amended by Section 4 of the Finance Act (Northern Ireland) 1967 and Section 150 of the Finance Act 1995.

6.82 The legislation which sets out this group relief in relation to Agreements for Lease and Lease documents between associated bodies corporate in the whole of the UK is Section 151 of the Finance Act 1995.

6.83 The relief gives exemption from ad valorem Stamp Duty on conveyance, transfer and lease documents which transfer or convey a beneficial interest in a property or regulate the leasing of a property from one body corporate to another, where those two bodies corporate are within the same group. Adjudication is compulsory in both cases.

6.84 There is no time limit on a claim under these provisions on an unstamped document but see Paragraph 6.73 above if the claim is in respect of a document which has already been stamped.

Partial relief

6.85 Relief is not available if a transfer is made to an associated body corporate and some other unassociated body corporate. Stamp Duty would arise on the total consideration because the relief is all or nothing.

Transactions involving nominees

6.86 Relief is available on documents which transfer a beneficial interest in property between associated bodies corporate even if the property is transferred between nominees. It is, however, necessary to establish that the nominees are acting for the beneficial owners.

Conveyance and transfer documents

6.87 We will look first at conveyance and transfer documents eligible for relief under Section 42.

The conditions for intra group relief

6.88 There are several conditions, all of which must be met for exemption to be granted. Partial relief is not allowed. If any condition is not satisfied then the claim fails.

6.89 The conditions for a document to be exempt from Stamp Duty under Section 42 of the Finance Act 1930, as amended, are that:

- the effect of the document must be to transfer a beneficial interest in property from one body corporate to another (Section 42(2)(a));
- the two bodies corporate must be associated with each other at the time the document was executed. The test of association was amended by Section 123 Finance Act 2000 (Section 124 for Northern Ireland and Section 125 for leases) and applies to documents

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executed on or after 29 July 2000. Prior to this date the test of association was provided by Section 42 (2)(b) which required that one of the bodies corporate must be the beneficial owner of 75% of the Ordinary share capital of the other. Companies are now regarded as associated if they would be regarded as such for the purposes of Corporation Tax. A company is not to be regarded as the parent of another at a particular time for the purposes of Section 42 if it would be prevented from being regarded as such for Corporation Tax purposes by reason of Section 413(7) as supplemented by Schedule 18 ICTA 1988.

- no part of the consideration is to have been provided or received, directly or indirectly, by an outsider not associated with the transferor or transferee company (Section 27(3)(a) of the Finance Act 1967);
- the beneficial interest must not have been previously transferred by an outsider not associated with transferor or transferee company (Section 27(3)(b) of the Finance Act 1967);
- there must be no arrangement whereby the transferor and transferee are to cease to be associated because the transferor, or another body corporate, is to cease to be the transferee's parent (Section 27(3)(c) of the Finance Act 1967).

Proof required from customer

6.90 The onus for demonstrating that the conditions for exemption are met lies with the customer. Under Section 12(2) of the Stamp Act Stamp Taxes may require to be furnished with whatever evidence is necessary to show that the conditions for relief are satisfied.

Transfer of beneficial interest

6.91 For the beneficial interest to be transferred

- the transferor must be the beneficial owner of the property when the document was executed; and
- the beneficial ownership must pass to the transferee and must be transferred by a duly executed document.

6.92 Documents which are not exempt under Section 42 include the transfer from a body corporate acting in a trustee capacity (eg for a pension scheme) and the transfer of a mortgaged property from a mortgagee under power of sale. A trustee and mortgagee do not have a beneficial interest in the property.

6.93 Where the legal title only is transferred, the beneficial interest already being vested in the transferee, the document is chargeable to £5 fixed duty.

6.94 Where a transfer between associated bodies corporate is in conformity with an earlier contract, the beneficial interest will have passed to the purchaser under the contract. The transfer may still be exempt, however, as it is chargeable on the consideration which was payable under the contract (*Escoigne Properties Ltd v IRC* [1958] AC 549).

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6.95 For the purposes of the 'intra group relief' a company which has entered into an unconditional contract for the sale of property is no longer the beneficial owner of that property (*Parway Estates Ltd v IRC* [1958] 46 TC 435). A conditional contract may have the same effect if the purchaser can waive the conditions (*Wood Preservation Ltd v Prior* [1968] 2 All ER 849), or where the vendor has to waive them to sell the property (*Brooklands Selangor Holdings Ltd v IRC* [1970] 2 All ER 76). The cases seem to follow the general principle that once a contract for sale is executed the property is held in equity by the purchaser. The equitable interest has been held (in *Parway*, for example) to be equivalent to the beneficial interest. The situation in Scotland is different, for under Scots Law beneficial ownership remains with the seller until the sale is completed.

Relationship broken between contract and transfer or between agreement for lease and the lease

6.96 Where the required relationship was in place at the time of a contract for sale, but **not** at the time of the transfer, a claim to exemption under Section 42 will **not** be allowable.

When are two companies associated?

6.97 The test of association is now that one body corporate must be regarded for Corporation Tax purposes as associated with the other. The Corporation Tax requirement is that one of the bodies corporate is entitled to 75% of the profits of the other and entitled to 75% of the assets of the other on a winding up of that body corporate.

6.98 In the following examples it may be taken that the percentage shareholdings are qualifying percentages for the purposes of Corporation Tax and thus Stamp Duty. This 75% requirement can be met in a number of ways. If one company owns the whole of the issued ordinary share capital of another which beneficially owns the whole of the issued ordinary share capital of a third then, strictly, the first does not beneficially own the issued ordinary share capital of the third. Under Section 42, as amended, this kind of relationship is however recognised and allowed. This means that in all cases where the ownership of every company in the group is 100% by some other company in the same group a transfer between any 2 companies in that group can qualify for relief. If, on the other hand, direct beneficial ownership is between 75% and 100% the indirect beneficial ownership may be found to be diluted below 75%.

6.99 If Company A beneficially owns 75% of Company B which beneficially owns 75% of Company C then Company A indirectly beneficially owns only 75% of 75% (= 56.25%) of Company C and a transfer between A and C would not be relievable.

6.100 However, if Company A beneficially owns 20% of Company B and 74% of Company C and Company B beneficially owns 10% of Company C then Company A indirectly owns 20% of 10% (= 2%) of Company C which when added to the 74% which it directly beneficially owns gives it 76% of Company C and makes the transaction relievable once again.

6.101 Ownership, then, may be directly, wholly or partly through one or more companies in a group. The respective proportions of the total capital of each company held by the company next above it in the chain are multiplied until the figure for the companies concerned is ascertained.

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6.102 Since the conditions for associated status include the requirement for beneficial ownership of shares giving rights to 75% of the profits available for distribution and 75% of the assets on a winding up, it follows that a body corporate which has no share capital can only be associated as a parent company. The beneficial ownership of shares passes to the purchaser when a contract for sale is made. Once a body corporate contracts to sell its shares in a subsidiary to an outsider the associated status between the parent and its subsidiary has ended. It is possible for the beneficial ownership of shares to be lost before a formal contract is made for the transfer of the shares. This may happen where the nature of an agreed arrangement is such that the first step towards its implementation means that all further steps, including the sale of the shares, are bound to take place (*Leigh Spinners v IRC* [1956] 46 TC 425).

6.103 It has also been held that the beneficial ownership of shares in a subsidiary was lost when an agreement was entered into by an agent on behalf of the directors and shareholders of the parent company (*Holmleigh (Holdings) Ltd v IRC* [1958] 46 TC 435). In another case it was held that, as it was clear from an agreement that the shares in question were committed to be allotted to outsiders (and the outsiders in question were not party to the agreement), they were not beneficially owned by the claimant (*Baytrust Holdings v IRC, Thomas Firth and John Brown (Investments) Ltd v IRC* [1971] 3 All ER 76).

6.104 A parent company may cease to be the beneficial owner of shares if it grants an option to an outsider to purchase those shares, especially if the option is binding and/or the parent undertakes not to exercise the rights attached to the shares during the option period. It is also considered that a parent company ceases to be associated with a 100% subsidiary if it grants an option to an outsider to purchase an equal number of new shares so that the subsidiary is owned equally by them, and the parent can thus no longer give good title to a prospective purchaser of 75% or more of the shares in the subsidiary.

6.105 Notwithstanding all the foregoing, a company cannot be regarded as a parent for Stamp Duty purposes if it fails the requirements for Corporation Tax purposes.

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Company's purchase of own shares

6.110 A purchase by a company of its own shares from one of its associated companies can qualify for relief. Where a 100% subsidiary company purchases some of its own shares from its parent under Section 162 of the Companies Act 1985 or Article 47 of the Companies (Northern Ireland) Order 1982, (and Section 66 of the Finance Act 1986 therefore applies), relief may be available under Section 42. This is provided that the conditions are satisfied, in particular that the purchase of the shares was not part of an arrangement under Section 27(3) of the Finance Act 1967.

6.111 to 6.120 Blank

Conveyance or transfer of any other kind

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6.121 Section 42 does not provide exemption from duty chargeable under Para 16, Part III, Sch 13 to the Finance Act 1999. If there is no consideration, and the document cannot validly be certified under the Exempt Instruments Regulations (see Chapter 2), then the transfer is therefore liable to £5 fixed duty.

Partitions and deeds of exchange

6.122 Section 42 exemption does not apply to partitions liable under paragraph 21 Part III Schedule 13 Finance Act 1999. It does apply to exchanges which are Conveyances on Sale under Section 241 Finance Act 1994 (see Chapter 4).

Bodies corporate

6.123 The term 'body corporate' implies a company, but the relief is not restricted to companies. 'Body corporate' includes companies with limited or unlimited liability, companies limited by guarantee, charter companies and bodies created by statute. Relief may be available where a local authority, being a body corporate, is a party to a document and the other party has a share capital which is beneficially owned by the authority.

Foreign companies

6.124 Some foreign companies have been accepted as falling within the term 'body corporate' for the purposes of the intra group relief. The following is a list of examples of foreign bodies accepted by us as falling within the definition of body corporate for Section 42 and Section 151 purposes:

Australia	Private companies which do not need to comply with certain requirements, are known as 'proprietary' companies. Such companies registered in New South Wales are bodies corporate.
Bahamas	Companies described as limited.
Belgium	Societe de personnes a responsabilite limitee (descussociés).
Bermuda	Companies described as limited.
British Virgin Islands	A company described as limited and which is incorporated under the Companies Act 243.
Canada	Companies described as limited. (Ltd)
Cayman Islands	Companies described as Ltd.
Denmark	A company described as an A/S.
Finland	An 'Oy' (Osakeyhtio) is a Finnish limited company which may be public or private.

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France	Societe Anonyme (SA) and Societe en commandite par actions.
Germany	Aktiengesellschaft. (AG) Gesellschaft mit Beschränkte Haftung. (GmbH) Kommanditfellschaft auf Aktien. (KGaA)
Guernsey	A company constituted under the laws of Guernsey and registered before the Royal Court.
Holland	Naamloze Vennootschap. (NV) Besloten Vennootschap. (BV)
Hong Kong	Companies described as limited.
Irish Minister of State	An Irish minister may be accepted as a parent body corporate for S42 purposes
Italy	Societa per Azioni. (SPA)
Liberia	Companies described as limited but note that we may require to see the Certificate of Incorporation.
Malaysia	A company which includes the word 'Berhad' as part of and at the end of its name.
Netherlands Antilles	Naamloze Vennootschap or NV.
Norway	Aksjeselskap (et) or Aktieselskap (et). (AS)
Panama	Sociedad Anonima. (SA) 'Corp.' 'Inc.' Note that 'Ltd' is not conclusive.
Portugal	A body which is a Sociedade por Quotas.
Saudi Arabia	A company organised pursuant to the laws of the Kingdom of Saudi Arabia has been accepted although it did not have perpetual succession.
Singapore	Companies described as limited.
South Africa	A Company which is 'limited by shares'.
Spain	Sociedad Anonima (SA) and Sociedad de Responsabilidad Limitada. (SRL)
Sweden	Aktiebolaget (AB) Also The Kingdom of Sweden.
Switzerland	Societe Anonyme (SA), Societe en commandit par actions and Aktiengesellschaft (AG). A verein.
Trinidad	A company limited 'by shares'.

USA	Corporations (usually described as 'Corporation' 'Company' or 'Incorporated') organised under the laws of various states. Delaware Limited Liability Companies.
Venezuela	Corporations organised under the laws of Venezuela.

Arrangement

Proof required from the customer

6.125 A claim to exemption will not be allowed if the transfer, lease or agreement for lease was effected in pursuance of, or in connection with, an arrangement under which:

- (1) part or all of the consideration was to be provided or received, directly or indirectly, by an outsider* (Section 27(3)(a) of the Finance Act 1967 and Section 151(3)(a) of the Finance Act 1995); or
- (2) the transferor/lessor and transferee/lessee were to cease to be associated because the transferor/lessor, or another body corporate, is to cease to be the transferee's/lessee's parent (Section 27(3)(c) and Section 151(3)(b)); or, for transfers only
- (3) the beneficial interest transferred was previously transferred by a party other than an associated body corporate (Section 27(3)(b) of the Finance Act 1967).

6.126 Restrictions upon the operation of Section 42 were introduced by Section 50 of the Finance Act 1938 to close certain loopholes. Section 50 was later repealed and replaced by Section 27 as amended by Section 149 of the Finance Act 1995. The effect of Section 27 was to add the set of anti-avoidance tests detailed above to Section 42. For the relief to apply the onus is on the customer to show that the document was not executed in connection with one of these three arrangements. The offending arrangements are set out in Section 27(3) Finance Act 1967.

Section 27(3)(a)

6.127 Section 27(3)(a) deals with the case where the consideration for the sale is to be provided directly or indirectly from outside the group. We need to consider this provision whenever there is any form of outside finance whatever, for example where there is any form of borrowing or it can be shown that money is flowing around in a circle. The provision is widely drawn and would even bar relief where an outsider releases a debt owed by the transferor. See paragraphs 8 to 14 of the Statement of Practice reproduced later in this Chapter.

Section 27(3)(b)

6.128 Section 27(3)(b) stops Section 42 relief applying where the parties are also claiming relief under Section 58(4) of the Stamp Act or, in other words, sub-sale relief. Where an outsider sells to Company A which in turn sells to Company B, A and B being associated, a conveyance by the outsider direct to B with A's consent would only be liable on the

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consideration paid by B. To allow Section 42 relief on B's purchase from its associated Company A would wipe out any duty altogether on the transaction. Section 27(3)(b) bars group relief in those circumstances. See paragraphs 15 and 16 of the Statement of Practice reproduced later in this Chapter.

Section 27(3)(c)

6.129 One of the aims of Section 27 is to combat the device whereby a subsidiary company is to leave the group taking with it assets from another related company. An example of the application of Section 27(3)(a) is where, under an arrangement, (1) a parent company A transfers assets to its subsidiary B, the consideration being left outstanding as a loan, and (2) the subsidiary acquires the shares or undertaking of an associated company for consideration of the issue of shares. That issue of shares results in the breaking of the relationship between A and B. A claim under Section 42 in respect of the transfer from A to B would therefore be denied under Section 27(3)(c) (and possibly also under Section 27(3)(a), if the consideration for the transfer was provided by means of B's new association). See paragraphs 17 to 21 of the Statement of Practice reproduced later in this Chapter.

6.130 Although Section 27(3)(c) bars relief where there is an arrangement for the transferee to leave the transferor's group relief can however be allowed if a subsidiary transfers assets to its parent and then leaves the group. This is commonly known as a 'hive up' of those assets. Provided that at the material date the relationship shares were not the subject of equitable obligations in favour of an outsider, there is no restriction on a transferor subsidiary hiving off unwanted assets to any another related company as a preliminary to the sale of the shares of the transferor subsidiary to a purchaser outside the group.

Independent transactions

6.131 The provisions of Section 27 are not intended to bar relief where there are independent transactions. A parent may, for example, buy property in the open market and pay the proper Stamp Duty and then claim relief on a subsequent transfer to its subsidiary.

6.132 It is, therefore, necessary to find that the instruments in question were executed in pursuance of or in connection with an arrangement before Paragraphs a., b., or c. of Section 27(3) as amended by Section 149(6) can be invoked. They cannot be applied in isolation. The words 'or in connection with' are wider than 'in pursuance of' and they aptly cover a series of acts. The rider to Paragraph a. gives added strength to that paragraph in that the consideration is deemed to be provided indirectly by an outsider where under an arrangement the body providing the consideration is enabled to do so, or the body receiving the consideration parts with any of it, as a result of the payment of money or the provision of any other consideration by an outsider under another transaction.

6.133 The term 'arrangement' in Section 27(3) is very wide. It includes a plan, scheme or understanding between 2 or more persons, including the outsider, which consists of a number of steps which are to be taken to bring about a certain result (*IRC v Payne* [1940] 23 TC 610 at 626, CA). All the steps should be regarded as a single transaction (*Escoigne Properties Ltd v IRC* [1958] AC 549). It is not necessary for the arrangement to be enforceable in law, nor need the parties have agreed at the outset every step which was eventually taken (*Crossland v Hawkins* [1961] Ch 537 and 2 All ER 821; *Newton v Commissioners of Taxation of Australia* [1958] AC 450 and 2 All ER 759; *Shop and Store*

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Developments Ltd v IRC [1967] 1 All ER 42). There must, however, be a degree of certainty of intention to act in the arranged way. The onus is on the Customer to show that any negotiations were fluid at the relevant time.

Company in liquidation

6.134 When a company goes into liquidation, whether voluntary or compulsory, it ceases to be the beneficial owner of its assets. Accordingly no relief may be given where the transferor/lessor is in liquidation except that relief may be allowed where a subsidiary company enters into an agreement for the sale of property and subsequently goes into liquidation. This is because the conveyance is stampable on the transfer of the equitable interest which passed before liquidation. This, however, does not apply in Scotland, so a Scottish document will not be granted relief.

6.135 If the company in liquidation is a 100% subsidiary and its debts have been satisfied, or provision made for them, without need for the property to be sold then the beneficial interest in the property will have vested in the parent by operation of law. A transfer of the property from subsidiary to parent would not affect the beneficial interest, and would be chargeable only to £5 fixed duty.

6.136 If in similar circumstances the property was transferred not to the parent but instead to a fellow subsidiary relief may be available. This is because the effect of the document is to transfer the beneficial interest from the parent to the transferee subsidiary.

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Relief under section 151 Finance Act 1995

6.156 Section 151 provides a complete exemption from Lease Duty for certain leases and agreements for lease granted between associated bodies corporate on or after 1 May 1995.

6.157 Because all lease duty is exempt under Section 151 a lease or agreement for lease for no consideration may be exempt from the £5 fixed duty if the conditions for relief are satisfied.

6.158 The conditions set out in Section 151 of the Finance Act 1995 for a lease or agreement for lease to be exempt are substantially similar to those described above for conveyance or transfer on sale documents but there are differences. Section 151 does not require that the interest granted or agreed to be granted is the beneficial interest. There is no reference in Section 151 to an arrangement under which the interest was previously transferred by an outsider.

Consideration for a lease

6.159 The consideration for a lease referred to in Section 151(3)(a) Finance Act 1995 relates to premium and any payment for the use of the premises, such as rent. If the consideration was provided by a third party exemption would not be available.

6.160 A claim to exemption under Section 151 for an agreement for lease may succeed provided that the required relationship was in place when the agreement was executed. A

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subsequent lease made in conformity with such an agreement will not be liable to duty. If, however, the terms of the lease are different from those in the agreement then:

- if the parties are still associated at the time of the lease then the lease may be exempt from duty
- if, however, the relationship has been broken the duty is re-calculated in accordance with the terms of the lease and, if more duty is payable, the lease is liable accordingly.

6.161 Section 151(3) of the Finance Act 1995 denies exemption under Section 151 if the lease or agreement for lease was executed in pursuance of or in connection with a similar, but not identical, arrangement (there is no reference in Section 151 to the interest being previously transferred by an outsider).

Statement of Practice - Stamp Duty: group relief

6.162 Stamp Taxes published a Statement of Practice (SP 3/98) on 13 October 1998 about the Stamp Duty relief for transfers of property and the grant of leases between member of the same group. The text is as follows:

Statement of Practice: Stamp Duty group relief

1. Section 42 Finance Act 1930 gives relief from Stamp Duty for transfers of property between members of the same group of companies. Section 151 Finance Act 1995 similarly gives relief from duty on the grant of a lease between members of the same group.
2. Section 27(3) Finance Act 1967 and Section 151(3) Finance Act 1995 are designed to prevent the use of group relief to avoid Stamp Duty when property, or an economic interest in it, passes out of the group.
3. This statement sets out Stamp Taxes' current general practice in order to assist practitioners in determining whether claims to relief might qualify. The treatment of a particular case will of course depend on the precise facts. This statement is for general guidance only; and the facts of a particular transaction may, exceptionally, place it outside the guidelines. It applies also to the equivalent Northern Ireland legislation.

General

4. Broadly, Section 27(3) and the corresponding provision in Section 151, provide that relief is not to be given if the transfer was made in pursuance of, or in connection with, an arrangement under which:
 - a. all or part of the consideration for the transfer was to be provided or received, directly or indirectly, by a person outside the group; or
 - b. the interest being transferred was previously transferred by a person outside the group; or

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- c. the transferor and transferee were no longer to be part of the same group.
5. The person claiming the relief when the relevant instrument is adjudicated has the onus of satisfying Stamp Taxes the intra-group transaction is not carried out in pursuance of, or in connection with, an arrangement of a kind which disqualifies the transaction from relief: *Escoigne Properties Ltd v IRC* [1958] AC 549, 564.

Arrangement

6. In this context, arrangement means the plan or scheme in pursuance of which the things identified in the subparagraphs of Ss27(3) and 151(3) have been or are to be done: **Shop and Store Developments Ltd v IRC** [1967] 1 AC 472, 493-494. The arrangement need not be based in contract. It is sufficient if the intra-group transaction may be the first bi-lateral step by which legal rights and obligations are created in pursuance of the arrangement. If there is an expectation that a disqualifying event will happen in accordance with the arrangement and no likelihood in practice that it will not, relief will be refused.
7. The words in connection with are very broad. In **Escoigne**, there was a gap of four years between the two steps in issue.

Provision or receipt of consideration by a person outside the group: Section 27(3); Section 151(3)(a) and (4)

8. Section 27(3)(a) denies relief where the instrument was executed in pursuance of or in connection with an arrangement under which any of the consideration is to be provided or received, directly or indirectly, by a person outside the group. It also denies relief if the arrangement is one under which the transferor or transferee (or a member of the same group as either of them) is to be able to provide any of the consideration, or is to part with it, in consequence of a transaction involving a payment or other disposition by a person outside the group. Section 151 lays down similar rules for leases.
9. In some cases, the question arises whether loan finance for the purchase or lease will disqualify an intra-group transaction from relief. It is necessary to look at all the facts of the individual case, but Stamp Taxes will interpret the provisions in the light of their general purpose of denying relief where the intra-group transaction is a means of saving Stamp Duty when the property, or an interest in it, moves out of the group. Accordingly, Stamp Taxes are likely to be satisfied that relief is due if the intra-group transaction is not to be followed by a sale of the property transferred, or an underlease, to a person outside the group. If the intra-group transaction is to be followed by a sale or underlease to a person outside the group, but the claimant can demonstrate that Stamp Duty will be paid in respect of that transaction in approximately the same amount as would have been payable if the intra-group transferor or lessor had itself sold the property or granted the underlease, Stamp Taxes are likely to be satisfied that the intra-group transaction and the transfer or lease out are independent for Stamp Duty purposes and grant the relief sought.
10. A transaction is not disqualified merely because the transferee within the group obtains a specific loan for the purchase of the asset; or the loan is secured on the asset; or arrangements are made to replace or novate an existing charge on the property transferred. It will be necessary to consider the facts as a whole, especially if the loan finance is not straightforward finance on ordinary commercial terms.

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11. Intra-group transactions will be very carefully scrutinised, and relief may be refused, where, for example, the intra-group transaction involves or is to be followed by:

- the creation or transfer of loan stock or equity capital;
- a capital reorganisation of the transferee;
- a guarantee by a third party not associated with the group;
- the creation of a new charge or financial arrangement whereby title to the property is, or may be, vested in the lender otherwise than in satisfaction of all or part of the debt; or
- the assignment of the freehold reversion or the intra-group lease to a person outside the group.

12. Similarly transactions will be very carefully scrutinised where:

- all or part of the consideration for the transaction is to remain outstanding or is represented by intra-group debt, (as the aim and effect may be to reduce the value of the transferee company on a possible future sale outside the group); or
- the existing shareholders of the transferee include shareholders outside the group and the transaction is to be followed by the declaration of a dividend in specie, or by the liquidation of the transferee.

13. Further assurances by way of statutory declaration - the document in which the claim is made to Stamp Taxes - will be required in any case in which the property transferred or vested intra-group is the only, or only substantial, asset of the transferee. Information to that effect should be provided in the statutory declaration submitted with the documents.

14. Where group member A has granted a lease to a person outside the group, and subsequently

grants an underlease to its fellow group member B, so that the rent already payable by the lessee becomes payable to B rather than A, relief is likely to be given for the intra-group underlease, provided there are no other factors which suggest that relief should be denied.

Property previously conveyed by a person outside the group: Section 27(3)(b)

15. Section 27(3)(b) was intended to prevent the avoidance of duty on the transfer of property into a group by means of a sub-sale, so as to take advantage of Section 58(4) of the Stamp Act 1891. For example, suppose the property is sold to a group member by a vendor outside the group, but the sale rests in contract without a transfer of the legal title. The group member then sells the property to another member of its own group, and directs the vendor to transfer the legal title to that other member. In accordance with Section 58(5) the transfer completing the sale and the sub-sale is chargeable to duty only in relation to the sub-sale (thus relieving the effect of Section 4 of the Stamp Act). However, Section 27(3)(b) would deny group relief for that transfer.

16. Stamp Taxes will continue to apply Section 27(3)(b) to schemes of this type and to any other scheme where an attempt has been made to avoid the duty payable on the acquisition by the group. However, where an outside vendor sells a property to a

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member of the group, the sale is completed by a transfer and Stamp Duty is paid on that transfer, Stamp Taxes will normally regard any subsequent intra-group transfer as independent, and grant relief for the transfer within the purchaser's group.

Dissociation or demerger of transferee: Section 27(3)(c): Section 151 (3)(b)

17. Before the introduction of Section 27(3), almost all the avoidance devices encountered in this area involved the transfer of property to a subsidiary, often created solely as a vehicle for that property, followed by the transfer of the shares in the subsidiary out of the group. Compared with a transfer of the property out of the group, a substantial amount of duty could be avoided even where the subsidiary paid for the property from its own resources. If the consideration for the intra-group transaction remained outstanding or was represented by debt, duty could be reduced further by reducing the value of the shares - hence Section 27(3)(a).

18. Section 27(3)(c) was introduced to counter this avoidance in relation to conveyances and transfers on sale. Section 15(3)(b) deals with leases on similar lines.

19. In cases of this kind, Stamp Taxes will need to be satisfied that the intra-group transfer or lease is not a step in pursuance of an arrangement to demerge the transferee. The existence of such an arrangement may be apparent from company documents, correspondence and other dealings between members of the group and professional advisers, or from discussions or negotiations with the potential purchasers, underwriters or minority shareholders.

20. In practice, Stamp Taxes will apply these provisions so as to preclude group relief if there is evidence of a plan or scheme to dispose of the subsidiary and there is no practical likelihood that the scheme will not be carried through. It will not be regarded as sufficient for the claimant to contend that such an arrangement which is less than contractual may possibly be frustrated by unforeseen events or unlikely occurrences. Even a contract may be frustrated.

21. As the liability of the relevant instrument must, as a matter of general principle, be determined as at the date of the instrument, the question whether an arrangement of the relevant kind exists must also be determined at that time, although Stamp Taxes may have regard to what is said and done thereafter to establish the true position (**Wm. Cory and Son Ltd v IR** [1965] AC1088). For the purposes of Stamp Duty, it is therefore the existence of the scheme or plan to which these provisions direct attention, not the ultimate outcome of steps which may be taken to implement that scheme. Accordingly, statements of practice in relation to other tax have no application in this context.

The mechanics of making a claim

Letter of claim

6.163 The legislation does not describe a precise form of words for the way in which a claim to exemption should be presented. It merely provides that it be '**shown to the satisfaction of the Commissioners**'. We formerly required that a **Statutory Declaration** be sworn by a **responsible officer** of, or acting on behalf of, the **parent body corporate** to

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set out the details of the claim. However, with effect from March 2000 a letter of claim is sufficient, but such letter must contain all the information that was previously included in a Statutory Declaration. The **responsible officer** (see paragraph 6.165 below) who signs the letter must be able to give an unqualified statement from first-hand information.

6.164 The letter of claim should state

- that a claim under Section 42 of the Finance Act 1930, as amended, is made in respect of specific documents for Conveyance on Sale duty and/or under Section 151 of the Finance Act 1995 if in respect of Lease duty
- the authorised and issued share capitals of the subsidiary companies and of any intermediate companies at the dates of all the documents
- whether any of the bodies corporate is in liquidation
- what shares are held by each shareholder in each subsidiary company
- whether it is intended that the relationship required by the legislation is to be maintained, or whether some change is envisaged
- whether the transferee/lessee body corporate is to keep the beneficial ownership of the interest acquired or whether a transfer on is expected
- the amount of the consideration and whether it was satisfied from cash resources, through an inter company loan account or by a third party loan
- that none of the documents was executed in pursuance of, or in connection with, an arrangement as described in Section 27 (3) of the Finance Act 1967 or Section 151(3) of the Finance Act 1995 as appropriate.
- that the relationship between the companies meets the requirements of Section 413(7) as supplemented by Schedule 18 Income and Corporation Taxes Act 1988.

Responsible officer

6.165 A letter of claim is acceptable if it is signed by

- a director, or the secretary, of the ultimate parent company or of the first common parent of the parties to the transaction
- a member of the parent company who has the right to attend board meetings where policy is decided
- an in-house solicitor of the parent company
- a director or the secretary of the subsidiary company if he/she is supported by a letter from a board member or the secretary of the parent company
- a lawyer acting for the parent company

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- an administrator or receiver appointed to the parent company under the Insolvency Act.

Enclosures to the letter of claim

6.166 The letter of claim should be accompanied by

- originals of the documents mentioned in the letter
- certified copies of all those documents
- a certified copy of the Register of Members of all subsidiary and intermediate companies
- where the parties to the transaction are indirectly associated, a family tree
- where the consideration was provided from cash resources, a copy of the latest accounts of the transferee company
- a copy of any agreement with a third party about the provision of the consideration
- copies of correspondence, agreements, board minutes and any other writings which concern any decision or intention to discontinue the relationship between the parties or the ownership of the property.

Shortened form of letter of claim

6.167 For a year after the date of an Agreement for Sale which has been relieved from duty a shortened form of letter of claim may be accepted in respect of the instruments of transfer arising from that Agreement. It should certify that all the statements made in the earlier letter of claim and in the ensuing correspondence (if appropriate) still applied at the date of the instrument in respect of which relief is being claimed.

Qualified letters of claim

6.168 Letters of claim qualified by phrases such as 'as far as I am aware' are not acceptable. The responsible officer signing the letter must be in a position to make an unqualified statement from first-hand information. If he/she is not aware of all the facts and circumstances he/she should acquaint him/herself of them. If a company's solicitor states 'I am informed and verily believe' that should be accepted.

Summary of the bars to relief

6.169 Summarising briefly, relief is not available where any of the following applies:

- there is no letter of claim
- the parties are individuals

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- one of the parties is not associated (partial relief is not to be given)
- the 75% relationship is not present
- no beneficial interest passes, unless the document completes the sale of the beneficial interest
- the transferor company is in liquidation
- shares are not registered in the name of the company at the date of the document
- the document concerned is liable to fixed duty
- under an arrangement, the consideration has been provided directly or indirectly by a third party
- as part of an arrangement relationship shares are sold.
- the relationship does not meet the requirements of Section 413(7) as supplemented by Schedule 18 Income and Corporation Taxes Act 1988.

Failure of a claim to exemption

6.170 If the customer fails to provide any of the necessary information the documents are to be returned unstamped with a covering letter to explain that the claim cannot be granted.

6.171 If the claim fails because a condition for relief is not satisfied the customer is to be advised in writing accordingly. Depending on your experience, and the circumstances of the particular case, you may need to seek guidance from your manager before you write to the customer. You should tell the customer how much duty (and any penalty) needs to be paid for the document(s) to be duly stamped or, if that is not possible, (for example because the consideration consists of shares which need to be valued) what further information is needed before the duty can be calculated.

Limitation of effect of Stamp Duty group relief on SDRT

6.172 Ordinarily the execution and Stamping (if required) of an instrument with nominal fixed duty or 'adjudged not chargeable with any duty', including relief under Section 42 FA 1930 (as amended), cancels the SDRT charge. However under Section 190 FA 1986, on and from 4 January 1996, new subsections were inserted in Section 88 FA 1986 namely (1B), (4), (5) and (6) which limit the provisions for the cancellation of SDRT. This is where chargeable securities have been acquired in the two year period prior to the execution of the transfer and the transferee did not pay Stamp Duty or SDRT when it acquired them because of certain exemptions relating to the financial markets. See paragraph 12.28 in Chapter 12.

6.173 This means that some transfers which have been adjudicated free from duty under Section 42 FA 1930 or (Section 11 FA [NI] 1954) are ignored.

6.174 In these circumstances SDRT will be payable in respect of an agreement to transfer chargeable securities within the group even though a transfer has been executed and stamped, unless a specific SDRT exemption applies.

6.175 to 6.190 Blank

Company reconstructions and acquisitions Section 75, 76 and 77 Finance Act 1986

6.191 A brief explanatory note (ADJ 468) is available for customers who wish to know how to make a claim to relief from duty under Section 75, 76 or 77 of the Finance Act 1986. It explains that Stamp Taxes reviewed its requirements following the repeal of the previous legislation (Section 55 of the Finance Act 1927 and Sections 78 and 79 of the Finance Act 1985) and that a Statutory Declaration is no longer required for claims in connection with company reconstructions and acquisitions. A claim must be made by letter in one of three standard formats depending upon which of the three sections is involved. Copies of the three standard claim letters are reproduced in our forms ADJ 473, ADJ 474 and ADJ 475.

6.192 The ADJ 468 note goes on to explain that the claim letter may be signed by the secretary or a director of the acquiring company, or by the company's professional advisers. Finally the leaflet explains in detail what information must be enclosed with the claim letter.

6.193 Sections 75, 76 and 77 of the Finance Act 1986 all:

- provide relief from conveyance on sale duty only
- relate to transactions by companies
- refer to a 'target company' and an 'acquiring company'
- require that the 'acquiring company' has its registered office in the UK
- state that the consideration for the acquiring company's acquisition must include the issue of shares in the acquiring company
- have no time limit for a claim to relief
- make adjudication compulsory where the relief is claimed.

6.194 A condition for exemption under Section 75 or Section 77 depends on the acquisition being effected for bona fide commercial reasons and not for the purpose of tax avoidance. We accept that this condition is satisfied if the Customer has obtained advance clearance for the scheme (under Section 138 or 139 of the Taxation of Chargeable Gains Act 1992 or Section 707 of the Income and Corporation Taxes Act 1988) provided that copies of the application and clearance correspondence are supplied and the details given therein accurately reflect the events which actually took place.

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6.195 Although it must be shown that the Registered Office of the acquiring company is in the UK there is no restriction on the place of incorporation of the target company in a claim under any of Sections 75, 76 or 77.

6.196 The relief provided by each of the three Sections is subject to a number of conditions, all of which are strictly enforced.

Section 75 Finance Act 1986 conditions

6.197 Subject to the following conditions, Section 75 provides exemption from conveyance on sale duty for documents executed for the purposes of, or in connection with, the transfer of the whole or part of the undertaking of a company (the target company) to another company (the acquiring company). This type of transaction is often referred to by practitioners as a 'demerger'. The conditions are:

- the acquisition of the undertaking, or part undertaking, must be in pursuance of a scheme for the reconstruction of the target company;
- the registered office of the acquiring company must be in the UK;
- the consideration for the acquisition must include the issue of non-redeemable shares in the acquiring company to all the shareholders of the target company;
- there must be no other consideration apart from the assumption or discharge by the acquiring company of liabilities of the target company;
- the acquisition must be effected for bona fide commercial reasons, and it must not be part of a scheme or arrangement a main purpose of which is the avoidance of certain taxes; and
- the shares must be issued on a pro rata basis so that the shareholders of the acquiring company after the acquisition are the same as those of the target company and that their proportions of shareholdings in the two companies are identical.

Undertaking

6.198 The term 'undertaking' refers to the business, trade or enterprise of the target company which is transferred as a going concern to be carried on substantially unchanged by the acquiring company. For there to be an undertaking it is implicit that some business must be carried on. The acquisition of a mere investment held by a trading company is not the acquisition of part of the company's undertaking (Baytrust Holdings Ltd v IRC [1971] 3 All ER 76). It is doubtful whether the acquisition of assets of a trading company which are insufficient to comprise a viable business could be the acquisition of an undertaking or part undertaking. The holdings of investments may, however, constitute a business. The holding of a substantial block of shares in a trading company may constitute a business if the holding is large enough for a parent company/subsidiary company relationship to exist. It is not sufficient that what is transferred constituted a business of the target company. It must continue as a going concern.

Reconstruction

6.199 The term 'reconstruction' is not defined, but it has been held that a scheme for the reconstruction of a company comprises the transfer of the undertaking, or part undertaking, of an existing company to a new company with substantially the same members, and must involve the carrying on by the new company of substantially the same business as that transferred (*Brooklands Selangor Holdings Ltd v IRC* [1970] 2 All ER 76 and *Baytrust Holdings Ltd v IRC* [1971] 3 All ER 76).

6.200 For there to be a scheme of reconstruction there must be, at the end, no change in the real ownership, nor fusion into common ownership of what was previously in separate ownership. Neither the split of a company into two parts, the different parts going to separate shareholders, nor the distribution of part of the assets of a company not forming part of its undertaking in the form of shares in a new company is a reconstruction.

Issue of shares

6.201 The term 'issue of shares' means something more than mere allotment and requires some subsequent act whereby title is completed. It indicates the whole process where new shares are applied for, allotted and registered (*National Westminster Bank plc v IRC* [1994] STC 580). It follows that shares are issued when they are properly recorded in the Register of Members.

6.202 The customer must show that, apart from the assumption or discharge of the target company's liabilities, the consideration consists solely of the issue of non-redeemable shares in the acquiring company to all of the shareholders of the target company. The omission of even one shareholder of the target company, for example if the holders of the subscriber shares have been overlooked, bars relief. The strict application of this rule often leads to concern on the part of our customers but the relief has now been in place for well over a decade and we will help customers as far as possible to avoid unintentional errors of this type if they seek our opinion in advance.

6.203 The relief is not available where the shares are issued to the company whose undertaking is acquired, unlike the reduced rate relief under Section 76, considered below.

Shareholder

6.204 The term 'shareholder' means the registered or legal owner of the shares (*Oswald Tillotson v CIR* [1933] 1 KB 134; *Murex v IRC* [1933] 1 KB 173)

Section 76 Finance Act 1986 conditions

6.205 Section 76 provides partial relief from conveyance on sale duty for any document executed for the purposes of, or in connection with, the transfer of the whole or part of the undertaking of a company (the target company) to another company (the acquiring company). The acquisition of the undertaking, or part undertaking, does not need to be in pursuance of a scheme for the reconstruction of the target company. The conditions for the relief are:

- the registered office of the acquiring company must be in the UK;

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- the consideration for the acquisition must include the issue of non-redeemable shares in the acquiring company to the target company or to any or all of its shareholders;
- the only other consideration allowed is cash not exceeding 10% of the nominal value of those shares and/or the assumption or discharge by the acquiring company of liabilities of the target company.

6.206 There is no 'mirror image' test, and neither is there a requirement that the acquisition is effected for bona fide commercial reasons and not for tax avoidance purposes.

6.207 Where shares are not the sole consideration (ignoring liabilities) the relief can only be granted if the remainder of the consideration consists of cash not exceeding 10% of the nominal value of the consideration shares. Cash in this connection is limited to the actual payment of money. Deferred payments are debts, not cash. Any consideration other than shares, cash and liabilities bars the claim to relief.

6.208 Since the consideration shares must be issued to either the target company or to all or any of its shareholders it is possible that relief can be allowed for internal reorganisations. The test is in terms of the issue of shares. Mere allotment of shares is not sufficient. Shares, for the purposes of the exemption, are not issued until the allottees' names, whether the target company or its shareholders, are on the register of the allotting company. Shares registered in the name of a nominee are not acceptable as failing within the terms of Section 76. Neither is the entry of beneficial owners who were not on the target company register in place of mere nominees.

6.209 The reduced rate extends to the assignment by a creditor to the acquiring company of any relevant debts owed by the target company. Section 76 provides for relief in most of those few cases where the transfer of corporate indebtedness is still liable to Stamp Duty.

6.210 The debts eligible for the reduced rate are:

- All debts incurred by the company not less than two years before the date of the assignment; and
- All debts of which the assignor is a Bank or trade creditor including those incurred within the preceding two years.

6.211 You will see that the conditions for the partial relief under Section 76 are much easier to satisfy than those for the full exemption under Section 75. If the conditions of Section 76 are satisfied in any case then the document(s) concerned will be chargeable to duty at the rate of 0.5% rounded up to the nearest £5 of the amount or value of the consideration for the sale. It follows that share transfers, being chargeable at that rate anyway, cannot gain any benefit under Section 76.

Section 77 Finance Act 1986 conditions

6.212 Section 77 provides **exemption from conveyance on sale duty** for documents transferring shares in one company (the target company) to another company (the acquiring company). The conditions for the relief are:

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- the transfer must form part of an arrangement by which the acquiring company acquires **the whole of the issued share capital** of the target company;
- the registered office of the acquiring company **must be in the UK**;
- the consideration for the acquisition must consist only of the issue of shares in the acquiring company;
- the shares must only be issued to the shareholders of the target company;
- the acquisition must be effected for bona fide commercial reasons, and it must not be part of a scheme or arrangement a main purpose of which is the avoidance of certain taxes;
- the shareholders of the acquiring company after the acquisition must be the same as those of the target company immediately before the acquisition;
- their proportions of shareholdings in the two companies must be identical;
- the classes of shares in the two companies must be the same; and
- the proportions of shares of any class in the acquiring company must be identical to those of the same class in the target company.

6.213 Section 77 gives a very limited narrow exemption; its conditions are stringent and are strictly enforced.

Single bid

6.214 The context of the phrase 'whole of the issued share capital' means that the exemption is given only where there is a single bid for the entire share capital of the target company. Relief is not given therefore if the acquiring company already held shares in the target company.

Issue of shares to target company shareholders

6.215 The consideration shares must be issued (mere allotment is not sufficient) to all the shareholders of the target company. Shares registered in the name of a nominee of a shareholder of the target company are not accepted as having been issued to the shareholder.

Class of shares

6.216 The term class of share concerns the rights attaching to the shares and not simply the descriptions of the shares. The question of whether one share is within a class different from that of another share depends upon whether the rights attached to the two classes of share are different. Details of a company's share and their rights are to be found in the company's Memorandum and Articles of Association.

6.217 to 6.230 Blank

Other adjudicated reliefs

Charity exemption

6.231 Under Section 129 Finance Act 1982, from 22 March 1982, any Conveyance, Transfer or Lease made to a charity is exempt from duty. It must be lodged for formal adjudication and impression of the non chargeable adjudication stamp. You should check the charitable status of the transferee or lessee in all cases where the exemption is claimed.

6.232 However a declaration of trust setting up a charity attracts £5 fixed duty and does not require adjudication.

6.233 Stamp Duty is sometimes paid on acquisitions by charities. The Charities Act 1992 requires that the status of a registered charity be clearly indicated on its cheques. This will help identify a charity where documents are submitted for stamping.

6.234 You should examine all cheques and correspondence carefully to see if there is a reference to a charity. The customer should then be telephoned and asked whether the charity has registered status. If so, they should be informed of the exemption provisions of Section 129 FA 1982 and the need for adjudication. The document can be processed at any Stamp Office. We must make every effort to identify an acquisition by a charity raising questions where we think the transferee or lessee might be a charity.

Section 96 Finance Act 1997 demutualisation of insurance companies

6.235 This Stamp Duty relief applies to any documents executed on or after 19 March 1997 where the whole or part of the business of a mutual insurance company is transferred to a limited company. The relief is meant for transfers under demutualisation schemes where the members of the insurance company become Shareholders in the limited company and not schemes where the insurance company is taken over by a third party.

6.236 There are two conditions:

- that at least 90% of the members of the insurance company are offered shares in the limited company (or the parent of the limited company);
- that any other shares issued by the limited company go to employees or pensioners of the insurance company or are issued as a result of an offer to the public.

Section 130 Finance Act 2000 transfers, conveyances and leases to Registered Social Landlords

6.237 This Stamp Duty relief applies to transfers, conveyances and leases to Registered Social Landlords which meet the conditions laid down.

Qualifying landlord

6.238 The first condition is that landlord is a qualifying landlord. A 'qualifying landlord' is defined as:

- In England and Wales - any body registered as a social landlord in a register maintained under Section 1(1) Housing Act 1996.
- In Scotland - (i) any housing association registered in the register maintained under Section 3(1) of the Housing Association Act 1985 by Scottish Homes or (ii) any body corporate whose objects correspond to those of a housing association and which, pursuant to a contract with Scottish Homes, is registered in a register kept for that purpose by Scottish Homes.
- In Northern Ireland - any housing association registered in the register maintained under Article 14 of the Housing (Northern Ireland) Order 1992.

6.239 The question as to whether the transferee or lessee is a qualifying landlord is therefore a matter of fact. Only transferees or lessees which fulfil the definition of 'qualifying landlord' can be successful in a claim for exemption. An intention to register or the fact that an application to register is pending does **not** qualify and any claim must fail.

Types of transaction

6.240 There are three types of conveyance, transfer or lease to a qualifying landlord which are within the exemption. These are:

- to a qualifying landlord controlled by its tenants.
- to a qualifying landlord by a qualifying transferor.
- to a qualifying landlord purchasing the estate or interest, or the grant of the lease, with the assistance of a public subsidy.

A qualifying landlord controlled by its tenants

6.241 A qualifying landlord 'controlled by its tenants' is one where the majority of the board members of the qualifying landlord are tenants occupying properties owned or managed by the qualifying landlord.

6.242 In the context of 6.241, a 'board member' means:

- in relation to a qualifying landlord which is a company, a director of the company.
- in relation to a qualifying landlord which is a body corporate whose affairs are managed by its members, a member.
- in relation to a qualifying landlord which is a body of trustees, a member of that body of trustees.
- in relation to a qualifying landlord not falling within any of the previous definitions, a member of the committee of management or other body to which is entrusted the direction of the affairs of the qualifying landlord.

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6.243 In the context of 6.242, 'company' has the same meaning as in the Companies Act 1985 (see Section 735(1) of that Act).

6.244 In order to gain relief as a qualifying landlord controlled by its tenants, it is for the applicant to demonstrate that the transferee or lessee meets the requirements of the legislation. You must not grant relief until you are completely satisfied that the applicant has succeeded in doing this.

To a qualifying landlord from a qualifying transferor

6.245 A qualifying transferor is defined as any of the following:

- a qualifying landlord.
- a housing action trust established under Part III of the Housing Act 1988.
- a principal council, within the meaning of the Local Government Act 1972.
- the Common Council of the City of London.
- a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.
- Scottish Homes.
- the Department of Social Development in Northern Ireland.
- the Northern Ireland Housing Executive.

6.246 In order to gain relief for a transaction to a qualifying landlord from a qualifying transferor, it is for the applicant to demonstrate that the parties meet the requirements of the legislation. You must not grant relief until you are completely satisfied that the applicant has succeeded in doing this.

To a qualifying landlord purchasing the estate or interest, or the grant of the lease, with the assistance of a public subsidy

6.247 A 'public subsidy' means any grant or other financial assistance:

- made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (application of money by distributing bodies).
- under section 18 of the Housing Act 1996 (social housing grants).
- under section 126 of the Housing Grants, Construction and Regeneration Act 1996 (financial assistance for regeneration and development).
- under section 2 of the Housing (Scotland) Act 1988 (general functions of Scottish Homes).

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- under Article 33 of the Housing (Northern Ireland) Order 1992 (housing association grants).

6.248 Section 18 Housing Act 1996, for the purpose of this legislation, includes Section 50 Housing Act 1988. Your Technical Adviser will have details of this and other areas where the relief may still be available.

6.249 In order to gain relief as a qualifying landlord purchasing the estate or interest, or the grant of the lease, with the assistance of a public subsidy, the relevant document must contain a certificate to that effect. The certificate will be or be similar to 'It is hereby certified that the conveyance/transfer/lease hereby effected is an instrument on which Stamp Duty is, by virtue of section 130(1)(c) Finance Act 2000, not chargeable'. If it felt appropriate to challenge the certification it is for the applicant to demonstrate that the requirements of the legislation are met.

6.250 Section 130 Finance Act applies from 29 July 2000.

6.251 It is important to remember that this section supplements rather than replaces Section 129 Finance Act 1982 (Exemption for Charities).

Disadvantaged areas relief

6.252 An exemption from Stamp Duty for land transactions in the UK's most disadvantaged areas was provided in the Finance Act 2001 (Section 92 and Schedule 30). Secondary legislation in the form of regulations specifies the areas that qualify for the relief and the date from which it is available.

6.253 Relief is restricted to transactions where the consideration or premium for a lease does not exceed £150,000. The Government has, however, announced that it intends to either increase substantially, or abolish entirely, this threshold for non residential transactions at a future date.

6.254 The regulations implementing the relief are SI2001/3746, SI2001/3747 and SI2001/3748. The relief came into effect for documents executed on or after 30 November 2001.

Documents eligible for relief

6.255 The relief applies to all documents liable to duty under Parts I and II of Schedule 13 to the Finance Act 1999. This covers all conveyances and transfers of land or an interest in land and all leases of land or an interest in land.

Conditions for the granting of relief

6.256 The relief is available where

- the property is situated in a designated disadvantaged area
- the transaction could benefit from a theoretical £150,000 certificate of value
- either the document is certified as falling within the scope of Section 92 or a separate certificate is provided
- the document is executed on or after 30 November 2001

6.257 All claims must be adjudicated under the provisions of Section 12 Stamp Act 1891.

Disadvantaged areas

6.258 The secondary legislation designates the disadvantaged areas where the relief applies. These are the most deprived as determined by the indices of deprivation in each of the four nations that comprise the UK.

6.259 In England, Wales and Northern Ireland the indices are compiled by reference to electoral wards or divisions. In Scotland the index uses postcodes. The ward and postcode areas match the ward boundaries and postcodes used in each countries most recent index of deprivation, as follows:

Country	Type of Area	Effective Date of Index
England	Ward	7 May 1998
Northern Ireland	Ward	21 April 1991
Scotland	Postcode	21 April 1991
Wales	Electoral Division	1 April 1998

6.260 Land or property within the boundaries of the designated areas at the relevant date qualify for the relief, together with any land or property outside those boundaries which have an identical postcode to land or property within those boundaries.

6.261 In order to have a quick means of reference for most properties, each country has supplied a separate list of postcodes covering the designated areas. This is, however, not definitive (except in Scotland). If a postcode is not on the list for England, Northern Ireland or Wales, the applicant may still be able to make a successful claim for relief if he can show that the land or property fell within the boundaries of a designated area at the appropriate time.

6.262 Appropriate evidence might be a map of the area showing the boundaries of the area at the appropriate date with the location of the land or property clearly marked. Alternatively a letter from an authoritative source confirming that the land or property fell within a designated area at the appropriate date. Your Technical Adviser may accept other evidence on a case by case basis.

Duty on the rent payable under a lease

6.263 The relief extends only to conveyance on sale duty. Duty payable by reference to average annual rent under the provisions of Paras 11.2 and 12, Part II, Sch 13 Finance Act 1999 is payable in the usual way.

Claims for relief

6.264 A customer Newsletter was issued in November 2001 addressing various points and setting out the information that should accompany any claim for relief. The requirements are that

- the document is certified to the effect that it falls within the provisions of Section 92 Finance Act 2001, or such certificate is supplied separately.
- the full postcode is supplied.

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- a PD form is supplied.
- a full copy of the transfer or lease is provided.
- a copy of the contract, sale agreement or agreement for lease (if appropriate) is provided.
- the document contains a £250,000 certificate of value.
- if lease duty is payable, a payment in respect of that duty is remitted.

6.265 Where a claim for relief is successful and there is no lease duty payable, the document should bear the 'adjudged not liable' stamp and a PD stamp to be properly stamped. If lease duty is payable the document should bear the appropriate duty stamps, the 'adjudged duly stamped' stamp and a PD stamp to be properly stamped.

Partial relief

6.266 In the case of a plot of land, with no allocated postcode, straddling a boundary, partial relief may be available. But Schedule 30(2)(a) requires that any apportionment of consideration must be just and reasonable. Please consult your technical adviser should such a case arise.

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Chapter 7: Stamp Duty: repayments, stamp allowance and free stamping

Overview

7.1 This Chapter gives information about repayments of Stamp Duty, the payment of interest on Stamp Duty repaid, stamp allowance and free stamping.

Stamp allowance

Meaning and cause

7.2 The term 'stamp allowance' relates to Stamp Duty impressed and fully or partly repaid or transferred to a fresh document, or documents.

7.3 The need for stamp allowance arises because too much duty is impressed on a document as a result of an error in the document itself or in a calculation. Allowance may be granted by transfer of duty from one document to another, with no repayment, because, for example, of an error in the conveyancing description in the first document. That is the most common kind of stamp allowance claim. Occasionally a second document is engrossed and executed with the error corrected which is then stamped before the repayment claim is made in respect of the original document. In those cases stamp allowance results in a repayment of the duty paid on the original document.

Interest

Section 110 Finance Act 1999

7.4 Section 110 of the Finance Act 1999 provides for the payment of interest on the repayment of Stamp Duty overpaid. It applies to documents executed on or after 1 October 1999.

Rounding down

7.5 Interest will be paid by us on Stamp Duty and penalty repayments. Details of the dates to be used in calculating the interest payable are in paragraphs 7.8 to 7.14 below.

De minimis limit

7.6 No interest on Stamp Duty repaid is payable if the duty to be repaid is less than £25.

Everyday overpayments - interest not payable

7.7 We will not pay interest in the everyday case of a document which is sent to us with too much duty where we have to repay the balance when the document is stamped and returned a few days later.

Stamp allowance cases - interest payable

7.8 Stamp allowance cases are dealt with in paragraphs 7.2 and 7.3 above and paragraphs 7.20 to 7.56 below. We will pay interest under Section 110(2) Finance Act 1999 when a

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document has been stamped and it is later the subject of a stamp allowance claim, provided it results in the repayment to the customer of an amount of duty of £25 or more.

Allowances for spoiled or misused stamps - interest payable

7.9 Section 110(4) of the Finance Act 1999 applies to a money payment made by the Commissioners under Section 11 of the Stamp Duties Management Act 1891.

7.10 Interest will be paid by us from the date on which the duty was paid for the stamp in respect of which the allowance is made.

Allowances for lost or spoiled documents - interest payable

7.11 For the purposes of Section 110(5) of the Finance Act 1999 a payment by the Commissioners under Section 12(2)(b) of the Stamp Duties Management Act 1891, in respect of a spoiled or lost document, is treated as a repayment of the duty or penalty by reference to which it is made.

7.12 Interest will be paid by us from the date on which the payment of duty or penalty was made.

Wait and See cases - interest payable

7.13 Where a customer has lodged a document with us in a 'Wait and See' case (ie where the consideration liable to Stamp Duty is ascertainable but not yet ascertained) and has sent us a payment on account, we will pay interest if the amount paid on account turns out to be more than is actually due and we repay the balance. We will only add interest to the amount repaid if the customer:

- presented the document for stamping; and
- lodged with us a payment on account of the Stamp Duty they estimated to be due but the duty actually due turned out to be less than that amount; and
- proceeds with the stamping of the document; and
- the amount to be repaid is £25 or more.

7.14 **Section 110(3) Finance Act 1999 makes it clear that the document must be stamped.** If the customer withdraws the document unstamped we will not pay interest. If such a document were resubmitted for stamping later there would be a penalty for late presentation of the document and interest due on late payment of the Stamp Duty. No account would be taken of the period the document and payment on account had been held by us previously.

7.15 For more information about wait and see cases please refer to Chapter 4 (Stamp Duty: Conveyance On Sale Duty).

Obligation to pay interest

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7.16 Where the amount of duty repaid is £25 or more and repayment interest is properly due, the customer is legally entitled to receive payment of that interest however small and it must be paid. FAO Worthing will calculate and pay the interest due when they issue the payable order for the duty repayment. All you need to do is show on the repayment form Stamps 71, by ticking the appropriate box, that interest is to be repaid and complete the date from which it is to be calculated.

Interest as income

7.17 Interest on the repayment of Stamp Duty is not treated as income of the person receiving the payment for tax purposes.

Appeal cases

7.18 In a Stamp Duty appeal case where Stamp Duty and any penalty is ordered to be repaid under Section 13B(4) of the Stamp Act, interest will be added to the repayment, where appropriate, under the terms of Section 110 Finance Act 1999.

Rate of interest

7.19 The rate is set by Regulations under Section 178(2) of the Finance Act 1989 and Section 110 of the Finance Act 1999 and in SI 1999 No 2538. The rate of interest for Stamp Duty repayments and SDRT (Stamp Duty Reserve Tax) repayments will be the same. It is lower than the rate of interest charged on the late payment of Stamp Duty and SDRT. It is not therefore to the advantage of any of our customers to lodge excessive amounts with us.

Administration

Legislation and categories of claim

7.20 The legislation for stamp allowance is contained in Sections 9 to 12 of the Stamp Duties Management Act 1891. Most claims are made under various provisions of Sections 9(7) and 10.

Sections 9(7)(a) to (e)

7.21 Section 9(7)(a) relates to documents which are found to have been void from the outset.

7.22 Section 9(7)(b) covers most stamp allowance claims which we receive. It concerns documents which are found unfit because of an error or mistake. It applies to almost every document which is found to contain an error, whether a simple typing mistake or a fault in the conveyancing description. The error must be in the stamped document itself. An error or mistake elsewhere is not covered.

7.23 Section 9(7)(c) applies to documents which have not been used for any purpose and, because one of the parties is unwilling or unable to complete the transaction, the documents are incomplete and insufficient for the purpose intended. 'Complete' is used in the legal sense, meaning 'to bring into legal effect'. A document which has been used for any

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purpose or which, because it had been given legal effect, could have been used for the purpose intended is not covered.

7.24 Section 9(7)(d) applies where a document failed of its purpose, or became void, because it came within one of the following two situations

- any person refused to act on it; or
- the document was not enrolled or registered within a statutory time limit.

7.25 Section 9(7)(e) applies where a document cannot be used because the transaction became effected by means of another stamped document. An example would be where a document was stamped ad valorem but a duplicate was mistakenly presented for stamping and similarly stamped. A claim for repayment of the duty on the duplicate would be allowable under Section 9(7)(e).

Section 10

7.26 Section 10 allows us to repay the duty overpaid on an over-stamped document, provided that a claim is made within the two year time limit (see paragraph 7.28 below). A common error covered by this Section is where a document in favour of a charity is stamped ad valorem because the customer overlooked the exemption under Section 129 Finance Act 1982. Repayment may be claimed within the two year time limit even if the document had been used for some purpose, and so had been treated as duly stamped.

Time limit for claims

7.27 Both Section 9 and Section 10 contain a two year time limit for a claim for allowance. A claim under Section 9 should be made within two years after the stamp was spoiled or became useless or, if the document was executed, within two years of the date of the document. Section 9 provides that the Commissioners may in certain very limited circumstances prescribe further time; but in practice the two year time limit is strictly enforced.

7.28 A claim under Section 10 must be made within two years of the date the document or, if it was not dated, within two years of first execution. This time limit is strictly enforced. If a claim is made outside the two year time limit allowed by Section 10 it must be refused. The time limit is mandatory and must not be exceeded in any circumstances.

Date of execution of a document

7.29 It is important to know the date of a document because of the time limits noted in paragraph 7.28 above. If a document is undated, or the date is uncertain because it is unclear, or seems to have been altered, replaced or erased the customer should be asked to state the date of the document and to give an explanation for the apparent alteration with supporting evidence.

Date of a claim for allowance

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7.30 A claim must be made within the two year time limit noted in paragraph 7.28. The date that a claim is made is taken as the date of the claim form or, if the claim is made by letter, the date of the letter.

Persons who can claim stamp allowance

7.31 A claim may be accepted from

- the customer who paid the duty
- a solicitor or other agent acting for the customer who paid the duty
- the legal representative of a deceased person who would have been able to claim
- the trustee in bankruptcy of a bankrupt who paid the duty
- the receiver or liquidator of a company in liquidation which had paid the duty.

Which Stamp Office will handle a claim?

7.32 Any Stamp Office can deal with a stamp allowance claim. It is preferable, however, for a claim to be dealt with by the Office which originally stamped the document. This is so that the records of the original stamping can be readily examined if required.

Information needed for a claim

7.33 In order for us to grant stamp allowance we require a letter claiming repayment of the appropriate amount of duty explaining the reasons for the claim together with the original stamped document. (See paragraph 7.36 below where the Land Registry, or in Scotland the Keeper of the Registers, will not release the document to the customer.)

7.34 If this information is provided and it is accepted that a refund is in order, the repayment can usually be processed without delay. Once the adjustment has been made to the impressed stamps, the document is returned to the customer or to the Land Registry (or in Scotland the Keeper of the Registers) as appropriate. A payable order follows from the Financial Accounting Office.

Original document retained by the Land Registry/Keeper of the Registers

7.35 There are occasions when the Land Registry, or in Scotland the Keeper of the Registers, will not release documents to customers.

7.36 If the Land Registry will not let the customer have the document, we will need from the customer a copy of the stamped document and details of the District Land Registry where title was registered. We will then ask the District Land Registry to send us the document direct.

7.37 In Scotland, the Keeper of the Registers is usually able to release documents to customers. The Keeper is, however, unable to let customers have documents which are in the process of recording on the Sasine Register or which were presented for registration in the Books of Council and Session.

7.38 Where the document is in the process of recording on the Sasine Register, we will need from the customer a copy of the stamped document and a copy of the Keeper's green form of receipt for the document. Where the document was presented for registration in the books of Council and Session we require the customer to provide an official extract of the stamped document. In either case we will contact the Keeper to ask for the document on loan. Once the document is received and it is accepted that a refund is in order, the repayment can usually be processed without delay. When the adjustment has been made to the impressed stamps, the document is to be returned direct to the Keeper of the Registers. A payable order is sent to the claimant from the Financial Accounting Office.

Surrender of the 'spoiled document'

7.39 Under the stamp allowance legislation it is a condition for stamp allowance that the stamped document concerned (known as the 'spoiled document') is surrendered to us for destruction. We cannot grant allowance without the original document because we need to block out the incorrect duty stamps and so a photocopy or a registered extract are not acceptable.

7.40 Exceptionally, stamped documents may be returned to the customer if the duty was reduced under Section 10 or otherwise if it was required by the customer for title to be registered. An example would be where an agent paid duty on a document in favour of a charity, not realising about the exemption, but later the oversight was noticed and a claim to allowance was made within time, and after repayment was made the document was returned to the customer who required it to register title. Neither do we retain documents which the Land Registry or the Keeper of the Registers in Scotland has released to us on loan. They must be returned direct to the Land Registry or the Keeper after adjustment of the duty stamps.

7.41 A spoiled document which has been surrendered for destruction is retained for two months before being shredded. The two month period is a waiting time in case of any comments or questions.

7.42 If a customer has a legitimate reason for requesting the return of a spoiled document you should refer him or her to proviso (b) in Section 9(7), confirm that is a condition for allowance that the document is given up for destruction, ask why the document is needed and offer to provide a complete photocopy.

7.43 Note that stamp allowance claims involving any of the legislation listed in paragraph 6.71 of this manual must be dealt with by formal adjudication of the document.

Substitute documents

7.44 When a stamped document is presented for stamp allowance because of an omission in the text, or an error or mistake, the claim is normally accompanied by a substitute document. We can then transfer the duty from the spoiled document to the substitute. If no substitute document is provided you should ask the customer whether a substitute was prepared and, if not, why one was considered unnecessary. If a customer states that a substitute document has already been stamped ask for a photocopy of the stamped document, clearly showing the duty stamps it bears so you can be sure the duty has been paid twice.

Substitution of part only of a document

7.45 On occasions a customer may provide a fresh front page to replace the first page of the stamped document. If the claim is accepted the duty is transferred from the original front page to the substitute page. The spoiled first page is then retained for destruction.

7.46 If the date of execution of the document remains the same and the date of the fresh stamps is more than 30 days after that date, you should write 'Nil Penalty' on the freshly stamped first page. This will show that the penalty position was not simply overlooked.

Change of intention

7.47 Sections 9 to 12 of the Stamp Duties Management Act 1891 contain no provision to allow us to give stamp allowance if a stamped document is no longer needed because of a change of mind about the transaction. Any claim made on that basis must therefore be refused. Customers may not be prepared to agree that their claim results from a change of intention and you should make enquiries where you suspect this may be the reason for the claim. If no substitute document was required because the transaction was abandoned this is often a good indication that there has simply been a change of intention.

Adjudicated documents

7.48 If a stamped document submitted for stamp allowance bears the adjudication stamp it should be referred to the Technical Adviser without accepting the claim. Only an officer of grade C1 or above may authorise a stamp allowance claim in respect of an adjudicated document.

Penalty stamps

7.49 If a spoiled document also bears a penalty in addition to the Stamp Duty the strictly the penalty should not be repaid. In practice, however, (but subject to the exception noted in the paragraph immediately below) we repay a penalty on a spoiled document if the whole duty is repaid, or transferred to a fresh document. No extra penalty is imposed on a fresh document to which the duty on a spoiled document is transferred. If there was no penalty on the spoiled document there will be no penalty on the fresh document. If the date of the fresh stamps is more than 30 days after the date of execution of the fresh document and there was no penalty on the spoiled document, you should write 'Nil Penalty' on the freshly stamped document. This will show that the penalty position was not simply overlooked.

7.50 The exception noted immediately above is where a fresh front page is substituted, with no change to the date of execution of the document. In that case the penalty is also to be transferred to the fresh document.

7.51 If the duty on a spoiled document is reduced under Section 10, Stamp Duties Management Act 1891 any penalty or interest on that document must be recalculated by reference to the reduced duty and the balance repaid, with repayment interest where appropriate.

The limits of authority

7.52 Any claim under Sections 9 to 12 of the Stamp Duties Management Act 1891 must be authorised at the appropriate grade depending on the amount to be allowed, including any penalty and interest.

Refusal of allowance

7.53 If a claim is refused, for example if it was made outside the time limit, the document(s) must be returned to the customer and not retained in the Office.

Stamps removed from a document or torn or damaged

7.54 Except where the first page is substituted (see paragraph 7.45 above) stamp allowance can only be given on complete stamped documents. If part of the page which bears the stamp(s) is cut or torn and sent to us for stamp allowance the claim should be refused.

7.55 If allowance is claimed for a document with damaged stamps the claim should not be accepted unless the customer gives an acceptable reason (for example, the document was partly burned in a fire at the customer's office) and the value of the damaged stamps can be identified.

Lost documents

Section 12A Stamp Duties Management Act 1891

7.56 If a duly stamped document is lost allowance may be granted under Section 12A of the Stamp Duties Management Act 1891 for the 'free stamping' of a replacement document.

7.57 A customer (or other person as listed in paragraph 7.31 above) who wished to claim 'free stamping' of a replacement for a lost document should apply in writing and provide:

- a Statutory Declaration to verify the loss of the original document; the fact that it was stamped; the full facts and circumstances of the loss, and comprehensive details of the lost document (stock drafts for the Statutory Declaration and notes about its completion are available for use in these cases)
- an undertaking to surrender the original document if it subsequently turns up and to indemnify Stamp Taxes against any other claim which may be made and allowed for the same lost document (stock drafts are available for customers' use); and
- full details of the original application.

Copies of the drafts mentioned above will be available on Stamp Taxes website.

7.58 Any Stamp Office can deal with a lost document claim. It is preferable, however, for a claim to be dealt with by the Office which stamped the original document. This is so that the records of the original stamping can be examined, if available, to prove that the lost document had been stamped.

Stamping of replacement document

7.59 When a lost document claim is accepted, the replacement document is 'free stamped' and the letter 'f' is impressed in black ink on each duty stamp.

7.60 If the lost document is subsequently found the customer must send it to us in accordance with their undertaking given at the time of the claim. There is, of course, no repayment then since the customer only paid one amount of duty even though there are two stamped documents.

Limits of authority for lost document claims

7.61 Any claim for allowance for a lost document under Section 12A of the Stamp Duties Management Act 1891 must be authorised at the appropriate grade depending on the amount to be allowed.

Refusal of a lost document claim

7.62 Whilst most claims are allowed; a claim must be refused if any of the items listed in paragraph 7.57 above is not provided, or if the facts indicate that the claim should be denied or if, apart from the details of execution, the replacement document differs from the lost document. Section 12A of the Stamp Duties Management Act 1891 only applies where the replacement document is an exact replica of the lost document. You must seek approval from your manager before you deny any claim.

Lost document claims and changes to the rate of duty

7.63 Occasionally the rate of duty may change between the date of the lost document and the date of the replacement. In such circumstances the fresh document is not liable to duty at a different rate from the original. Under Section 12A of the Stamp Duties Management Act 1891, the replacement document is not chargeable with any duty, but it is stamped with the duty which it would otherwise have been chargeable at the time of its execution. Neither a repayment of duty, nor any additional duty, arises purely as a consequence of a change in the rate of duty.

Chapter 8: Stamp Duty: bearer instruments

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Chapter 8: Stamp Duty: bearer instruments

Overview

8.1 This Chapter sets out the different types of bearer instrument which are liable to Stamp Duty, the rates of duty which apply and how payment of the duty is denoted on documents of this type. It also covers the penalties for failure to provide Stamp Taxes with details of the issue of dutiable bearer instruments. The relevant legislation is in Schedule 15 of the Finance Act 1999.

What is a bearer instrument?

8.2 A bearer instrument is a document which constitutes the rights of the holder of that instrument, the bearer, to the securities which the document represents. The beneficial interest in those securities may be transferred by simply handing the bearer instrument to the new owner of the shares. There is therefore no need to execute a Stock Transfer Form or other such document to effect a transfer of the beneficial interest in the securities. It follows that there is no document of transfer which can be stamped when a bearer instrument is delivered to the new owner.

8.3 In recognition of this fact, Stamp Duty is instead imposed on some particular types of bearer instrument at the time they are first issued. There are some exceptions to this rule which are covered later in this Chapter.

What is a bearer instrument by usage?

8.4 Where a document is not in the usual form of a bearer instrument but is nevertheless used for the purpose of transferring the right to stock and delivery of that document is

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accepted by usage as sufficient for the purpose of transferring the stock, whether it constitutes a legal transfer or not, the document becomes what is known as a 'bearer instrument by usage'.

8.5 Such a document is treated as:

- transferring the stock which it represents on delivery of the document; and
- issued by the person by whom or on whose behalf it was first issued, whether or not it was at that time capable of being used for transferring the right to the stock without being executed by the holder of the stock.

Meaning of 'bearer instrument' for Stamp Duty purposes

8.6 'Bearer instrument' is defined Para 3 of Sch 15 to the Finance Act 1999 as meaning any of the following:

- a marketable security transferable by delivery;
- a share warrant or stock certificate to bearer or instrument to bearer (by whatever name called) having the like effect as such a warrant or certificate;
- a deposit certificate to bearer;
- any other instrument to bearer by means of which stock can be transferred; or
- an instrument issued by a non-UK company that is a bearer instrument by usage.

When is the Stamp Duty chargeable?

8.7 Stamp Duty is chargeable:

- on the issue of a bearer instrument in the UK; and
- on the issue of a bearer instrument outside the UK by or on behalf of a UK company.

8.8 Stamp Duty is chargeable on the transfer in the UK of the stock constituted by or transferable by means of a bearer instrument if Stamp Duty was not chargeable on issue of the bearer instrument, as detailed above, **and:**

- duty would be due as a conveyance or transfer on sale if the transfer were effected by an instrument other than a bearer instrument; or
- the stock constituted by or transferable by means of a bearer instrument consists of units under a unit trust scheme.

Rates of Stamp Duty on the different types of bearer instrument

8.9 The bearer instruments described above can be divided into four main classes. These are set out below with the appropriate rate of Stamp Duty shown beside each.

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Bearer instrument	1.5% of the market value of the stock constituted by or transferable by means of the instrument
Bearer instrument by usage issued by a non-UK company	0.2% of the market value of the stock constituted by or transferable by means of the instrument
Deposit certificate for the stock of a single non-UK company	0.2% of the market value of the stock constituted by or transferable by means of the instrument
Substitute bearer instrument	£5 Fixed Duty (See Para 8.12 below)

8.10 UK bearer instruments are charged to Stamp Duty upon their issue. It does not matter whether the issue was in the UK or abroad, the duty is still due.

8.11 The 1.50% duty effectively represents three times the duty which would be due on an instrument in writing transferring the stock for a consideration equal to the market value of the stock represented by the bearer instrument.

8.12 A substitute bearer instrument is only liable to £5 fixed duty provided it is issued in direct substitution for a similar document on which the proper ad valorem duty was paid.

Exemptions

8.13 There are several exemptions from the Stamp Duty under the Bearer Instrument Head of Charge. These are as follows:

- There is no duty on a bearer instrument issued outside the UK in respect of a loan in a currency other than sterling and which is not offered for subscription in the UK or offered for subscription with a view to an offer for sale in the UK of securities in respect of the loan.
- There is no duty on an instrument constituting or used for transferring stock (other than units in a unit trust) if that stock is itself exempt from all stamp duties on transfer.
- There is no duty on bearer instruments which are exempt under Section 64 of the Finance Act 1971 or Section 5 of the Finance (Northern Ireland) Act 1971, which abolished the old mortgage, bond, debenture, covenant duty.
- There is no duty on bearer instruments exempt under Section 173 of the Finance Act 1989 which abolished the duty on life policies and superannuation annuities.
- There is no bearer instrument duty on renounceable letters of allotment, letters of rights or other similar instruments where the rights are renounceable not later than 6 months after the issue of the letter or instrument.

Exemption for non-sterling bearer instruments

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8.14 There is no Stamp Duty under Schedule 15 on the issue of a bearer instrument relating to stock expressed:

- in a currency other than sterling; or
- in units defined by reference to more than one currency (whether or not one of them is sterling);

nor is there any duty on the transfer of the stock constituted by or transferable by means of such a bearer instrument.

8.15 If the bearer instrument is for stock consisting of a loan and there is an option to repay the loan in sterling or in one or more other currency, no Stamp Duty is due on issue of the bearer instrument if the option can only be exercised by the holder of the stock. But if the option can be exercised by anyone else, Stamp Duty will be due on issue of the bearer instrument.

8.16 Some instruments falling within this exemption, in Para 17 of Sch 15, are nevertheless subject to a 1.5% SDRT charge if placed into a depositary receipt scheme or a clearance service. See Chapter 14 paragraph 14.45.

Ascertaining the market value

8.17 If the stock was offered for public subscription in registered or bearer form in the year prior to the issue of the bearer instrument, the market value is taken as the amount subscribed for the stock.

8.18 If it was not offered for public subscription within the previous year but stock of the same description is dealt with on a UK stock exchange within one month of the issue of the bearer instrument, the market value is taken as the value of the stock on the first day of dealing.

8.19 In any other case the market value is taken as the value of the stock immediately after the issue of the instrument.

8.20 If the Stamp Duty is to be charged on a transfer of the stock in the UK constituted by or transferable by means of a bearer instrument (as detailed in paragraph 8.8 above) the market value is to be ascertained as follows:

- In the case of a transfer pursuant to a contract of sale, the market value is to be taken as the value of the stock on the date the contract was made.
- In any other case the market value is to be taken as the value of the stock on the day before that on which the instrument is presented for stamping or, if it is not presented, on the date of the transfer.

Variation of the terms of a bearer instrument

8.21 If a bearer instrument issued on behalf of a non-UK company in respect of a loan expressed in sterling:

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- has been stamped ad valorem; or
- has been stamped with £5 fixed duty as a substitute for an original instrument stamped ad valorem; or has been impressed with the bearer instrument denoting stamp; then

there will be no Stamp Duty due as a result of the amendment of any of the original terms or conditions of the bearer instrument.

8.22 to 8.50 Blank

Procedures for denoting and stamping bearer instruments

Production before issue

8.51 A bearer instrument must be produced to Stamp Taxes before it is issued and is only considered to be duly stamped if it has been impressed with the Bearer Instrument Denoting Stamp. This stamp is only available at Bush House where all such documents must be sent for stamping.

8.52 The instruments should be lodged at Bush House before issue with a completed form BI-1. They will be denoted and returned. Within six weeks of their issue a form BI-2 must be completed and sent with payment of the Stamp Duty due to Bush House. Note that no duty stamps are impressed on the Bearer Instrument itself. It is deemed to be duly stamped when it bears the denoting stamp alone. A record is kept of bearer instruments which have been denoted and if payment of the Stamp Duty upon issue is not made within the required six weeks of issue this is followed up in correspondence.

Production of substitutes

8.53 If the bearer instrument concerned is a substitute instrument to which the fixed duty of £5 applies it should be lodged at Bush House together with the form BI-1 and the original stamped instrument which it is to replace.

Penalty for failure to produce or stamp an instrument

8.54 If the provisions for producing and stamping bearer instruments in Para 21 of Sch 15 to the Finance Act 1999 are not complied with then Para 22 of that Schedule makes provision for a penalty for the failure to do so.

8.55 If the instrument is not produced within the time limits set out in Sch 15 the person by whom or on whose behalf it was issued and any person who acts as the agent of that person for the purposes of the issue are each liable to a penalty not exceeding the aggregate of £300 and the duty chargeable. They are also jointly and severally liable to pay:

- The duty chargeable; and
- Interest on the unpaid duty from the date of the default until the duty is paid.

8.56 If the provisions for stamping transfers of stock chargeable under Para 2 of Sch 15 to the Finance Act 1999 are not complied with then Para 23 of that Schedule makes provision for a penalty for the failure to do so.

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8.57 If the instrument is not duly stamped any person who in the UK transfers any stock by means of the instrument or is concerned as broker or as agent in any such transfer is liable to a penalty not exceeding the aggregate of £300 and the amount of the duty chargeable. They are also jointly and severally liable to pay:

- The duty chargeable; and
- Interest on the unpaid duty from the date of the transfer in question until the duty is paid.

Interest

8.58 Interest is due on any unpaid bearer instrument duty from the date of default until the duty is paid. If part payment is made interest will cease to accrue in respect of the amount paid, from that date. It is charged at the same rate as interest on all other Stamp Duty paid late. The amount calculated is rounded down to the nearest multiple of £5. No interest is payable if the amount is less than £25.

Penalty for false statement

8.59 Anyone completing the form BI-1 or BI-2 or supplying Stamp Taxes with the necessary information by any other means, who wilfully or negligently furnishes us with false particulars is liable to a maximum penalty of £300 plus twice the amount by which the Stamp Duty properly due exceeds that actually paid.

Chapter 9: Stamp Duty: Trusts and Pension Schemes

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Chapter 9: Stamp Duty: Trusts and Pension Schemes

Overview

9.1 This Chapter explains the essentials of a trust and sets out the Stamp Duty assessment of various types of trust document. It also provides information about pension schemes and how transfers to and by pension scheme trustees are dealt with by Stamp Taxes.

Declarations of Trust

9.2 A declaration of trust, for Stamp Duty purposes, is a document executed to create a property trust and to record the trust(s) upon which the property is held on behalf of the beneficial owner(s).

The Essentials for the creation of a Trust

9.3 There are three essentials for the creation of a trust, namely:

- the wording must clearly show the intention to create a trust;
- the trust property must be clearly defined; and
- the beneficiaries must be identified.

Land or other property

9.4 A declaration of trust concerning land must be made in writing, whereas a declaration of trust for any other property may be made orally (in which case of course no Stamp Duty can be charged because there is no document to assess).

The charge to Stamp Duty

9.5 A declaration of trust is liable to £5 fixed duty under the provisions of Para 17 of Sch 13 to the Finance Act 1999 unless its true effect is that it constitutes a conveyance or transfer on sale. A declaration of trust made by a seller in favour of a buyer is a conveyance or transfer on sale (Chesterfield Brewery Company v IRC [1899] 2 QB 7; Peter Bone Ltd v IRC [1995] STC 921). The Chesterfield Brewery case relates to shares, and the Peter Bone case to land. Declarations of Trust which operate as a conveyance or transfer on sale are chargeable to ad valorem duty as if they were a conveyance on sale. They are not liable to only fixed duty as a declaration of trust.

9.6 A declaration of trust which establishes a trust and gifts property is chargeable to £5 fixed duty as a declaration of trust and £5 as a gift but may be exempted from the £5 duty as a gift if it is certified as falling within Category L in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987. (See Chapter 2)

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Documents which are chargeable as declarations of trust

9.7 Documents which are chargeable to £5 declaration of trust duty include:

- those which create a trust (whether such documents are under hand or seal);
- those which alter one of the essentials of a trust (being in effect a declaration of a new trust); and
- less formal documents which effect the creation or alteration of a trust, examples being an exchange of letters between employer and employee or company resolutions evidenced by signed minutes. (Where it is impractical to stamp the original in the minute book a copy signed by the person(s) who signed the original may be stamped as if it were the original instead).

Specific documents

9.8 Some documents which are associated with pension schemes are liable to Stamp Duty as declarations of trust. These include:

- interim trust deeds;
- definitive trust deeds (unless the document merely sets out the provisions of trusts already declared by interim deeds, in which case it is not chargeable to duty);
- deeds of variation (unless the document only affects the rights of persons who already qualify under the scheme, in which case it is not liable to duty);
- deeds of adherence or participation provided that they extend the class of beneficiaries covered by the original trust deed (otherwise the document is not liable to duty); and
- deeds of substitution, whereby a new company takes over an existing scheme.

Life policies incorporating declarations of trust

9.9 Some life insurance policy documents include declarations which render them liable to £5 fixed Stamp Duty as declarations of trust. However, these documents may be certified as falling under Category N in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987. When a life insurance policy incorporating a declaration of trust includes a Category N certificate it is exempt from the £5 fixed duty charge.

9.10 Category N includes declarations of trust made after an insurance policy has been issued as well as those which are effected as part of the process of bringing the policy into existence. It includes declarations of trust over individual life policies and individual pension insurance arrangements such as personal pensions and retirement annuity contracts. It covers declarations of trust over more than one policy and policies relating to more than one life.

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9.11 Category N does not apply to documents creating trusts governing occupational pension schemes, pure accidental death policies nor declarations of trust establishing executive pension plans. See also Paragraphs 2.23, 2.36 and 2.37 in Chapter 2.

Deed of appointment or retirement of trustee(s)

9.12 A document which merely effects the appointment of a new trustee or the retirement of an existing trustee is not liable to duty (following the abolition in 1985 of the 50p fixed duty under the Head of Charge Appointment).

9.13 A document which vests or transfers property on such an appointment or retirement is chargeable to £5 fixed duty as a conveyance or transfer of property (Section 62 of the Stamp Act 1891) unless it is certified under Category A of the Stamp Duty (Exempt Instruments) Regulations 1987.

9.14 to 9.35 Blank

Court Orders made under the Variation of Trusts Act 1958

9.36 Paragraphs 9.37 to 9.40 inclusive do not apply to Scottish Court Orders of this kind. For the position in Scotland see paragraph 9.41 below.

9.37 These Court Orders are effected to vary the terms of a trust, usually because the beneficiaries want to rearrange their interests but are unable to do so without a Court Order possibly because there are minors involved. The original orders are kept by the Court. Adjudication is not necessary, and duplicate orders provided by the Court may be stamped instead.

9.38 The following instructions reflect guidance which was issued for solicitors on 31 July 1989 by the High Court (Practice Direction [1989] 3 All ER 96, [1989] 1 WLR 1162).

9.39 An undertaking by solicitors with regard to stamping is no longer required to be included in an Order under the Variation of Trusts Act 1958, whether made by a judge or a Master.

9.40 There are three types of Court Orders in this regard and their Stamp Duty treatment is as follows:

1. Orders confined to the lifting of protective trusts.

These orders are not liable to Stamp Duty and should not be presented to a Stamp Office.

2. Orders effecting gifts.

These may be certified under Category L of the Stamp Duty (Exempt Instruments) Regulations 1987 otherwise they are liable to £5 fixed duty as a Conveyance of any other kind.

3. Orders outside the two above which contain declarations of trust and do not effect the disposition of trust property.

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These documents simply declare new trusts without effecting gifts. They are liable to £5 fixed duty as declarations of trust.

Interlocutors made under the Trusts Scotland Act 1961

9.41 These are the Scottish equivalent of Court Orders under the Variation of Trust Act 1958. An Interlocutor of the Court of Session gives approval to an 'arrangement' the terms of which are set out in a schedule. Original Interlocutors are retained by the Court and a Court or Office Copy may be stamped instead. Adjudication is not necessary.

9.42 There are two main types of Interlocutors and their Stamp Duty treatment is as follows:

1. Interlocutors confined to lifting the alimentary restriction on a liferent.

These documents are not liable to Stamp Duty and should not be presented to a Stamp Office.

2. **Interlocutors altering the powers of trustees.**

These are liable to £5 fixed duty as declarations of trust.

Other Court Orders relating to Trusts

9.43 These are the more common Orders of the Court concerning trusts with brief notes about their Stamp Duty treatment:

- Order appointing original or new trustees: No duty.
- Order appointing new trustees and vesting in them the right to transfer stock, (including shares and any annuity, security, etc transferable in books kept by any company etc): No duty.
- Order appointing new trustees and vesting in them land or other property (except as below) capable of being vested: £5 (exempt if certified under Category **A** in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987).
- Order appointing new trustees and vesting in them the right to sue for any chose in action (in Scotland, any debt): £5 (exempt if certified category **A** or, if the chose in action or debt is money secured by a mortgage, bond, debenture, or covenant or by any judgement, exempt under Section 64 of the Finance Act 1971).
- Order vesting in new trustees (separately appointed) the right to transfer stock, etc and also the right to receive dividends: £5 (exempt if certified category **A**).
- Order merely vesting the right to transfer, or to call for the transfer, of any stock, etc: No duty.

Settlements

9.44 Certain settlement documents can operate as declarations of trust, as conveyances on sale or as gifts.

What is a settlement?

9.45 A settlement is created when the beneficial owner (the settler) conveys property to trustees (or declares that he is holding the property as trustee) for persons in succession. It may be effected by a settlement document (or trust deed) in addition to a conveyance or transfer of each property concerned to the trustees. The documents may be executed in any order, but they are usually all executed on the same day.

Date a settlement becomes effective

9.46 A settlement becomes effective at the date of the trust deed if:

- the settlement property is already with trustees who previously held it as the settlor's nominees; or
- the settlor declares him/herself the sole trustee; or
- the settlement deed contains words of assignment or conveyance of the property to the trustee(s).

9.47 A settlement becomes effective when the property is vested in the trustee(s) or placed under the trustee(s) control if the settlor conveys property to the trustee(s). There is a resulting declaration of trust, and a subsequent execution of the settlement deed effects the gift. If the settlement deed precedes the transfer it operates as the declaration of trust, and the conveyance or transfer effects the gift. If the documents are executed on the same day the settlement deed may be regarded as executed last; but if the customer maintains otherwise that may be accepted.

Later additions to a settlement

9.48 A settlement document which provides for property to be included later is not liable to further duty as a result.

9.49 Many settlements provide for an initial sum of £10 with later additions. Where the trust provides for additions to the fund it is not necessary to take that into account when calculating the duty.

Settlement documents with category L certificates under the Stamp Duty (Exempt Instruments) Regulations 1987

9.50 An inappropriate Category L certificate in a settlement document may be ignored. There is no need to ask the customer to delete it.

Examples

9.51 The following examples may assist you:

1. Property is purchased in the name of trustees. A second document evidences the property is held on trust for a named beneficial owner who provided the purchase money. This is a declaration of trust - £5 fixed duty.
2. The document evidences the property is held by an individual who will continue to hold it but for the benefit of a named donee; and it is certified under Category L. This document effects a gift and is exempt from duty.
3. A settlement document creates a trust and no cash or assets passed to the trust fund. This is a declaration of trust - £5 fixed duty.
4. A settlement document creates a trust and cash was paid into the trust fund. This is also a declaration of trust - £5 fixed duty.
5. A settlement document creates a trust with assets consisting of shares and real property transferred into the trust fund by separate documents dated the same day. The customer states that the settlement was executed before the transfers. The settlement document is a declaration of trust - £5 fixed duty. The transfers effect gifts and are exempt if certified Category L, but if not certified are liable to £5 duty each and must be adjudicated (following Section 82(5) of the Finance Act 1985).
6. Similar documents as in example 5 but the settlement was the last document executed and completed the gift. The settlement document is a declaration of trust - £5 fixed duty. It also effects the gift so it is liable to a further £5 duty and requires adjudication unless it is certified Category L. The transfers are liable to £5 fixed duty each as a conveyance or transfer of any other kind.
7. A settlement document creates a trust with assets previously transferred to the trustees. The settlement document is a declaration of trust - £5 fixed duty. It also completes the gift so it is liable to a further £5 duty and requires adjudication unless it is certified Category L. The transfers are liable to £5 fixed duty each as a conveyance or transfer of any other kind.

Declarations of Trust effecting a conveyance or transfer on sale

9.52 The £5 fixed duty due on Declaration of Trust documents means that, with the few exceptions mentioned above, all such documents need to be sent to Stamp Taxes for assessment and stamping. This enables us to examine all such documents to ascertain whether, in effect, they do more than simply declare a trust but instead operate as a Conveyance or Transfer on Sale. Retention of the fixed duty on declaration of trust documents therefore protects the ad valorem yield when a sale is involved.

9.53 It is important that in examining all documents purporting to be no more than a straightforward declaration of trust you carefully check the true position and the wording of the documents to see whether they effect a declaration liable to ad valorem duty as a sale.

Agreement or contract for the sale of property incorporating a declaration of trust

9.54 An Agreement for the Sale of land is not normally within the provisions of Para 7 of Sch 13 to the Finance Act 1999 (See Chapter 4) because the constructive trust for the purchaser is only in respect of the legal estate in the land. The contract will however immediately become liable to ad valorem duty if the vendor declares that it holds the property on trust for the purchaser and this has the effect of transferring an equitable interest to the purchaser.

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Pension Schemes, Common Investment Arrangements, Common Investment Funds and Pension Fund Pooling Schemes

Pension Schemes

What is a Pension Scheme?

9.71 When an employer, a company or a partnership wants to provide pension rights for its employees it may create a Pension Scheme by appointing Trustees to hold a 'fund' into which the company will make contributions. The Trustees have control over the investments but often appoint managers for the day-to-day running of the fund. Regular payments from the Employer and/or its employees are made into the scheme which the trustees then invest.

9.72 As a rule, each member of the scheme, ie every employee, has an entitlement to benefits under the scheme. Some schemes may invest in policies on unit-linked principles.

Approved Pension Schemes

9.73 Approved Pension Schemes are those which have been referred to the Pension Scheme Office of the Inland Revenue and whose rules have been approved by that office so that they can then benefit from certain tax exemptions.

9.74 When the fund is first set up the company transfers assets into the name of the trustees to form the fund. This is not normally a sale and the Stamp Duty due will usually only be fixed duty of £5.

Merger of two or more companies

9.75 When companies with existing Pension Schemes merge a transfer of assets between the schemes may take place. A merger of two schemes does not attract ad valorem Stamp Duty. Every Stock Transfer Form evidencing assets moving from one set of trustees to the trustees of the newly formed scheme (ie the new scheme which comprises the assets of the two formerly separate schemes), will attract £5 fixed duty only. In practice, a merger involves numerous transfer forms, one for each security held by the transferring trustees, and each form will attract £5. The assumption by the Trustees of the liability to pay pensions and benefits to the members of the scheme is not chargeable under S57 of the Stamp Act 1891. However if a single instrument is used to make the transfers, supplemented by a schedule of the stocks involved instead of separate Stock Transfer Forms, there is only one amount of £5 fixed duty.

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9.76 It is often the case that these trustees are the same and the Transfer is therefore an A to A transfer. In these circumstances, the Customer should be advised to produce and stamp a Letter of Direction as the £5 Stamp Duty will frank the SDRT charge which would otherwise be chargeable as the assumption of the pension liabilities is chargeable consideration for **SDRT** purposes. If the securities transferred are in dematerialised form in CREST and a letter of direction is prepared and stamped with £5 fixed duty so as to frank the Stamp Duty Reserve Tax charge the transaction in CREST may be certified using flag 5 so that no SDRT is charged. (See Chapter 11, paragraph 11.45.)

9.77 It makes no difference to the Stamp Duty position if the schemes involved are unapproved.

9.78 Following enquiries regarding mergers of or transfers between Pension Schemes we usually suggest a certificate is endorsed on the appropriate document to say that £5 fixed duty has been agreed as correct under the reference number of the file concerned. This enables the documents to be dealt with over the Public Counter. A copy of our letter suggesting this should be presented with the documents.

9.79 When land or an interest in land is transferred on the merger of funds the assumption of the obligation to provide pension benefits for the employees is not property or any other form of chargeable consideration and therefore Section 241 of the Finance Act 1994 **does not** apply. Any Land Transfer effecting this transaction will attract £5 fixed conveyance duty in the same way as a Stock Transfer.

Members (or employees) leaving a scheme?

9.80 It can happen that a member leaves the occupational scheme run by his/her employer and takes out a Personal Pension Scheme (PPS) for example when he/she changes job. When an employee leaves and takes out a PPS evidenced by a Policy Document the Trustees of the Occupational Scheme usually transfer assets to this PPS representing that share of the Occupational Scheme to which the individual was entitled.

9.81 The transferee (PPS) is assuming liability to pay pension rights to the individual as consideration for the transfer of the assets. This consideration is not chargeable. Section 57 of the Stamp Act 1891 does not apply and, if the asset transferred is land or an interest in land, the consideration does not amount to property and therefore Section 241 of the Finance Act 1994 cannot apply.

9.82 If the trustees of the employer's scheme and the PPS are the same, a Share Transfer is A to A. In these circumstances, the Customer should be advised to produce a Letter of Direction as the Stamp Duty will frank the SDRT charge which would otherwise be chargeable.

What if the Pension Fund Trustees/Managers invest the fund in a life policy?

9.83 If the whole fund (usually shares) is transferred to the Life Company in consideration of the issue of a Life Policy this consideration is not chargeable and fixed duty of £5 is due. If the Pension Fund Trustees and the Life Company Trustees are the same the transfer is A to A and the customer should be advised to produce a Letter of Direction as the Stamp Duty will frank the SDRT charge which would otherwise be chargeable. If the securities transferred are in dematerialised form in CREST and a letter of direction is prepared and

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stamped with £5 fixed duty so as to frank the Stamp Duty Reserve Tax charge the transaction in CREST may be certified using flag 5 so that no SDRT is charged. (See Chapter 11, paragraph 11.45.)

9.84 If land or an interest in land is transferred in consideration of the issue of a Life Policy then there is no sale as the consideration is not property. Section 241 of the Finance Act 1994 cannot apply.

Common Investment Arrangements (CIA)

What is a Common Investment Arrangement?

9.85 Companies in a group may each run a separate exempt approved Pension Scheme for their employees. The companies may choose to pool the assets of their schemes to form a common investment arrangement. An Agreement will be drawn up evidencing the participants and the terms on which the assets are managed and the benefits calculated. The assets are not made subject to trusts overriding those contained in the documents governing each individual scheme. The administrator of the CIA operates, at most, as a mere agent for the trustees of the participating schemes.

9.86 Each set of trustees transfer the assets of their Pension Fund into the new Common Investment Arrangement (CIA). Beneficial ownership of those assets must however remain with each respective set of trustees of the schemes participating otherwise each scheme's entitlement to investment income relief will be impaired.

9.87 As consideration, the trustees are issued or credited with units in the CIA which represent those assets transferred. The duty is £5 on such a transfer of assets.

Redemption of units in specie

9.88 If a Pension Scheme, now participating in this CIA, needs to realise assets in order to meet its liabilities ie to meet pension rights of its members, the CIA may make a redemption in specie to the Trustees of the Pension Scheme in exchange for the cancellation of the units held by those Trustees. This means the CIA will transfer assets to the Trustees of the Pension Scheme and the Trustees will render units, to the value of the assets, back to the CIA for cancellation.

9.89 There is no ad valorem duty chargeable on this transaction. Para 16 of Sch 19 to the Finance Act 1999 specifically excludes Common Investment Arrangements, made by trustees of exempt approved schemes, from the definition of unit trust schemes. The units issued by a CIA are not, therefore, stock and the consideration is not chargeable. The duty is £5 only, either on a Transfer of assets or a letter of direction. (A CIA would be a unit trust were it not for Para 16 of Sch 19 to the Finance Act 1999).

Land or an interest in land transferred

9.90 If land and/or an interest in land is transferred then the consideration will be the units in the CIA which are a type of property whose value can be ascertained. Duty will therefore be due under Section 241 of the Finance Act 1994 on the value of the units given as consideration.

Member leaving the CIA

9.91 When a member Pension Scheme withdraws from the CIA, the transfer of assets to the Trustees of the Pension Scheme will attract £5 only as no beneficial interest passes.

Pension Fund Pooling Schemes

9.92 The Stamp Duty and Stamp Duty Reserve Tax (Pension Fund Pooling Schemes) Regulations 1996 (SI 1996/1584) came into force in July 1996. They provide for unit trust schemes which qualify as Pension Fund Pooling Vehicles (PFPVs) under the Income Tax (Pension Funds Pooling Schemes) Regulations 1996 (SI 1996/1585) to be 'transparent' for tax purposes and not to be treated as unit trust schemes for Stamp Duty and SDRT purposes. A PFPV enables investors to both contribute and withdraw securities without a charge to ad valorem Stamp Duty. It treats units in schemes as not being stock for the purposes of Stamp Duty on transfers, or as chargeable securities for the purposes of SDRT.

9.93 When a PFPV is established it must seek Inland Revenue approval from Financial Institutions Division (FID) in London. Once approved, FID notify Stamp Taxes Technical Group Adviser who maintains a record of all such PFPVs.

The effect of the Regulations

9.94 Without the Regulations, these schemes would be treated as unit trust schemes, being collective investment vehicles under which property is held on trust for the participants. The Regulations mean that PFPVs are treated the same way as Common Investment Arrangements for Stamp Duty purposes.

Stamp Duty and SDRT on PFPV transactions

The contribution of cash or assets by the first investor

9.95 A contribution of cash is a subscription for units and does not give rise to any duty. A contribution of assets attracts £5 only since at this stage there is no change in beneficial ownership because the managers/trustees hold the contributed assets for one investor.

A Second or further investor respectively creates or joins the scheme, subscribing cash or contributing assets

9.96 Again, a subscription of cash gives no rise to Stamp Duty. Although it might be argued that his contribution of cash has given him some proportionate interest in the existing underlying securities there will have been no agreement for sale of an interest in chargeable securities and therefore no charge to SDRT

9.97 If the new investor contributes investments consisting of stocks and shares then his transfer of investments will be regarded as on their sale but since the consideration will be the issue of units, which because of the Regulations are not stock, then Section 55 of the Stamp Act 1891 will not apply and the transfer will be for a consideration which is not chargeable to ad valorem duty. Only fixed duty of £5 will be due. The stamping of transfers will frank the SDRT charge which arises under Section 87 of the Finance Act 1986.

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An investor leaves the scheme, taking cash for the redemption or cancellation of his units, or taking investments instead of cash

9.98 If units are redeemed or cancelled for cash then, since there will have been no transfer, or agreement to transfer, there will be no charge to Stamp Duty or SDRT. If the investor takes investments in the form of stocks and shares instead of cash then, although no duty will be payable on the redemption or cancellation of the units, the transfer to him of the underlying investments will be regarded as being on their sale. But, since the consideration will not be regarded as stock, and so not chargeable to ad valorem duty, the transfers of the underlying investments will attract only £5 fixed duty. Stamping the transfers will frank the charge to SDRT which arises under Section 87 of the Finance Act 1986.

An investor transfers units to another investor within the PFPV

9.99 These units are not chargeable securities for SDRT purposes and so any agreement for their sale will not give rise to a charge under Section 87 of the Finance Act 1986. Since the units are neither stock nor units under a unit trust scheme, any document transferring units on sale will attract ad valorem duty at either 1%, 2.5% or 3.5% and not 0.5% and a contract to sell such units not completed by a transfer document will attract ad valorem duty under the provisions of Para 7 of Sch 13 to the Finance Act 1999.

Exemption in relation to Employee Share Ownership Plans

9.100 An All-Employee Share Ownership Plan (AESOP) is a trust enabling employees the opportunity to purchase shares in their employer's company.

9.101 When shares are bought by employees through an approved AESOP trust, no ad valorem Stamp Duty is chargeable on any instrument transferring the shares from the trustees to the employee. Similarly, there is no SDRT charge on the agreement by the trustees to transfer shares to the employee (Finance Act 2000, Schedule 8, para 116A inserted by Section 95, Finance Act 2001).

Chapter 10: SDRT: an introduction

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Chapter 10: SDRT: an introduction

Overview

10.1 This Chapter is an introduction to the basic provisions for the application of Stamp Duty Reserve Tax (SDRT). It also includes an introduction to CREST and explains how SDRT is charged under that system.

Introduction to SDRT

10.2 Stamp Duty Reserve Tax on purchases of shares is an integral part of the overall Stamp Duty regime, running alongside the Stamp Duty charge on share transfers.

10.3 SDRT is a relatively new tax, first introduced in 1986. The main provisions are in FA 1986 and the supporting Regulations at SI 1986/1711. SDRT has grown in importance very significantly following the advent of CREST, and now accounts for the majority of the duties collected on share transactions. Most trades on the London Stock Exchange, and on other Exchanges such as virt-x (formerly Tradepoint), are now effected electronically through CREST without the need for stock transfer forms. This means that many fewer documents are presented to Stamp Taxes for stamping than before.

10.4 The principal charge to SDRT, under section 87 FA 1986, is on agreements to transfer 'chargeable securities' for consideration in money or money's worth. SDRT applies in place of Stamp Duty in cases where the agreement is not completed by a duly stamped instrument of transfer (ie by a stock transfer form stamped with ad valorem duty). The tax is charged at 0.5% on the amount of value of the consideration given for the transfer. Unlike Stamp Duty, there are no fixed duties under SDRT and it is not rounded up.

10.5 Chargeable securities, defined in section 99 FA 1986, includes shares in United Kingdom companies and shares in foreign companies having a register in the United Kingdom, together with interests in, rights arising out of and options to acquire shares. It also includes units in most unit trusts. Securities which are exempt from Stamp Duties, such as gilts and loan capital, are exempt from SDRT. There are also exemptions for charities and for certain transactions in the financial markets.

10.6 There is a special higher rate SDRT charge of 1.5% in relation to the issue or transfer of securities into depository receipt schemes and clearance services (described in Chapter 14).

10.7 Special rules for SDRT on unit trust transactions are applied as from 6 February 2000, under the provisions in Schedule 19 FA 1999 (described in Chapter 15).

10.8 The responsibility for paying SDRT to the Inland Revenue rests with the 'accountable person' as defined in the SDRT Regulations 1986 (SI 1986 No 1711). This is usually the broker acting for the purchaser of the shares. However the ultimate liability for the charge under section 87 rests with the purchaser, as indicated by section 91 FA 1986.

10.9 SDRT is a global tax, chargeable whether or not the transaction in question is made in the United Kingdom and whether or not any party is located in the United Kingdom. This was made explicit by section 86(4) FA 86.

10.10 SDRT is under the care and management of the Board of Inland Revenue (section 86(2) FA 1986). It is administered from SDRT Operations, Customer Service (Ground Floor, East Block, Barrington Road, Worthing, West Sussex, BN12 4SE). However, SDRT compliance inspections of CREST participants and other share dealers are carried out by SDRT Operations, Assurance, also based in Worthing.

Background

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10.11 SDRT was introduced from 27 October 1986, the time of 'Big Bang' when great changes were made to the way share trading is carried out on the London Stock Exchange. The new tax was designed to tax certain transactions where no Stamp Duty had been payable. At the same time the rate of Stamp Duty on shares was reduced from 1% to 0.5%.

10.12 The fundamental difference between Stamp Duty and SDRT is that Stamp Duty is charged on documents but SDRT applies to transactions. It follows that certain transactions which do not involve a document became chargeable to SDRT. Examples of transactions which became chargeable to SDRT include sub-sales within Stock Exchange accounts and purchases of existing renounceable letters of allotment.

10.13 Some years after 1986 there were moves to change the basis of settlement from 'accounts' to a fixed number of days after the trade date (T +10 for example), known as 'rolling settlement'; and to move from certificated to dematerialised (electronic) share ownership. This work bore fruit with the advent of CREST, which - after a transitional period - replaced the previous paper-based TALISMAN system in April 1997. The standard settlement period on the London Stock Exchange has been progressively reduced and is now typically 5 business days after trade date, or T + 5.

10.14 Although it is common for SDRT to arise on transactions outside CREST (as discussed later on), it is fair to say both that CREST is at the heart of the administration of SDRT and that understanding what it does and how it works is vital to Stamp Taxes. So it makes sense, in this introductory Chapter, to introduce CREST at some length to set the scene.

SDRT on CREST transactions

Overview

10.15 CREST is a settlement system which enables stocks and shares to be held, transferred and settled in dematerialised form by means of electronic messages. It started operating in July 1996.

10.16 CREST is a settlement system. It is not a trading exchange, a custodian or a clearance service. Over £1,800bn of stock, representing about 80% of the value of all UK listed companies, is now held in CREST. Our main interest in it is that most SDRT is now paid through CREST.

10.17 In order for CREST to be able to hold and settle share transactions in dematerialised form (ie without there being share certificates or stock transfer forms) new company law regulations were required. These are in the Uncertificated Shares Regulations (SI 1995 No 3272). They provide, in particular, for 'operators' of 'relevant (computer) systems' to be approved by the Treasury to carry this out. CREST is an approved Operator.

What CREST does

10.18 The main things CREST does are:

- to enable shares to be held in de-materialised form and to be transferred electronically in real time without certificates or paper transfers;
- to arrange for shares to be delivered against payment;
- to operate automatic direct links with company registrars;

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- to enable transactions to be reported to regulators (eg the London Stock Exchange);
- to collect SDRT in accordance with procedures agreed with Stamp Taxes; and
- CREST facilitates transactions in certificated form through its Courier and Sorting Service (but does not collect Stamp Duty on such transactions);

10.19 There are many thousands of deals every day, and buyers want certainty that the shares they have agreed to buy are delivered without delay. Similarly sellers want to be sure that they will receive prompt payment for the shares sold. The CREST settlement system ensures that both parties to every transaction can be satisfied, because under arrangements agreed between CREST and payment banks, payment is guaranteed for securities delivered through CREST. This means that CREST settlement ensures effective delivery-versus-payment.

How CREST works

10.20 CREST depends on the involvement of its users (the bodies with the ability to communicate with CREST) and participants. Participants include:

- Members who are holders of securities in CREST and who can authorise the making and receiving of payments. Securities in CREST are held in the member's name under one or more numbered accounts or sub-accounts particular to the member,
- Sponsored members who are corporate or individual investors who hold securities within CREST but depend on a sponsoring user to communicate electronically with CREST,
- Registrars who keep the register of securities in the company concerned which are settled in CREST, and
- Payment banks who make and receive payments for CREST members.

10.21 The CREST operation involves the passing of information electronically to and from the CREST operator at the centre and members, registrars and banks. All communication between CREST and its users is electronic, and is secure and authenticated. CREST keeps records of shares held by its members and provides company registrars with access to its records.

10.22 CREST also receives data from other CREST participants ('information providers') and provides details to regulatory organisations, in particular the London Stock Exchange, virt-x (formerly Tradepoint), LIFFE, and the Financial Services Authority. CREST also provides information to Stamp Taxes and to the Irish Revenue authorities.

10.23 CREST arranges settlement of deals between CREST members. The settlement process starts with the buyer and the seller (or the stockbrokers etc. acting on their behalf) sending electronic instructions to CREST as soon as possible after their deal.

10.24 In the case of a straightforward sale from one member to another, CREST will compare the details, in particular the agreed date of settlement, to check they are complete and identical. If so, the transaction is given 'matched' status. If not, the transaction is 'unmatched'. This means that it cannot be settled, and it is left in the system up to 60 days for both parties to see and to 'match' their details. Once a transaction is matched, CREST waits until the intended settlement date and, provided that everything else is in order, checks that the seller has enough stock to deliver and the buyer has adequate credit available to pay. If so, the transaction is settled accordingly.

10.25 The standard transaction for moving stock and cash between CREST members is the 'delivery', known as DEL, which would be used for a straightforward sale from one person to another. But there are many types of CREST transaction, each with a three-letter CREST code, some of which require 'matching' whilst others, being single input transactions, such as an 'own account transfer' (an OAT), do not need to be matched. One example of where an OAT is used is an agency cross where the same nominee account is used by both parties to the trade. Details of other CREST transaction types are set out in the CREST publications.

CREST and SDRT

10.26 CREST calculates, collects and accounts for SDRT on the basis of the inputs made by its participants. Note that there is no SDRT equivalent of the fixed rate of Stamp Duty.

10.27 The SDRT Regulations ensure that CREST, as an operator of such an electronic system, is liable to collect and pay SDRT incurred in connection with chargeable transactions. Inserted Regulation 4A in the 1986 Regulations governs these procedures.

10.28 Detailed procedures about the way SDRT operates in CREST are set out in the CREST Reference and Procedures and Guidance Manual (which has effect under Regulation 4A as part of the arrangements between CREST and the Inland Revenue). One of the most useful CREST publications is the 'blue book' published in September 1999 setting out 'market norms' about how users should make their CREST inputs.

10.29 Most statutory exemptions from SDRT are available automatically through CREST. This happens when the relevant CREST participant specifies in the details for the transaction concerned one of a number of markers, called 'Transaction Stamp Status (TSS) flags' or 'exception flags'. Each flag consists of a single capital letter, or a number.

10.30 The main ones are:

- O - no SDRT liability, transfer to/from nominee, with no change of beneficial owner (or transfer between nominees of the same beneficial owner),
- P - 0.5% ad valorem SDRT
- R - 1.5% ad valorem SDRT
- S - no SDRT liability, transfer to exempt charity
- T - no SDRT liability, SDRT paid inside CREST on another CREST transaction
- U - no SDRT liability, Stamp Duty paid outside CREST on a physical document (including form 169); or SDRT paid (or to be paid) outside CREST on corporate action
- W - no SDRT liability, issuing house exemption on new issue
- 3 - no SDRT liability, intra-group transfer, a letter of direction having been executed
- 4 - no SDRT liability, stock loan return or transfer of DBV collateral relating to loans
- 5 - no SDRT liability, letter of direction having been executed (including pension scheme mergers, purchase of life insurance policies and transfers by way of security for loans)
- 6 - no SDRT liability, authorised unit trust merger or authorised unit trust/OEIC conversion/amalgamation
- 7 - no SDRT liability, stamp liable outside UK

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10.31 The participant concerned will need to keep evidence to support the exception flag and may be required to produce such evidence (for example, if called upon to do so during a Stamp Taxes inspection).

10.32 Exceptionally, a transaction falling within a statutory exemption will not fit within one of the available flags. In such cases customers may either use a paper transfer instead of settling the transaction through CREST (if it is the case that under the Stamp Duty rules such a paper transfer will attract only fixed duty) or seek an SDRT repayment after the event. TSS Flag 5, introduced in October 1998, considerably reduced the range of circumstances in which this state of affairs applies.

10.33 As well as entering transactions that require a transfer of securities in CREST, participants frequently input non-settling transactions, in order to make reports for regulatory purposes to the relevant exchange, using OATs. An example is an agency cross. Any SDRT liability on such transactions should be picked up in CREST.
Example to show the progress of a trade through CREST

10.34(1). A deal is agreed between CREST participants (either in SETS - the Stock Exchange's computer trading system - or over the telephone etc). The transaction is the sale by investor A to investor B of 10,000 ABC plc shares for a consideration of £50,000. The shares are shown in the ABC plc register as held by A and are recorded in A's CREST stock account. The date of the deal is called the trade date (T).

10.34(2). Details of the agreed transaction are sent to CREST separately by each participant. These details include the consideration to be used for SDRT purposes and any necessary TSS flags, and enable CREST to identify from whom to deduct any SDRT.

10.34(3). CREST checks the details received from each participant, one against the other, and, if the details match, creates a matched bargain. CREST notes in particular the settlement day agreed by the parties.

10.34(4). On settlement day

- CREST checks that A has sufficient stock in the CREST stock account and that B has enough credit in its Cash Memorandum Account (CMA) (a CMA is held by CREST for each member and shows the cash payments and receipts arising during the day).
- The stock is moved from A's account to B's account, the guaranteed payment obligations are recorded in the CMAs and CREST sends a register update request (RUR) to the registrar, who amends the register within two hours.
- CREST sends instructions to the bank to make payment and, at the end of the day, all the banks concerned settle with each other outside CREST.

10.34(5). Unless an exemption from SDRT applies, CREST deducts SDRT of £250 (being 0.5% of £50,000) on settlement day, or 10 days after the trade date (T + 10), whichever is the earlier - as provided for in the CREST Reference Manual.

10.34(6). CREST pays the SDRT to us. CREST also provides SDRT Operations, Customer Service with a datafeed with full transaction details on a daily basis.

10.35 SDRT Operations, Customer Service uses the CREST database:

- to verify consistency, in particular that CREST have paid us correctly;

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- in connection with repayment claims, to check - in conjunction with sampling procedures - that SDRT was paid and has not been repaid; and
- to provide support information to the SDRT Operations, Assurance .

Interface between share holdings in CREST and paper certificates

10.36 Not all shares which are capable of being held in CREST are actually held there, as any investor who wishes may hold them in certificated form. Furthermore, many shares (mainly in smaller companies) are not yet able to be settled in CREST. These shares are called 'residual securities'.

10.37 Section 186 FA 1996 has the effect that Stamp Duty is not chargeable on an instrument effecting a transfer of securities if the transferee is a member of CREST and the instrument is in a form which will, in accordance with the rules of the CREST system, ensure that the securities are changed from being held in a certificated form to being held in an uncertificated form so title to them may become transferable in CREST. Accordingly, transfers in the appropriate form (ie CREST transfer forms) are exempt from Stamp Duty.

10.38 This process is called dematerialisation, and does not of itself give rise to SDRT. But where shares held in certificated form are transferred to another person for consideration and dematerialised into CREST at the same time then there is an SDRT liability (although the exemption from Stamp Duty still applies). Though clearly there is no SDRT if the transfer is just to a CREST nominee of the person holding the certificate.

10.39 It is also possible to withdraw securities from CREST and revert to holding them in paper form, using a STW transaction. This process is called re-materialisation. There is no SDRT here either, provided the transaction involves no change of beneficial ownership. But where, exceptionally, an STW supports a market trade then SDRT is accounted for.

10.40 The operator of an electronic transfer system may choose to accept transfers other than in the prescribed form. These remain liable to Stamp Duty and may be capable of cancelling an SDRT charge.

SDRT paid outside CREST

10.41 There are various situations where SDRT is accounted for outside CREST. Such transactions are sometimes referred to as 'off-market', though strictly this term is apt only to those transactions that do not take place on a regulated Exchange.

10.42 One example is where there is a rapid turnover of residual stocks and stock transfer forms are not stamped in respect of each transaction. Another type of transaction which is common outside CREST is the 'agency cross' in cases where residual securities are involved.

10.43 More generally, if securities are registered in the name of a nominee and the beneficial interest is sold to a person using the same nominee so that the legal title remains unchanged, a charge to SDRT will arise unless the written instructions from the vendor to nominee instructing him to hold the shares as nominee for the purchaser constitutes a letter of direction and has been duly stamped as a conveyance on sale. This situation arises

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frequently within the discretionary nominees operated by many qualified brokers and qualified dealers, who will then be accountable for any such SDRT arising.

10.44 Where SDRT cannot be accounted for through CREST, the tax is payable by the seventh day of the month following the month in which the transaction takes place.

Chapter 11: SDRT: the principal charge

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Chapter 11: SDRT: the principal charge

Overview

11.1 This Chapter covers the provisions for the application, payment and collection of SDRT in detail, following on from the information in Chapter 10.

Introduction

11.2 The principal charge to SDRT in section 87 FA 1986 applies 'where a person (A) agrees with another person (B) to transfer chargeable securities for consideration in money or money's worth'. But it does not apply if there is an instrument of transfer which is either duly stamped or exempt from Stamp Duty (and section 92 applies).

11.3 The charge arises on the 'relevant day', which is when the agreement is made. If the agreement is conditional then the charge arises when the condition or conditions are satisfied (section 87(3)). The amount of the tax is 0.5% of the consideration given, calculated to the nearest penny.

Chargeable securities

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11.4 As a broad generalisation, securities are chargeable securities for SDRT purposes if transfers of them would normally attract Stamp Duty. So, for example, shares in companies incorporated in the United Kingdom (or which have a register here) are chargeable securities, but securities which are exempt from all Stamp Duties are not.

11.5 Although the scope of 'chargeable securities' has much in common with that of 'stock and marketable securities' (to which the 0.5% Stamp Duty charge applies), there are some differences. One of the main differences is that various rights relating to securities are themselves treated as chargeable securities. For example, although a sale of renounceable letters of allotment or acceptance would not normally be chargeable to Stamp Duty, renounceable letters are chargeable securities for SDRT purposes.

11.6 The definition of chargeable securities is in section 99 FA 1986. Various additions have been made to this definition since it was originally enacted, but it is worth grappling with as much as can be learned about the structure of the tax from this section.

11.7 Subject to certain exceptions, 'Chargeable securities' includes:

- a. Stocks, shares and loan capital ('securities') issued or raised by bodies incorporated in the United Kingdom (section 99(3)(a)).
- b. Certain rights or interests relating to such securities, being
 - interests in the securities themselves and interests in dividends or other rights arising out of securities (section 99(3)(b)), and
 - rights to allotments of or to subscribe for securities, (eg renounceable letters of allotment or acceptance) and options to acquire securities (section 99(3)(c)).
- c. Securities issued or raised by bodies incorporated outside the United Kingdom but registered in a register in the United Kingdom (section 99(4)(a)), and rights and interests relating to such securities (section 99(4)(c)).
- d. Any interests or rights issued by bodies incorporated in the United Kingdom where the securities to which the rights relate are not themselves chargeable securities (section 99(3)(b) and (c)).
- e. Shares issued by a body incorporated outside the United Kingdom which are paired with shares issued by a body incorporated in the United Kingdom (section 99(4)(b)) and rights and interests relating to such shares (section 99(4)(c)).
- f. Units under unit trust schemes (section 99(3)(d), though see also new sections 99(5A) and (5B) discussed in more detail below).

11.8 The exceptions include:

- a. Securities the transfer of which is exempt from all stamp duties, and rights and interests relating to such securities (section 99(5)). In particular exempt loan capital to which section 79(4) FA 1986 applies is outside the scope of SDRT for this reason.
- b. Interests in depositary receipts (section 99(6)), reflecting the fact that a higher rate charge is incurred when shares are transferred to a depositary.

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c. Section 90(7) FA 1986 ensures that purchases of shares by charities are exempt from SDRT.

d. UK Depositary Interests in foreign securities satisfying the conditions in the regulations at SI 1999/2383.

e. Loan Capital where the return bears an inverse relationship to results. Section 133 Finance Act 2000 applies.

Consideration

11.9 Where payment is made other than in money - eg by way of shares or other property - the SDRT charge is calculated on the basis of the market value of the consideration at the time the agreement was made (section 87(7)).

11.10 Where the consideration for chargeable securities is foreign currency, this is to be converted to sterling SDRT on the basis of the rate of exchange applicable at the time of the agreement (as published in Financial Times on the following day).

11.11 If the transaction occurs in CREST then it is acceptable for the previous day's closing rate to be used, provided that whatever practice is adopted is used consistently. It should be noted that in CREST the stampable consideration must be entered in sterling.

11.12 SDRT is chargeable on all consideration in money or money's worth, which is very different from Stamp Duty (where chargeable consideration consists only of money, stock or marketable securities and debts). One consequence of this is that the Stamp Duty contingency principle (under which a prima facie or maximum sum may be taken as the consideration) does not apply to SDRT. Furthermore, if there is uncertainty about what the amount of the consideration will be (for example in the case of an earn-out, where a business is sold for a consideration partly depending on future profits) then a fair estimate should be made on the basis of expectations at the time of the agreement.

11.13 However, the value of any monetary consideration is not to be discounted to reflect notional interest on delayed payment. Neither do we accept the argument that something given as consideration has no value just because the agreement prohibits its subsequently being assigned. This is because such restrictions on transfer are ignored for the purposes of the hypothetical sale in the open market (where the question is what a purchaser would pay to stand in the shoes of the assignor).

Agreement to transfer

11.14 SDRT is charged on an agreement to transfer chargeable securities whether the agreement is oral or in writing and whether or not the agreement has been completed.

11.15 If the agreement is completed by an instrument of transfer which is duly stamped then the SDRT charge is cancelled to the extent that SDRT has not already been paid (section 92(3) Finance Act 1986). Any SDRT which had been paid is repayable, provided that a claim for repayment is made within a period of six years from the date of the agreement to transfer or, if the agreement was conditional, the date the condition was satisfied (section 92(2)).

11.16 If A agrees to sell securities to a purchaser (B) who then agrees to sell them to another person (C) (a sub-purchaser) before B's purchase has been completed, then there are potentially two charges to SDRT. If a paper transfer of the securities is made directly from A to C and is duly stamped it cancels only the SDRT on the agreement for the transfer to C. The purchase by the original buyer, B, will still give rise to a charge to SDRT. In other words, there is no 'sub-sale relief' under the SDRT legislation.

11.17 Such dealing sequences can arise both within CREST (where typically two SDRT charges will be paid) or with residual securities. In the latter case it should be borne in mind that section 67 Finance Act 1963 prohibits circulation of blank stock transfer forms (not showing the name of the transferee). Where however a purchaser sells securities before the delivery of the stock transfer form the securities transferred can be delivered direct from the original vendor to C, with SDRT being paid by B and Stamp Duty being payable only on the consideration paid by the sub-purchaser C.

Payment arrangements and accountable persons

11.18 The material which follows here is an overview. Chapter 13 provides more detail.

11.19 The 'accountable person' is the person responsible for accounting for the SDRT, and is usually an exchange member, or failing that a qualified dealer.

11.20 The definition in regulation 2 of SI 1986/1711 sets out the order of priority:

- (a) the exchange member (if any) buying the stock for his client
- (b) the exchange member (if any) acting for the seller
- (c) the qualified dealer (if any) buying stock for his client
- (d) the qualified dealer (if any) acting for the seller
- (e) the buyer himself

11.21 If the SDRT is not accounted for through CREST, the accountable person will be responsible for paying the tax to SDRT Operations, Worthing. In such cases regulation 2 provides for the accountable person to give notice, and pay the tax, seven days after the end of the month in which the charge arose.

11.22 An exception to this is where (for example on an offer for sale) the seller undertakes to pay the tax, having entered into an agreement with us under Regulation 4, but this is a less common practice than it used to be.

When the tax has to be paid

11.23 For agreements to transfer securities which are conditional and the condition is satisfied on or after 1 July 1996, or agreements which are not conditional are made on or after that date, the charge arises on the date the agreement is made or becomes unconditional. For transfers on or after 20 October 1997 the tax is due seven days after the end of the month in which the charge arises unless the tax has been accounted for through CREST.

11.24 Interest is charged on tax paid late. If the transaction could have been reported to a regulator through CREST (and the tax paid at the same time), but this was not done, then interest is chargeable from 14 days after the relevant transaction. However, you should not

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seek interest, in relation to securities held outside CREST, if a duly stamped instrument or transfer is produced by the accountable date, or 60 days after the agreement to transfer securities, whichever is the later.

Instalment arrangements

11.25 Where shares sold are to be paid for over a period of time, special provision may be made to enable the purchasers to sell freely without prejudicing the interest of the seller. An arrangement of this kind typically involves an agreement between the seller and a custodian bank to which the purchaser is also a party. Under the terms of the agreement the shares concerned will be registered in the name of and retained by the custodian bank until the instalments have been paid. A purchaser's rights and obligations in relation to the shares (ie his interim rights) are evidenced by letters of acceptance (which are renounceable for a limited period) and interim certificates issued by the custodian bank.

11.26 Where these circumstances apply the agreement between the vendor and the purchaser gives rise to an SDRT charge. In practice this charge is often borne by the vendor. Sales of the letters of acceptance, during the renunciation period, also give rise to an SDRT charge. Where after the renunciation period, the letters of acceptance become registered documents and the shares are transferred by a stock transfer form, SDRT will only arise if Stamp Duty is not paid.

11.27 The issue of interim certificates (when the acceptance letters are surrendered) does not give rise to a charge under section 87. When interim certificates are transferred by stock transfer form, a charge to SDRT arises only if Stamp Duty is not paid.

11.28 When the final instalment is paid, the shares are transferred from the custodian bank to the shareholder and a charge to fixed duty arises on each transfer. There is no corresponding charge to SDRT if effected via an electronic transfer system.

Unit trusts and OEICs

Main rules

11.29 Although units in most unit trusts are chargeable securities by virtue of section 99(3)(d), section 90(1) (as amended from 6 February 2000 by Schedule 19 FA 1999) prevents there being an SDRT charge on transfers of units under a unit trust scheme to or from the managers of the scheme, leaving the way clear for the SDRT regime contained in Schedule 19 FA 1999. Most transfers of units directly between unit holders will be reported to the manager and will also fall within the Schedule 19 regime, described in Chapter 15. But where, for example, such a transfer is made within a common nominee it is liable to the section 87 SDRT charge. The issue of new units by a manager is not a transfer of securities.

11.30 Units in foreign unit trusts are not chargeable securities by virtue of section 99(5A)(a). A foreign unit trust is one where all the trustees are resident abroad and the units are not registered in a register kept in the United Kingdom by or on behalf of the trustees.

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11.31 Units in unit trusts which hold only exempt investments, as defined in section 99(5B) are also excluded from the scope of chargeable securities. This provision supersedes and extends the relief previously provided by section 101 FA 1980.

11.32 Following Section 152 of the Finance Act 1995, Regulations were made (SI 1997/1156) under which OEICs are treated in broadly the same way as authorised unit trusts for SDRT (and Stamp Duty) purposes. These have since been added to by SI 1999/3261, which replicate the Schedule 19 regime for oeics.

Mergers etc

11.33 For agreements made before 19 March 1997 (or after 30 June 1999) particular care is needed where either mergers or take-overs of unit trusts occur. Depending on the circumstances a variety of Stamp Duty and SDRT consequences can arise and you should seek specific advice.

11.34 Subject to certain conditions, however, Section 100 of the Finance Act 1997 relieves from SDRT agreements made (or, if conditional, where the condition is satisfied) on or after 19 March 1997 and before 1 July 1999 for the transfer of chargeable securities between the trustees of merging authorised unit trusts.

11.35 The temporary relief from SDRT under Section 100 of the Finance Act 1997 for agreements on the merger of authorised unit trusts is supplemented by a temporary relief given under Section 101 of the Finance Act 1997. This additional relief applies where the trustees of two unit trusts are the same, but instead of a transfer of securities there is merely a direction by the holders of units in the absorbed trust to the trustees of the continuing trust to hold the property of the absorbed trust as trustees of the continuing trust.

11.36 Regulation 8 of SI 1997/1156 provides a permanent exemption from SDRT where an authorised unit trust is converted to an OEIC. Regulation 10 provides a similar, temporary, exemption where an authorised unit trust is amalgamated with an OEIC. The relief in regulation 10 has since been extended by SI 1999/1467, but as stated in the Press Release of 26 May 1999 the relief will be withdrawn one year after the coming into force of Treasury regulations allowing the formation of a wider class of OEIC.

11.37 CREST Transaction Stamp Status Flag 6 was introduced from 19 October 1998 to cater for the various exemptions for unit trust and OEIC mergers in cases where the movements are made in CREST. Letters of direction are not required as there are specific SDRT exemptions in legislation. However, if transfers in connection with such mergers are carried out on paper, the reliefs are subject to adjudication.

Bearer instruments

11.38 Bearer instruments liable to bearer instrument duty are normally excluded from the charge to SDRT (Section 90(3)). Renounceable letters of allotment and acceptance, which are exempt from bearer instrument duty, are liable to SDRT.

11.39 However, sections 90(3A)-(3F) charge to SDRT agreements to transfer securities constituted by bearer instruments which are otherwise exempt from Stamp Duty and issued after 26 November 1996 in certain circumstances. But they do not charge documents transferring listed bearer securities unless the transfer was made in connection with an arrangement for the take-over of the body corporate which issued the bearer instruments.

11.40 These provisions are separate from those concerning the 1.5% charges, discussed in Chapter 14, paragraph 14.45.

Depository receipts and clearance services

11.41 Agreements to transfer securities which are liable to either the depository receipt charge or the clearance service charge are excluded from the principal charge. Purchases of depository receipts and of securities held within a clearance system by a nominee whose business is exclusively that of holding securities for a person providing a clearance service are also excluded from the principal charge (Section 90 and Section 99). Chapter 14 provides more detail.

Traded options and futures

11.42 SDRT does not in practice arise on options or futures dealt in on LIFFE where dealing takes the form of traded put or call options, as they do not run to delivery but are instead closed out by the writing of an equal and opposite contract. The writing or grant of such an option does not constitute a transfer. The exercise of an option may give rise to SDRT, subject to what is said in Chapter 12, paragraph 12.17, if there is no stamped share transfer.

UK depository interests in foreign securities

11.43 A depository interest is a UK security which enables trading in non-UK incorporated and registered shares to be settled by approved operators of electronic systems within the UK. Depository interests are necessary because operators can only settle UK securities under the terms of the Uncertificated Securities Regulations 1995. So depository interests, issued against the foreign shares, are traded and settled instead of the shares themselves.

11.44 There is no SDRT charge on paperless transfers of non-UK incorporated or registered shares, but transfers of UK securities are generally liable to SDRT. Section 119 Finance Act 1999 and SI1999/2383 (as amended by SI2000/1871) allow depository interests, which are essentially a wrapper around the foreign shares, to be regarded as non-chargeable securities and therefore exempt from SDRT if, and only if, the underlying securities are:

- Shares in a foreign company - that is, a company which is neither incorporated in the UK nor centrally managed and controlled in the UK;
- Shares in a foreign company not held on a register in the UK;
- Of the same class in the company concerned, as shares that are listed on a stock exchange recognised under Section 841 Taxes Act 1988; and
- Not units or shares in a collective investment scheme.

Exemption in relation to Employee Share Ownership Plans

11.45 An All-Employee Share Ownership Plan (AESOP) is a trust enabling employees the opportunity to purchase shares in their employer's company.

11.46 When shares are bought by employees through an approved AESOP trust, no ad valorem Stamp Duty is chargeable on any instrument transferring the shares from the trustees to the employee. Similarly, there is no SDRT charge on the agreement by the

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trustees to transfer shares to the employee (Finance Act 2000, Schedule 8, para 116A inserted by Section 95, Finance Act 2001).

Interaction with Stamp Duty in cases where fixed duty applicable

Background

11.47 There are quite a number of situations involving the transfer of shares where a fixed Stamp Duty charge can cancel an SDRT charge. The reason for this difference in the scope between the two taxes is that ad valorem Stamp Duty only bites on consideration in the form of cash, debt or securities, whereas SDRT bites on any money's worth consideration (and there is no equivalent of fixed duty in SDRT). So, if conveyances in such situations are effected on paper rather than in dematerialised form, only the fixed duty need be paid.

11.48 The situations concerned with which you will probably be most familiar are pension scheme mergers (where the consideration for the shares is the taking on of an obligation to pay benefits) and life insurance policies (where securities are transferred by way of the premiums for the purchase of a policy). See for example, the guidance on pension scheme transactions elsewhere in Chapter 9 of this Manual.

11.49 Chapter 9 mentions the use of a letter of direction to get around this problem in cases where the securities did not actually need to move in CREST (eg because the same trustee acts for both pension schemes and so there is no change in legal owner). In principle a letter of direction can also be used where there is a change of legal owner, and the document stamped with fixed duty would then frank the normal SDRT charge in CREST.

Transaction Stamp Status Flag 5

11.50 CREST TSS Flag 5 was created to facilitate this process in October 1998. This solved practical problems for CREST participants - who had previously needed to re-materialise the securities involved, make the transfers using stock transfer forms, and then dematerialise the securities back into CREST. The procedures were later relaxed in February 1999 and the present position is reflected in the September 1999 blue book.

11.51 The flag caters for various situations in which a letter of direction has been executed and is in due course stamped with fixed duty. The main situations involved are pension scheme mergers, insurance policies and transfers of securities subject to a mortgage. The article set out details of the procedure that it is expected people will follow and provides indicative draft letters of direction for the three most commonly expected cases.

11.48 Because of the tight time scales that customers will normally be working to, it is likely that most of these letters of direction will be brought to the London Stamp Office for stamping over the counter.

11.49 The indicative draft letters provided in the CREST Newsletter article (which set out the nature of the circumstances involved and specifically indicate that TSS flag 5 is to be used) should assist you and customers to handle this with confidence.

11.50 The main points to note are that the letter of direction must:

- be the legal instrument which effects the transfer

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- be executed before the CREST transfers settle
- be presented within 30 days of execution, and
- the accountable person should ensure either that the letter contains details of the securities being transferred, the consideration and the CREST transaction identifier (the CREST ID) (if desired in a Schedule attached to the letter) or that he has an audit trail between the stamped letters and the CREST IDs concerned.

11.51 The letter should normally be addressed to, and countersigned by, the transferee. Note that we accept that if there is one overall transaction (under which, for example, 100 lines of stock are transferred for the issue of an insurance policy) then we need only look for one amount of fixed duty.

Chapter 12: SDRT: financial market issues

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Chapter 12: SDRT: financial market issues

Overview

12.1 This Chapter covers the various equity market exemptions and specific reliefs from SDRT. It contains details of some common types of transaction where SDRT can apply in the day to day operations of qualified brokers and dealers.

Introduction

12.2 Ever since the inception of SDRT there have been specific reliefs to reflect the operation and structure of the equity markets. Typically these also extend to Stamp Duty. Just as SDRT was originally introduced at a time of great change in the City, subsequent changes in the structure of the financial markets have also led to various changes in the Stamp Duty and SDRT regime.

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12.3 In 1986, there was a relief for market makers on purchases made as principal in the ordinary course of their business and a similar relief for broker dealers selling stock within 7 days of buying it. Both these were aimed at facilitating the role such 'intermediaries' on the London Stock Exchange performed in providing liquidity to the market. A comparable relief was introduced in 1992 for LIFFE traders, limited in scope by reference to the extent of their need to buy stock in order to hedge options transactions.

12.4 There has also been a relief for stock lending transactions for many years. Stock lending is a mechanism which contributes to market liquidity by enabling market participants to enter into obligations to sell stock they do not have. The point is that at short notice it is often more convenient for them to borrow the stock they need from a long term holder of the stock (such as a pension fund) to make the delivery on the sale rather than to buy it in the market. The borrower can then buy the stock at their leisure and use that stock to return stock to the lender. Until recently this relief was available only when the borrower was a market maker who needed the stock to meet a sale. The relief now extends to all stock lending and to repurchase arrangements (repos).

12.5 The most recent upheaval (other than the advent of CREST) took place on 20 October 1997 as a result of the introduction of the 'Stock Exchange Trading System' (SETS) order book on the London Stock Exchange. As a result of this development any market participant can enter buy or sell orders into a central Stock Exchange computer which matches them up automatically. Tradepoint (now called virt-x), a rival to the Stock Exchange in this area, had also just started operating an order book of this kind. As a result of this change in market structure, the Stamp Duty and SDRT reliefs for market makers, broker dealers and stock lending were replaced by a new set of reliefs, comprising intermediary relief and a combined stock lending/repo relief.

Relief for recognised intermediaries

12.6 The old reliefs for Stock Exchange market makers and broker-dealers were repealed on 20 October 1997 and replaced by a single new relief for purchases made by 'recognised intermediaries'. The legislation is in section 88A FA 1986 (the parallel Stamp Duty provision being in section 80A).

12.7 To qualify as a 'recognised intermediary' a person has to be a member of an Exchange and to be 'recognised' as an intermediary by the relevant exchange in accordance with arrangements approved by the Inland Revenue. The Exchanges concerned can include any stock market in an EEA state, or other recognised foreign exchanges or foreign options exchanges. At present such arrangements are in place for the London Stock Exchange, virt-x, LIFFE, OMLX, NASDAQ Europe and JIWAY.

12.8 The relief applies to all purchases made by a recognised intermediary on the Exchange by which that intermediary is recognised, but not to any purchases made elsewhere. Equally the relief applies only to purchase of stocks that are regularly traded on the Exchange. Both these conditions flow from the purpose of the relief, which is to facilitate liquidity on Exchanges.

12.9 We consider 'regularly traded' means a security listed or admitted to trading which fall within the Article 21 of the Investment Services Directive except for the caveat for illiquid securities. We accept that any security just admitted to listing, or admitted to trading, by an exchange with which the Inland Revenue has entered into arrangements, is regularly traded. The point is that we are satisfied that the rules and infrastructure would

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provide a mechanism for transactions in that security to be regularly carried out under its oversight and subject to its rules of conduct, trade publication and transparency. However, it is to be noted that the term 'regularly traded' does not embrace the carve out for illiquid stocks in Article 21 of the Investment Services Directive.

12.10 The other main condition in the legislation is aimed at ensuring that the relief does not become available to end investors as opposed to market intermediaries. So, an intermediary is defined as a person who carries on a bona fide business of dealing in stock and does not carry on an 'excluded business'. Investment managers, persons connected with bona fide dealers, insurance businesses, pension scheme trustees and other collective investment schemes are all excluded from the new relief by virtue of their business. It is important to note that if any excluded business is carried on then the whole of the activity of the person concerned is disqualified from intermediary relief. It is all or nothing.

12.11 In a Parliamentary Answer on 21 March 1997 the then Economic Secretary to the Treasury explained in more detail how the Revenue interprets the terms 'intermediary' and 'excluded business'. The Ministerial Question and Answer are reproduced in the Appendix to this Chapter. You should not look to exclude businesses by an over-restrictive interpretation of the legislation, for example the provision of secretarial services. You should not argue that activity purely in securities that are exempt from SDRT, or that investment transactions in shares which are not traded on an Exchange (such as those in wholly owned subsidiaries) are capable of imperilling intermediary status.

12.12 A number of enquiries have been received about the nature of the requirement that the intermediary be carrying on a business of dealing in stock (which has to be satisfied before one turns to the question of whether there is any excluded business). Whilst one might normally expect an intermediary to engage in at least some client business (as opposed to only conducting proprietary, or 'own account' trading) this is not a specific requirement. Any trading activity in stock that would be within the scope of Case I Schedule D (or would be were it carried on in the United Kingdom) is likely to meet this initial test. However if you become aware of any activity being carried on that appears to be aimed at avoidance of Stamp Duty or SDRT you should seek advice, as it is possible this might raise questions about the appropriateness of the firm's intermediary status.

12.13 In this context there is sometimes confusion about the nature of 'prime brokerage' - something referred to in the Ministerial Question and Answer. There seems to be no standard definition of this term, so if you come across it you will first need to establish exactly what is meant. From our point of view the key thing is whether it is the provider of this service or the client who has the beneficial ownership of the shares (or - directly or indirectly - the risks and rewards of ownership of those shares). If the client has the effective ownership then clearly we would seek to secure SDRT on the purchases.

12.14 Under the arrangements with the various Exchanges, the Exchanges concerned forward to Stamp Taxes details of persons who self certify as intermediaries after reviewing the relevant legislation and relevant guidance. Such persons should not, in particular, be operating a depositary receipt scheme or a clearance service. Any cases of doubt may be referred direct or via the Exchange to Stamp Taxes. The list of members who self-certify and which the Exchange recognises as intermediaries is provided to SDRT Operations, Customer Service, Worthing, to CREST, Euroclear, SegalInterSettle and to JIWAY, in accordance with the following arrangements.

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12.15 Additions and deletions to the list of recognised intermediaries are notified by the Exchange concerned to Stamp Taxes. As soon as Stamp Taxes has authorised the change, Stamp Taxes forwards the details to CREST, Euroclear, SegalInterSettle and JIWAY as appropriate. The relevant system then sets up the accounts to be used in such a way that intermediary relief is applied to on-Exchange transactions passed through them.

LIFFE Members

12.16 Since 20 October 1997 LIFFE intermediaries have been entitled to relief for purchases of shares on a recognised equity exchange. Under section 88A FA 1986 relief is also given on the transfer of shares to a LIFFE intermediary as the result of the exercise of an option where that is on LIFFE.

12.17 Prior to 20 October 1997, the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1992, SI 1992 No. 570, provided reliefs from SDRT in respect of LIFFE options market-makers and LIFFE options principal traders, which have now been replaced by the new intermediary relief provisions.

12.18 Regulations in SI 1997 No 2429 also came into effect on 20 October 1997 to preserve an existing relief for the London Clearing House and LIFFE clearing members in connection with the mechanics of settlement. This concerns situations where following the exercise of an option securities have to be passed from one LIFFE member to another but because of the way settlement is handled - in particular the use of a central counterparty - the securities may pass through several hands en route. The regulations prevent multiple charges to duty arising.

Virt-x (formerly Tradepoint) members

12.19 With effect from 25 June 2001, the business of the former Recognised Investment Exchange (RIE) known as Tradepoint Financial Network plc was transferred to virt-x Exchange Ltd.

12.20 Virt-x is a RIE and under regulation SI2001/2267, the effect of the existing Tradepoint regulations (SI1995/2051) was preserved in allowing the exemption from SDRT of certain agreements to transfer equity securities on the Tradepoint exchange to continue. The 2001 regulations ensure that from the date the business was transferred, the same exemptions from SDRT apply to virt-x as they did for Tradepoint. The continued exemptions include:

- Intermediary relief being available to members of Tradepoint on purchases on the Tradepoint system since 20 October 1997;
- Clearing participants of Tradepoint and the London Clearing House provided with an exemption for SDRT in respect of clearing transactions undertaken in respect of agreements to transfer securities undertaken on Tradepoint. This is similar to the provisions for the LIFFE settlement process.

OM London Exchange

12.21 Regulations to prevent multiple charges arising in connection with the settlement mechanisms of the OM London Exchange (OMLX) were made in SI 1999/3262. These are analogous to those made in relation to LIFFE, though because OMLX itself acts as central

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counterparty the London Clearing House is not involved. OMLX intermediaries are also entitled to relief in the same way as those on LIFFE.

Jiway

12.22 Jiway Ltd, a UK incorporated company, is a Recognised Investment Exchange (RIE), clearance service and central counterparty. Jiway is aimed at pan-european trading of share equities through retail brokers providing a securities trading platform, clearing and settlement in an 'all in-house' operation. Its activities include acting as central counterparty to transactions undertaken on the exchange that it operates. It started operating in November 2000.

12.23 The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Jiway Limited) Regulations 2000, SI 2000 No.2995 provides relief for transactions undertaken in respect of agreements to transfer securities undertaken on Jiway, where Jiway acts as a central counterparty. Jiway intermediaries are also entitled to relief in the same way as those on LIFFE and OMLX

12.24 UK securities traded on and settled in Jiway will be held for Jiway by a subsidiary nominee company in CREST.

12.25 The Inland Revenue has formally approved an election made by Jiway Ltd under Section 97A Finance Act 1986 as the operator of a recognised clearance service, to account for 0.5% charges arising on transfers within the clearance service. Being an approved operator of a clearance service, the election ensures that Jiway is liable to collect and pay SDRT in connection with chargeable securities, and provide information under Regulation 4A in the 1986 Regulations insofar as transactions are reported to Jiway in its capacity as an exchange.

12.26 Jiway pays the SDRT to us and also provides SDRT Operations, Customer Service with a datafeed with full transaction details, in accordance with agreed arrangements.

Stock loans and repos

12.27 Section 89AA Finance Act 1986 introduced, with effect from 20 October 1997, an SDRT relief for stock lending and repos which replaced the previous stock lending relief. The parallel Stamp Duty relief is in section 80C.

12.28 Repos are much like stock loans except that the transfers of stock in each direction are by way of sale, so that the arrangement is one for the sale and repurchase of stock. The term repo embraces 'delivery by value' (DBV) transactions under which people lend money against a basket of securities short term, typically overnight.

12.29 It is common for transfers under stock lending arrangements to be collateralised by the movement of other stock in the opposite direction. If the stocks used in this way are themselves within the scope of SDRT then these movements will also be capable of falling within the terms of the stock lending relief in their own right as a separate matter.

12.30 The relief is not restricted to market makers but is available in relation to all on-Exchange activity. The extension of the Stamp Duty and SDRT reliefs to all market participants and the inclusion of repos followed a liberalisation of income, capital gains and

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corporation tax rules affecting the stock lending and repo markets in London, in the context of the opening up of the gilt repo market in 1996.

12.31 The relief applies in relation to activity on all EEA State exchanges and other foreign exchanges on which the securities are regularly traded (section 89AA(3)(a) and (b)). To be 'on-exchange' the agreement has to be subject to the rules of and be reported to the Exchange concerned (section 89AA(5)). Agency stock lending (which is for example permitted on the London Stock Exchange) is acceptable, so that relief can be due in a situation where there is a transfer in CREST from one client to the agent and another to the second client and subsequent return legs. This is treated as two stock loans back to back.

12.32 Relief will be provided automatically if the CREST stock loan mechanism is utilised but otherwise repayments of SDRT will be possible where the necessary conditions are met.

12.33 Section 89AA applies where there is an arrangement for (a) Q to transfer chargeable securities of a particular kind to P or his nominee, and (b) for chargeable securities of the same kind and amount to be transferred by P or his nominee to Q or his nominee. What it does is to disapply the charge under section 87 from agreements to transfer securities in accordance with the arrangement. In addition to the other conditions discussed above, section 89AA(3)(c) limits this to cases where securities are in fact transferred in the way envisaged. Section 89AA(4) excludes arrangements from the section if they are not such as would be entered into by persons dealing with each other at arm's length or if any market risk is taken by P.

Certain intra-group transfers chargeable to SDRT

12.34 Section 88(1B) FA 1986 prevents intermediaries being used to buy stock for group members stamp free. It provides that an instrument on which Stamp Duty is not chargeable by virtue of Section 42 Finance Act 1930 is to be disregarded for the purposes of section 92(1A) and (1B) where the transferor acquired the securities Stamp Duty/SDRT free under the exemption for intermediaries (or under the regulations about LIFFE options traders and virt-x clearing members). This prevents an intermediary acting as a front for group members, by leaving the SDRT charge on the intra-group transfer in place. The charge is restricted to those securities for which an exemption was claimed and which have been held for a period less than two years. Special identification rules apply where necessary.

Placings and offers for sale

General

12.35 These paragraphs deal with SDRT charges and reliefs relating to placings and offers for sale to the public. These sales are usually sponsored by issuing houses acting either as agents for the issuing company and its shareholders, or as principals, and can include any combination of the following:

- a. new shares issued by the company for sale;
- b. bonus shares issued by the company to its shareholders and renounced by them for sale; and
- c. registered shares sold by the company's existing shareholders.

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12.36 If the sponsor acts as agent then the sale of bonus and registered shares are chargeable transactions, being sales of chargeable securities by the vendor shareholders to the public. The issue of new shares is not an agreement to transfer securities and is, accordingly, not chargeable.

12.37 If the sponsor acts as principal then its purchase of bonus and registered shares and its sale of new, bonus and registered shares will all be chargeable unless the sponsor is a recognised intermediary or the transactions come within section 89A.

12.38 It is common with such offers for sale for the sponsor to arrange to pay the SDRT on behalf of the Company or the Vendors, either through CREST or under an arrangement with the Revenue under Regulation 4.

Renounceable letters of acceptance or allotment

12.39 If existing shares are offered for sale on renounceable letters of acceptance, then at the end of the renunciation period a transfer of shares is executed by the vendor shareholders in favour of the person who then holds renounceable letters of acceptance, renounced or otherwise. The transfer will be impressed with Stamp Duty, usually paid by the vendors or sponsor. If the original purchaser does not renounce the letter, the SDRT charge arising on the purchase will be cancelled by the Stamp Duty on the transfer. If the letter of acceptance is renounced the SDRT charge falling on the original purchase remains in place, as do the charges on subsequent purchases of the renounced letter. The Stamp Duty payable on the eventual transfer will not cancel any SDRT charges arising in respect of such renounced letters of acceptance.

12.40 Where a company issues new shares (whether in connection with a rights issue or a bonus issue) existing shareholders will normally receive a renounceable letter of allotment, unless the new shares are to be held in CREST. A renounceable letter of allotment is itself exempt from stamp duties provided its life does not exceed 6 months. It is, however, a chargeable security for SDRT purposes.

12.41 The issue of a renounceable letter of allotment does not give rise to a charge to SDRT as there is no agreement to transfer securities. But the purchase of a renounced letter of allotment or acceptance (including a split letter) however does give rise to a charge to SDRT on the consideration paid. However, the issue of a share certificate in respect of the new shares at the end of the renunciation period to the person surrendering the allotment letter is not chargeable to SDRT.

12.42 The issue of a renounceable letter of acceptance, under an offer for sale of shares, can give rise to a charge to SDRT unless the conditions in S89A(3) have been met.

Section 89A FA 1986

12.43 Section 89A provides exemptions for such purchases and sales where the shares are to be admitted to the Official List of the Stock Exchange, to enable issuing houses to act as principals without incurring the additional SDRT charges.

12.44 Section 89A (1) exempts purchases of securities (other than unit trust units) by issuing houses and Section 89A (2) exempts the subsequent sale by them of newly subscribed securities where

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- a. The securities are bought by the issuing house and sold on under the same arrangements to the public
- b. The sale is subject to an official listing on the Stock Exchange; and
- c. The securities are bought and sold on at the same price.

12.45 The meaning of 'offer to the public' is that founded on case law -ie an invitation to the public in general, and not restricted to a limited class. A placing of shares to (say) 75 financial institutions is prima facie not an issue to the public at large in the ordinary sense. It may still be possible, however, for such an offer to fall within the definition of 'offer to the public' by considering whether or not the offer is calculated to result, directly or indirectly, in the shares becoming available for subscription or purchase by persons other than those receiving the offer or invitation.

12.46 Section 89A (3) provides an exemption for sales of registered shares to the public (or placee) where the sale is effected by the issue of renounceable letters of acceptance (or similar documents) and the sale is conditional upon an Official Listing on the Stock Exchange. The SDRT charges on the subsequent renunciations remain in place as does the Stamp Duty charge on the eventual transfer document.

Underwriting

12.47 Where shares are offered for sale to the public it is customary for the company or vendor shareholders to enter into an agreement with a financial institution who agrees to purchase shares not taken up by the public. This underwriting function can in fact be performed by the issuing house sponsoring the offer for sale by agreeing to procure purchasers and to purchase shares for which purchasers cannot be procured. When that condition is satisfied and the number of shares to be taken up by the underwriter is known, the agreement is liable to SDRT in respect of the shares so purchased.

12.48 It is also customary for underwriters to agree with sub-underwriters (sometimes a 'chain' of sub-underwriters) to the effect that the latter will take up part of the underwriter's liability to purchase shares not accepted by the public. No chargeable transaction exists at this stage but when unsold shares have to be taken up by the underwriters and sub-underwriters, then any shares taken up by sub-underwriters may result from a chargeable agreement between the issuing company or vendor shareholders and the sub-underwriter rather than a sub-sale of shares purchased by underwriters for sale on to sub-underwriters.

12.49 If registered shares are delivered to underwriters or sub-underwriters, the Stamp Duty paid on the transfer document will cancel the SDRT charge. If there is no transfer document (for example where the transfer is in an electronic transfer system) SDRT will remain chargeable. If bonus shares are issued and transferred by means of a renounceable letter of allotment then SDRT will be payable, but the issue of the new shares will not be an agreement to transfer securities and accordingly will not attract SDRT. If an underwriter or sub-underwriter sells shares taken up then that sale will attract SDRT in addition to the charge on the underwriter's or sub-underwriter's purchase.

Agency crosses

12.50 Where securities are registered in the name of a nominee and the beneficial interest is sold to a person using the same nominee (so that the legal title is unchanged), a charge to

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SDRT arises. This situation arises frequently within the discretionary nominees operated by many qualified brokers and qualified dealers. They will be accountable for the SDRT on transfers within those nominees (unless written instructions from the vendor to nominee instructing him to hold the shares as nominee for the purchaser constituting a letter of direction has been duly stamped as a conveyance on sale).

Bed and breakfast transactions

12.51 Where such transactions are carried out, two charges to SDRT can arise, one on the sale to the market and one on the repurchase, though it would be normal for the sale to the market to benefit from intermediary relief.

Agent or principal?

12.52 Apart from reliefs for intermediaries, and reliefs available to virt-x clearing participants and LIFFE members, there is no other relief for principals. The question whether a person acts as agent or principal can be difficult to discern without all the facts and circumstances. In general, you should accept that a person has acted as agent (so that the only question which arises is whether he is due to account for his client's tax, as opposed to his own) where the chargeable securities are not treated as owned by the person, the terms of contract do not permit action as a principal but indicate an agent relationship, and profits or losses are borne by the client.

12.53 Where brokers act in a principal capacity, their commission is properly to be treated as part of the consideration on which SDRT is charged, as this reflects their turn on the transaction, rather than being a separate commission charge.

Error dealing

12.54 Error dealing as principal often gives rise to additional SDRT charges. Normally if a business transacts in the capacity of agent on behalf of clients then, provided the business has sufficient authority to undertake such transactions, these are correctly analysed as purchases by the client even if they are incorrect. It is sometimes argued, particularly in the case of discretionary clients, whether such an authority exists but to date we have normally found that the client agreement usually does provide sufficient authority.

12.55 The question which then arises is how the firm involved corrects the error. If the securities are sold from the client's account, or as agent for the client (and any loss was paid to the client by way of compensation) then there would be no extra SDRT charge (other than those on the erroneous purchase and on the sale back to the market). But if the securities are sold to the firm as principal and the firm sells them into the market then the intervening transaction will generate an additional SDRT charge (in such cases it is normal for any profit or loss involved to be part of the profit or loss of the business). One likely indication of this is if the securities are rebooked from the client account into an internal error and omissions account or error dealing account before subsequently being sold.

Void or unenforceable contracts, and cancelled transactions

12.56 It is possible to delete or, failing that, to reverse a transaction before settlement in CREST occurs. Whether or not SDRT is due on the original agreement to transfer

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securities (and therefore whether repayment claims can be accepted) will depend on whether an enforceable and unconditional agreement was made. This is a question of fact.

12.57 The basic principles to take into account are that:

- under Section 87 Finance Act 1986, SDRT is charged on agreements to transfer chargeable securities for money or money's worth, not on the transfers themselves;
- your starting point from the SDRT point of view should be that the transfers of securities resulting from the CREST settlement process will be in pursuance of an underlying agreement.

12.58 The CREST background is that, when share transfers are agreed by CREST Participants, they will generally make inputs into CREST which have to match if the bargain is to proceed to settlement; it then being possible for deleting inputs to be made which, if they also match, delete the bargain so that it never reaches the settlement stage. There are also occasions when a CREST Participant will report a non-matching input to CREST, such as an Own Account Transfer (an OAT), which nevertheless still proceeds to settlement.

Transactions which are deleted before settlement in CREST

12.59 A transaction may be cancelled before or after its completion and for a number of reasons. Where this is done, CREST automatically re-credits any SDRT deducted. The CREST Reference Manual, Section 5, records that we have stipulated that an instruction should not be deleted unless the agreement to transfer securities was not legally enforceable. No SDRT arises in respect of such a transaction unless a valid, enforceable and unconditional contract had been made and the parties had simply changed their minds.

12.60 You should not seek SDRT on an 'agreement' to transfer chargeable securities if the transaction does not take place but is deleted before CREST settlement. This is ineffective from the outset. SDRT would arise in respect of an agreement which was legally enforceable but was rescinded before settlement. But in practice you should not pursue such an argument unless there are exceptional circumstances (such as where the purpose of rescinding an enforceable agreement was to gain a tax advantage) and only then after seeking advice.

Transactions which are 'cancelled' after settlement in CREST

12.61 Some SDRT repayment claims concern trades which were 'cancelled' (and reversed) after being matched and settled through CREST; or where it is claimed that the deal should have been cancelled. Some claims concern 'duplicated' trades; others relate to failed deletions or re-booked trades. If a customer demonstrates that a completed transaction was not made in pursuance of an agreement and provides a reasonable explanation, with good evidence to support it, then any SDRT paid should be repaid.

12.62 If a transfer is not made in pursuance of a valid enforceable agreement to transfer, then it may properly be cancelled (and reversed) and any SDRT refunded, whether or not the 'cancellation' took place before or after CREST settlement.

Examples of transactions giving rise to repayment claims

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12.63 Duplicated trades: Typically a 'duplicated trade' repayment claim arises where there is a single agreement only for the transfer of certain securities for a particular price; but, by mistake, the deal was settled twice in CREST, with two amounts of SDRT being paid. Where such a claim is backed by good supporting evidence, including details of the reversing trade, you should accept it. If, however, the 'duplicate' trade is different in some significant way from the original deal (for example the number of shares, the price per share, or a party concerned is not the same) then the assumption is that the second trade is in pursuance of a second agreement, and you should reject the claim.

12.64 Failed deletions: A typical 'failed deletion' repayment claim concerns an agreement which was not legally enforceable but which was nevertheless matched and settled through CREST, the parties having failed to delete the instructions in good time. The parties will then of course have to make a reversing trade later on. Where such a claim is backed by good supporting evidence you should accept it.

12.65 Re-booked trades: Re-booked trades and duplicated trades are similar in that a customer claims in effect that there was a single agreement for the transfer of shares, but two deals were settled in CREST. Typically the customer claims that the original transaction was wrong in some respect, and so it was replaced by another transaction which is on all fours with the agreement to transfer. The 'replacement' trade is therefore not identical to the original (replaced) deal. The difference(s) between the two bargains may relate to the amount of the commission or the 'shapes' of the transaction (eg the number of parcels of shares moved between different parties or the number of shares in such parcels), or some other matter.

Standard and description of evidence required

12.66 Before you accept a claim you need to be satisfied that it is well founded by reference to the available evidence. The actual evidence required in support of a claim may vary somewhat depending on the circumstances of the claim in question. Certainly, however, we should have a full explanation of what happened, and why. We should also have appropriate contemporaneous evidence (other than details of the actual transfers effected) to support this explanation. That might include, for example, copies of relevant internal records, original and cancelled contract notes, dealing slips and any instructions from the client concerned. The facts of each case will vary and so you should consider each claim on its own particular merits. But clearly we need be consistent in our handling of claims and you may need to discuss with colleagues or seek advice.

Appendix

Written answer to Parliamentary question raised on 21 March 1997.

Mr. Matthew Banks: to ask the Chancellor of the Exchequer if he will make a statement about the operation of sections 97 and 102 of the Finance Act 1997.

Mrs Angela Knight: The definition of 'intermediary' for the purposes of the new relief aims broadly to distinguish between dealers and end-investors, on the lines recommended by the Securities and Investments Board in its report to the Chancellor in July 1996.

Sections 97 and 102 of the Finance Act 1997 define 'intermediary' as a person who carries on a bona fide business of dealing in stock or securities, and who does not also carry on a business which the sections describe as an 'excluded business'. It will depend on the facts of the particular case whether a dealer is also carrying on an 'excluded business'.

One category of 'excluded business' is a business which consists wholly or mainly in making or managing investments. Thus if the dealing firm also carries on a separate business of making and managing investments in exchange-traded chargeable securities or stock on its own behalf, that would be an excluded business and the dealer would not qualify as an intermediary. But if the dealer is holding such investments merely as an incidental part of a dealing activity taxable under case 1 of schedule D, and not as a separate business, that would not disqualify the firm from being an intermediary. For example, if the dealer buys and holds shares merely to hedge derivative contracts which it has made, that would not be regarded as a business of making investments for the purpose of the excluded business test.

Similarly, the Inland Revenue would not regard a dealer as disqualified merely because the firm also makes and manages investments for clients, if the investments are not beneficially owned by the dealer. By contrast, if the dealer purchases investments for clients and the clients hold something short of beneficial ownership in those investments - as would happen, for example, under the American arrangements known as prime brokerage - that would be regarded as a business of making or managing investments for the purpose of the excluded business test.

A firm may also be excluded from relief if it carries on a business which consists wholly or mainly of providing services to persons with which the firm is connected such as members of the same group of companies. For example, if the dealer carries on a business of taking positions in equities as a service to connected persons who would not themselves qualify for relief as intermediaries, the sections would exclude the firm from relief. The Inland Revenue would not however regard the dealer as disqualified if business with connected persons is merely an incidental part of the firm's business with third parties, or if the services the firm provides are not related to handling securities within the scope of Stamp Duty and Stamp Duty reserve tax - such as research, secretarial or cleaning services. If the dealing firm buys chargeable securities merely in order to hedge the group's exposure as a result of derivative contracts undertaken with third parties by other members of the group, that would not be regarded as an excluded business.

The sections include a power for the Treasury to make regulations to alter the definition of intermediary, if that proves necessary. That will give flexibility to respond to market developments, or to deal with any particular problems which emerge as the new regime is introduced.

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I understand that concern has also been expressed about the way in which relief may be withdrawn if the Inland Revenue concludes that a firm which has been recognised as an intermediary has in fact been carrying on an excluded business. The treatment of a particular case will depend on the precise facts. For example if the intermediary had been recognised on the basis of incorrect or misleading information which it had provided about the nature of its business any relief already given would be withdrawn. Similarly, if the firm had knowingly started to carry on an excluded business after being recognised as intermediary, it would generally be appropriate to withdraw relief from the time the excluded business started. On the other hand, where the business was extended inadvertently into an excluded area, or there were genuine doubts about whether a particular part of the business came into the excluded category, the Inland Revenue's practice would be to give the intermediary an opportunity to modify or reorganise so as to retain intermediary status; and if a decision was taken to discontinue the relief, past transactions would not be affected. If firms have doubts about whether particular types of business are excluded business, they may discuss the business with the Inland Revenue. The Inland Revenue will consider issuing guidance on other aspects of the new regime if it proves necessary.

In order to qualify for the intermediaries relief, intermediaries will have to be recognised as such by the exchange of which they are members, under arrangements approved by the Inland Revenue.

Chapter 13: SDRT: administration

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Chapter 13: SDRT: administration

Overview

13.1 This Chapter covers our administrative procedures for the collection and repayment of SDRT. It also covers interest on late payment, interest on SDRT repaid and the penalties for non-compliance.

Basic principles

13.2 Section 91 FA 1986 says that the person who is liable for SDRT charged under the principal charge of section 87 is the person described as B in that section. This is the transferee, or to put it another way, the purchaser.

13.3 However the regulations then make an 'accountable person' responsible for accounting for the SDRT. The accountable person is usually an exchange member, or failing that a qualified dealer. The definition in regulation 2 of SI 1986/1711 sets out the order of priority as follows:

- (a) the exchange member (if any) buying the stock for his client
- (b) the exchange member (if any) acting for the seller
- (c) the qualified dealer (if any) buying stock for his client
- (d) the qualified dealer (if any) acting for the seller
- (e) the buyer himself

13.4 A 'qualified dealer' under the accountable person rules is, broadly, a dealer who is not a member of an exchange but who is a member of a self-regulatory organisation or a person otherwise authorised under Chapter III of Part I of the Financial Services Act 1986. In particular, a solicitor authorised by the Law Society to carry out investment business is a qualified dealer under the Financial Services Act 1986 and as such is capable of being an accountable person in transactions involving an SDRT liability.

13.5 If the SDRT is not accounted for through CREST, or under 'different arrangements' sanctioned under regulation 4, the accountable person will be responsible for giving notice of the transaction and paying the tax to SDRT Operations, Customer Service by the accountable date in accordance with regulation 4. In such cases regulation 2 provides for the accountable date to be seven days after the end of the month in which the charge arose.

13.6 The liable and accountable persons for the 1.5% depositary receipt and clearance service charges are defined separately, and are discussed in Chapter 11, along with other facets of those regimes. And there are also special rules for the SDRT charge on unit trusts and oeics, discussed in Chapter 15. But the general pattern of SDRT administration applies to all 'relevant transactions' as defined in regulation 2.

13.7 Interest is charged from the accountable date on tax paid late, and there are penalties for providing late or incorrect notices or making incorrect statements in relation to SDRT.

13.8 Accountable persons can only be relieved of their obligations if the Inland Revenue are satisfied that they have taken all reasonable steps to recover the tax from the liable person. In such cases (which are rare) the person liable for the tax (the purchaser) is required to pay it.

Central collection and reporting through CREST

13.9 Most SDRT is collected and reported centrally through CREST and this is normally simplest and most efficient for all concerned. An overview of how CREST works is provided in Chapter 10. Much of the detail of the administration of SDRT in CREST, and of market practice generally, is embodied in CREST publications.

13.10 Where transactions are properly reported to the Inland Revenue through CREST, so that we receive information about them and any SDRT due, this discharges the accountable person's requirement to notify the Inland Revenue of these transactions or account for the tax separately. However if the SDRT is not accounted for through CREST (even if an attempt was made to use CREST to account for it) then regulation 4 applies.

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13.11 There are still some transactions for which accounting through CREST is not possible, or proves awkward. Deals in residual securities are the most obvious example. Some takeover or offers for sale can also be tricky, though the September 1999 'blue book' contains a market norm for handling these through CREST which was agreed with the receiving agents.

Non-CREST transactions

13.12 Under regulation 4 the accountable person has to notify the Revenue of the charge and to pay the tax on or before the accountable date. If the agreement to transfer securities could have been reported to a regulator through CREST then the 'accountable date' for the payment of SDRT and any interest on overdue tax is the 14th day after date of the agreement. Otherwise the 'accountable date' is the 7th day of the month following that in which the charge arises. Thus, an agreement made on 5 January would give rise to a due date of 7 February.

13.13 No formal form of notice has been prescribed under regulation 4. The basic information you should ask for (to check that the notice is in order) if it is not supplied is

- the date of the agreement
- the names of the parties
- the description and number of securities
- the consideration paid, and
- the SDRT payable.

Documents unstamped at the 'accountable date'

13.14 It should normally be possible for routine applications for stamping to be processed quickly, and so it is likely in practice that stock transfer forms or other relevant documents will have been stamped before the SDRT accountable date if this is the wish of the accountable person. In these cases SDRT does not fall to be considered. However there are some circumstances where it may be difficult for a document to be stamped before the accountable date:

13.15 'Wait and See' cases. The first is where the consideration is not ascertainable by the accountable date or completion is not possible by that date; although full ad valorem duty will eventually be paid.

13.16 Adjudicated relief cases. The second scenario is where the Stamp Duty is likely to be nominal or nil (eg because an exemption is being claimed) but the adjudication process is not concluded by the accountable date. This should not happen that often as we are usually able to respond quickly to routine applications if these are made in good time.

13.17 Until October 1999, it was our practice, if the length of time for which the SDRT charge remained open seemed likely to be more than three months, or if the amount was large, or if difficulties were encountered, to refer such cases to SDRT Operations, Customer Service for SDRT to be pursued. But with the introduction of interest on late paid Stamp Duty (and an option for customers to lodge monies on account of the duty on a particular document with Stamp Taxes) this practice has ceased. Accordingly, consideration should only be given to referring such cases to SDRT Operations, Customer Service for SDRT to be pursued if difficulty is experienced in securing the stamping of the document.

13.18 Residual securities. Accountable persons handling residual securities sometimes find it can be difficult for the paperwork to keep up with the rate at which the same security is being bought and sold and they cannot get stock transfer forms stamped in time, but are nevertheless confident that such a form will be stamped shortly thereafter (which will then cancel the SDRT charge). You should not seek interest, in relation to securities held outside CREST, if a duly stamped instrument or transfer is produced by the accountable date, or 60 days after the agreement to transfer securities, whichever is the later. This practice was published in October 1998 (Issue 37 of Tax Bulletin) and reiterated in October 1999 (Issue 43 of Tax Bulletin). However, should a stock transfer form not in fact be duly stamped in due course then interest on the unpaid SDRT will still run from the accountable date. And if a notice was not delivered by that date the penalties described below will apply.

Interest on SDRT

13.19 If SDRT is paid late, then interest is charged from the accountable date to the date of payment under Section 86 TMA 1970 (as applied to SDRT in SI 1986/1711).

13.20 If SDRT is overpaid then any repayment of SDRT will be made with interest from the date that it was paid, under regulations 11 and 14. Any such claim has to be made to Stamp Taxes within six years of the accountable date, or the date of payment if later.

13.21 If a payment of SDRT is franked by having an instrument duly stamped (within six years of the date of the agreement) then the SDRT will be repaid with interest from the date the SDRT was first paid. Where the SDRT is paid through CREST the date for repayment interest purposes is the date we receive the tax from CREST. (This date is the fourteenth day after the end of the week in which CREST deduct it, ie the Friday one fortnight later).

13.22 The full SDRT will be repaid, regardless of the amount, but interest will only be paid if the amount of the SDRT repaid is £25 or more. No interest is added to SDRT repayments under £25.

13.23 In respect of interest periods up to 1 October 1999, the rate at which interest charged and paid in all 3 of these circumstances was the same. But from that date the regime changed. The rate of interest charged on underpaid or late paid SDRT is now greater than that paid on SDRT repayments. See Appendix C(2) for the table of rates that apply since 6 March 1993.

For example, if an amount of SDRT was due on 7 July 2001 and is not paid until 7 December 2001 the interest would be calculated at 7.5% from 7 July until 5 November inclusive and at 6.5% from 6 November until 7 December.

13.24 For assistance in calculating the actual amount of interest on a given amount of SDRT over a given period, especially where the period straddles different rate periods, SDRT Operations, Customer Service have a computer program which will calculate the interest.

13.25 There is no general power to mitigate interest which is due to the Revenue under Section 86. But do not pursue de minimis amounts.

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13.26 Other than the above, the only occasion where a measure of relief might be given is where there has been a Revenue delay of 6 months or more such that the terms of a Code of Practice apply. If such a case arises seek advice.

Penalties for late notices

13.27 Penalties apply to late notices under Section 93 TMA 1970, as applied to SDRT by SI 1986/1711 (as amended). The level of penalties depends on how late the notice is provided. Our current practice, described in 13.28 to 13.31 below, is as set out in Tax Bulletin (October 1999, Issue 43).

The following are guidelines to be used when considering mitigation of penalties.

Acceptable reasons for delay could be

- Industrial action at the Post Office or other document carrier occurred after the monthly return had been posted or handed to the carrier for delivery to this office.
- Systems failure of the computer software on which the customer relies to produce the monthly return.
- Natural disaster such as flood or fire has seriously disrupted the customer's business.
- Major accident (such as a bomb attack on the premises) has caused serious disruption to the customer's business.

Unacceptable reasons for delay could be

- Ignorance of the regulatory requirements to send monthly returns in by the accountable date.
- Failure of the former managers or administrators to provide sufficient information to new managers, administrators or Authorised Corporate Directors.
- The customer was of the opinion that the amount of SDRT was too small to warrant sending in monthly returns.
- Unavailability of staff to prepare the monthly returns.
- The returns were withheld until valuations, conversions or cancellations and adjustments had been calculated and incorporated in the returns.

But this list is not intended to be conclusive or exhaustive and every claim for mitigation should be considered on its own merits.

Notice given late but within one year of the accountable date

13.28 Section 93(2) TMA 1970 states that each Regulation 4 failure will incur a liability to a penalty of £100; that is to say that each transaction which is accounted for to Stamp Taxes after the accountable date will attract a potential penalty of £100. While composite monthly notifications by an accountable person are administratively convenient, a late notice covering, say, 10 transactions is potentially liable to 10 penalties of £100. The amount of the penalty in relation to each individual transaction should however be limited so that it does not exceed the SDRT due on the transaction concerned.

13.29 Where there is a composite notice relating to a number of transactions in a single month, you should normally only seek a single £100 penalty charge, provided that the accountable person takes steps to eliminate sources of recurrent error. So, if a composite notice relating to 3 transactions in one month and 4 transactions in the next month is sent in after the accountable date for the second month, the penalty would normally be £200.

13.30 If the total SDRT relating to the transactions in a single month is less than £100, then the lesser figure would be used. So if in the example above the 3 transactions in the first month involved an aggregate amount of £50 SDRT, and the 4 transactions in the second month involved over £100 then the penalty would be £150 rather than £200.

Notice given more than one year after the accountable date

13.31 In addition to the penalty described above, if the failure continues for twelve months or more the accountable person becomes liable, under Section 93(5) TMA 1970, to a tax geared penalty not exceeding the amount of SDRT which should have been paid. In the event of such a penalty becoming due, consideration needs to be given to mitigating the amount charged in line with the Board's established policy, on the basis of the readiness with which the disclosure is made, the amount of co-operation given and the overall gravity of the offence committed.

Information and IR Stamp Tax inspections

13.32 We expect accountable persons to keep appropriate records and they may be required to make them available for inspection under regulation 15. The Inland Revenue may by written notice require any person to furnish them with information needed for the purposes of SDRT under regulation 5(1) with the exception of papers covered by professional privilege as described in regulation 5(2). The Board is also entitled to obtain information from company registrars, issuing houses, members of exchanges and nominees (sections 23, 25 and 26 Taxes Management Act as applied to SDRT by the regulations).

13.33 We carry out audits of CREST participants, and others involved in the securities markets. Whilst our aim is to help our customers meet their obligations and pay the correct amount of SDRT, there is a need to actively monitor compliance. These inspections are carried out by Stamp Taxes' SDRT Operations, Assurance . A Code of Practice detailing how the inspections are undertaken is published in Stamp Taxes' leaflet SO 13.

Penalties for incorrect notices or statements made

13.34 Section 95 TMA, as applied to SDRT by the regulations, provides for tax geared penalties if incorrect notices or statements relating to SDRT are made fraudulently or negligently. This includes incorrect CREST TSS flags. As with penalties for notices over one year late, these penalties are subject to mitigation.

Recovery of tax and penalties, time limits etc

13.35 Where it is necessary to determine formally various matters relating to a chargeable transaction, or the occurrence of a charge, or the liable person, the Board of Inland Revenue may give notice in writing to the person concerned stating that they have determined the matter specified in the notice of determination (regulation 6).

13.36 The Inland Revenue may not recover tax or over-repaid tax unless the amount has been agreed in writing or determined by a notice of determination (regulations 12 and 18). There is a 6 year time limit for making such a determination which runs from the later of the date payment was made and accepted and the relevant accountable date (regulations 13 and 18). In any case of fraud or negligent conduct the 6 years begins to run from the time the fraudulent or negligent conduct came to the attention of the Board.

13.37 An appeal against a notice of determination should be made within 30 days of the service of the notice (regulation 8). Appeals lie to the Special Commissioners. If an appeal has been lodged against a notice, legal proceedings can be taken only for such amounts as have been agreed or formally determined by further notice (which itself is subject to appeal) as not being in dispute.

13.38 Penalties are recoverable under sections 100-100D TMA (as applied to SDRT by the regulations).

Chapter 14: SDRT: depositary receipts and clearance **services**

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Chapter 14: SDRT: depositary receipts and clearance services

Overview

14.1 This Chapter explains Depositary Receipts and Clearance Services and how SDRT operates in respect of them.

Introduction

14.2 Broadly speaking, there is either a Stamp Duty or an SDRT charge at the higher rate of 1.5% when securities are transferred or issued into a depositary or a clearance service.

14.3 The special charge acts as a season ticket, dealings in depositary receipts and transfers within clearance services being exempt from duty.

14.4 Although the differences between the two forms of commercial arrangement have given rise to some specific provisions in the legislation, the rules for depositary receipt schemes and clearance services parallel each other to a great extent.

Background

Depository receipt schemes

14.5 Holding shares in depository receipt form is especially common in the USA, and many US investors hold non-US shares in this way. Depository receipts are therefore frequently referred to as American Depositary Receipts (ADRs). US investors often prefer to hold United Kingdom shares in this way too.

14.6 To facilitate this it is common for there to be 'American Depositary Shares' each of which typically represent a handful of the ordinary shares concerned, because the value of an individual share is normally rather larger in the USA than it is in the UK. It is then these ADSs which are listed on the Exchange concerned (eg the New York Stock Exchange, or on NASDAQ) and which are evidenced by depository receipts.

14.7 A depository receipt is in effect a substitute for the share itself and is issued by a depository bank against the deposit of the shares concerned. UK companies sometimes enter into exclusive arrangements with one particular depository bank to organise the 'ADR programme' in their share. Depository receipts are typically held within a central depository where settlement can be done on a book entry basis, such as the Deposit Trust and Clearing Company in the USA.

14.8 A depository receipt is defined, broadly, as an instrument acknowledging that a person holds stocks or shares and that another person is entitled to rights in relation to stocks or shares of the same kind including the right to receive such securities (sections 69(1), 94(1) and 99(7) FA 1986). Such receipts typically acknowledge that:

- the issuing bank holds (ie has deposited with it or its nominee) securities (often described as deposited shares) or rights to receive them;
- the owner of the receipt is entitled to rights in or over the deposited shares (eg to dividends); and
- the owner of the receipt is entitled on surrender of the receipt to a specific number of deposited shares or rights to receive them.

14.9 Depository receipts are not chargeable securities for SDRT purposes (section 99(6)), so dealings in them once they are issued do not attract SDRT.

Clearance services

14.10 Typically, a clearance service is a system for holding securities and settling transactions in them by book entry. The securities may be held indefinitely within the system, despite changes in beneficial ownership and are held either by the company operating the clearance system or its nominee, and are thus traded without the use of transfer documents.

14.11 Clearance services are common in continental European jurisdictions. It is common for shares to be in bearer form and this method provides physical security (the bearer certificates being held in a vault) whilst facilitating trading and settlement.

14.12 There is no SDRT on agreements to transfer securities held within a clearing service (section 90(5)).

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14.13 Under Section 97A FA 1986, the operator of a clearance service can elect that the clearance service charge does not apply, provided they enter into appropriate arrangements with the Inland Revenue under which they will account for 0.5% charges arising on transfers within the clearance service. You should seek advice from the Senior Technical Manager if anyone suggests entering into such an arrangement with us.

14.14 The details of any such arrangement will depend on the particular circumstances involved, but some of the main issues to be considered in this context are:

- comparability with the procedures for accounting for SDRT through CREST;
- ensuring that all chargeable transactions are reported and duty paid;
- considering how higher rate charges and any reliefs would be administered;
- ensuring a flow of information for audit purposes that is accessible in the UK;
- preventing participants operating clearing services under cover of the arrangement;
- the need for an overseas clearance service to appoint a UK fiscal representative; and
- noting that section 97A enables us to terminate the election on notice.

Operation of the charge

Stamp Duty

14.15 Sections 67 and 70 provide for Stamp Duty of 1.5%, rounded up to the next higher multiple of £5 if not exactly divisible by £5, to be charged in the case of transfers (on sale or otherwise) of securities in United Kingdom companies to

- a person whose business (as nominee or agent) is exclusively that of holding securities for a bank's depositary business or for a clearance service, or
- to certain other persons specified by Treasury Order (no such orders have been made).

14.16 The charge is levied on the consideration for the sale, or (if the conveyance is not on sale) the market value of the securities at the time (sections 69(4) and 72(2)).

14.17 As with Stamp Duty generally, this charge does not apply on the issue of new shares, or to bonus shares.

SDRT

14.18 Section 93 imposes a 1.5% SDRT charge where in pursuance of an arrangement:

- chargeable securities are issued or transferred to depositary receipt issuer (or his nominee), and
- a depositary receipt is issued or is to be issued.

14.19 Section 96 imposes a 1.5% SDRT charge where chargeable securities are issued or transferred to a clearance service (or its nominee) in pursuance of an arrangement for the provision of clearing services.

14.20 In both cases, the charge is levied:

- where the securities are issued, on their price when issued,
- where the securities are transferred for consideration, on the amount or value of the consideration,

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- in other situations, on the open market value of the securities at the time of transfer or appropriation.

14.21 In the case of depositary receipts, the person liable for the tax (and accountable for it under the regulations) is:

- the person who is to issue the depositary receipt if that person is UK resident or has a UK branch (section 93(8) and (9)), except that
- in cases where the depositary receipt issuer has no such UK presence and the securities are transferred, the person liable is the person to whom the securities are transferred.

Where the responsibility for accounting for the tax falls on the nominee, depositary banks may make arrangements to account for the tax themselves.

14.22 In the case of clearance services, the operator of the service will normally be the person accountable and liable for the tax (section 96(6)). But similar rules to those for depositaries apply where the person concerned is not resident in the UK.

14.23 In both cases, the accountable date is the same as for the principal charge. It is common for the nominee acting for the depositary or clearance service to have a 'C' account in CREST which is a special kind of account which ensures that 1.5% SDRT is charged on all transfers into it.

14.24 The issue of bonus shares does not give rise to a charge (because there is no consideration). However, the issue of shares for a scrip dividend can result in a charge, as a right to cash has been exchanged for shares.

Interaction of SDRT and Stamp Duty

14.25 Sections 93(7) and 96(5) ensure that any ad valorem Stamp Duty paid (whether at 0.5% or 1.5%) on an instrument effecting the transfer is offset against the SDRT liability. Clearly if an instrument of transfer has been charged to Stamp Duty at 1.5% this may well cancel the whole SDRT charge.

Instalment arrangements

14.26 Special rules apply where securities being issued or transferred into a depositary receipt scheme or a clearance service are being subscribed or paid for by instalments.

New issues

14.27 When securities are newly issued into depositary receipt or clearance services, the issuing company sometime opts to fund the 1.5% charge.

Scope of the 1.5% charges

14.28 Since the 1.5% SDRT charges apply in respect of transactions involving 'chargeable securities' as defined for the purpose of the principal charge to SDRT, they do not arise where the transaction involves exempt loan capital (section 99(5)(a)) or stocks and shares of companies incorporated outside the United Kingdom (section 99(10)(a)).

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14.29 The 1.5% charges do not generally apply to inland bearer instruments within the meaning of the heading 'bearer instrument' in Schedule 1 to the Stamp Act 1891 (sections 95(2) and 97(3)), other than in relation to renounceable letters of acceptance or allotment etc. which are exempt from Stamp Duty. But see paragraph 14.45 below in relation to the changes made in FA 1999 in the case of instruments denominated in foreign currency.

14.30 Where, therefore, applicants allocated shares under the terms of an offer for sale are sent a renounceable letter in respect of those shares, a depositary receipt charge will arise if the letter is deposited with a depositary bank in connection with the issue of a depositary receipt. But no charge arises when shares are issued to a depositary bank which holds letters of acceptance or allotment. Similar rules apply to clearance services.

Elimination of double charges

Transfers between depositaries and/or clearance services

14.31 There is an exemption for transfers of securities between depositaries. This applies to transfers between one nominee company whose business consists exclusively of holding securities in connection with a bank's depositary receipt business and another such company, provided both companies are resident in the United Kingdom (section 95(1)).

14.32 The position is similar for transfers between nominees for companies operating clearance services (see section 97(1)). In the case of a transfer between clearance service accounts which is undertaken through CREST, a CREST Transaction Stamp Status flag 'T' may be used to exempt the transfers.

14.33 However, SDRT at the higher rate (1.5%) will be re-installed under the provisions of Section 97B(3) Finance Act 1986, where securities are transferred from one clearance service to another clearance service or Depositary Receipt Bank (or their nominee/agent) and, at the time of the transfer, an election under Section 97A Finance Act 1986 is in force relating to the transferor clearance service.

14.34 Section 134 Finance Act 2000 extends the SDRT exemption to transfers from a depositary to a clearance service or vice versa. This applies to securities transferred on or after 29 July 2000.

Transfers into depositaries or clearance services

14.35 Section 90(4) ensures that the principal charge under section 87 does not arise on the transfer to the depositary or clearance service if there is a 1.5% charge on that transfer.

14.36 Until 20 October 1997, there was a reduction of the 1.5% charge to 1% in cases where conversions were made by qualified dealers, as (unlike market makers) they would already have paid 0.5% on purchasing the shares in the first place. This relief was removed as part of the general change from market maker and broker/dealer reliefs to a relief for 'recognised intermediaries', as many of them will be eligible for intermediary relief.

14.37 Where a qualified dealer, or any one else, is not eligible for intermediary relief it is still possible to ensure that there is not both a 0.5% charge and a 1.5% charge. This is because we consider that the term 'arrangement' referred to in Section 93(1), in relation to the legislation as it is after 20 October 1997, embraces not only

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- the two actions referred to in that sub-section as being carried out in pursuance of the arrangement, but also
- an immediately prior purchase of securities made with the specific intent that they be deposited for conversion into the depositary receipts.

14.38 So you should accept that Section 90(4) provides exemption from the 0.5% charge which would otherwise apply on

- the transfer of securities to the depositary; and on
- an immediately prior purchase of securities made with the specific intention that they be so deposited.

This principle also extends to the clearance service charge.

14.39 In November 1998 we agreed with CREST a way in which flag T can be used to give effect to this understanding of the position in relation to ADRs. This is set out in the September 1999 'blue book'.

Exchange relief for take-overs

14.40 Sections 95(3)-(6) and 97(4)-(7) FA 1986 provide an exemption for certain 'share for share' exchanges in connection with a take-over. The underlying reason for this is that if shares have already suffered a 1.5% charge on their original entry into a depositary or clearance service then we do not need another charge if the overall value of shares within the depositary or clearance service has not increased.

14.41 The relief applies where an acquiring company (company X) issues securities in exchange for shares in another company (company Y). To qualify for the exemption, company X must either have control of company Y, or obtain control as a consequence of the exchange or of an offer as a result of which the exchange is made. Company X is taken to have control of company Y if it has (direct or indirect) voting control of that company.

14.42 We accept that the relief can apply to a limited extent where there is more than one bidder, provided one of them has control, even if this is via an intervening company. However this extends only to the shares issued by that controlling bidder. A 50:50 split is not acceptable.

14.43 The meaning of 'exchange' includes schemes where existing company Y shares are cancelled and new shares issued to company X in return for the issue of new shares in company X to the shareholders in company Y. Sections 95(6) and 97(7) refer.

14.44 But the relief does not apply where no 1.5% charge had been paid on the shares in company Y (because the shares were not chargeable securities ie Y is a foreign company).

14.45 Sections 95A and 97AA FA 1986 provide relief in the case where 'old securities' held in a depositary receipt scheme or clearance service are cancelled in favour of 'new securities' issued by the same company. This is most likely to be of relevance where a company redenominates its share capital into a different currency.

Foreign currency bearer securities

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14.46 The issue of bearer instruments denominated in foreign currency is exempt from the normal 1.5% bearer duty because of paragraph 17 Schedule 15 FA 1999. And section 95(2) and 97(3) often mean that there is no 1.5% SDRT charge either.

14.47 In response to situations in which mergers involving a UK company taking over a foreign company were arranged in such a way as to avoid 1.5% charges on the issue of new shares in the UK company, sections 95 and 97 were amended by FA 1999 to prevent abuse. They did this by focusing the relief on its purpose of facilitating companies borrowing overseas, in foreign currencies.

14.48 The effect of the change is that there is now a 1.5% charge on the issue or transfer of such a bearer instrument into a depositary receipt scheme or a clearance service unless it 'raises new capital', or it is issued in exchange for such an instrument.

14.49 To be considered as 'raising new capital', the instrument is required (eg by new section 95(2B)) to be subscribed for cash only and to relate to 'relevant securities'.

14.50 Relevant securities are defined (eg in new section 95(2D)) as securities which are either fixed rate preference shares or loan capital within section 78 FA 1986, and which are not convertible into chargeable securities other than ones which are themselves relevant securities.

14.51 It should be noted that 'loan capital within section 78' means the wide definition of loan capital in section 78(7), not the narrower scope of 'exempt' loan capital to which section 79(4) applies. But as just stated, a convertibility test, not unlike the one section 79(5), is provided for in section 95(2D).

14.52 A bearer instrument relating to loan capital which does fall within the scope of section 79(4) FA 1986 will be exempt from SDRT altogether by virtue of section 99(5)(a), so that there is no need to consider this 'raising new capital' test there.

Notification requirements

14.53 There are provisions in sections 68 and 71 requiring:

- depositary receipt issuers and operators of clearance services, and
 - companies whose shares are held in either of these ways
- to notify the Inland Revenue of this on pain of penalties of £1000, and £100 respectively.

Chapter 15: SDRT: unit trusts and open-ended investment companies

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Chapter 15: SDRT: unit trusts and open-ended investment companies

Overview

15.1 This Chapter sets out the way in which SDRT is applied to transactions in unit trust units and the shares in open-ended investment companies (OEICS) under the provisions of Schedule 19 FA 1999. It also gives information on the administrative procedures for payment, details of a suitable form of return, and the interest and penalties which can apply. References to numbered paragraphs refer to Schedule 19 Finance Act 1999.

Introduction

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15.2 This Chapter is concerned with the regime introduced in Schedule 19 FA 1999 with effect from 6 February 2000. It is based on the initial guidance of 1 September 1999.

15.3 Section 122 and Schedule 19 of the Finance Act 1999 introduced with effect from 6 February 2000 a new SDRT regime for surrenders and other transfers of units of unit trusts in place of the existing Stamp Duty charges. Corresponding changes were made to the SDRT regime for transactions in shares in open-ended investment companies (OEICS) in SI 1999/3261.

15.4 The regime, as with other SDRT charges, is in the main administered from SDRT Operations, Customer Service in Worthing.

General description of the SDRT regime

SDRT charging formula

15.5 There is in general a 0.5% SDRT charge on the value of surrenders of units to the managers or trustees, which is potentially reduced by two ratios:

- If more units are surrendered than issued during the two week period, which consists of the week the surrender occurs and the following week, then the liability is reduced by multiplying it by the ratio I/S (where I and S are the numbers of units issued and surrendered in the two week period);
- If a fund has investments in exempt assets, the liability is (further) reduced by multiplying it by the ratio $N/(N+E)$ (where N and E are the average market values of the non-exempt and exempt assets of the fund over the two week period).

15.6 The ratios are calculated for the whole unit trust. Under Paragraph 18 each part of an umbrella fund is to be treated as a separate unit trust in its own right, in the same way as each sub-fund within an OEIC is treated as a separate OEIC.

15.7 The following types of surrender are wholly or partly outside the scope of this general calculation:

- Pro rata in specie redemptions (where the unit holder receives a proportionate share of each asset held in the fund) and certain transfers of units between unit holders (for example, where there is no consideration) are exempt and so fall outside the calculation;
- Non pro rata in specie redemptions are excluded from the I/S ratio but may benefit from the reduction under the $N/(N+E)$ element of the calculation.

Unit trusts outside the scope of the charge

15.8 Surrenders of units in some unit trusts are totally excluded from the scope of the charge. This applies to unit trusts which can invest only in exempt investments, to pension fund pooling vehicles and certain other funds which are currently excluded by specific legislation from the definition of unit trust.

15.9 The treatment for OEICS is similar except that the rules have been adapted to reflect the fact that OEICS have a different legal structure.

Transitional arrangements (period - 1 October 1999 to 5 February 2000)

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15.10 Many of the general administrative procedures for Stamp Duty changed on 1 October 1999 under provisions in the Finance Act 1999. However, for unit trusts the rules in existence prior to that date were temporarily retained until they became obsolete on 6 February 2000. The old late stamping penalty regime continued to apply to unit trust documents in that transitional period. If you now receive a unit trust document which relates to a transaction prior to 6 February 2000 you need to bear in mind that it must be assessed to duty and any penalty as assessed under the previous regime. And, in the context of unit trusts, any penalties sought under section 56(3) Finance Act 1946 (failure to keep appropriate records) or under section 17 of the Stamp Act 1891 (enrolling an instrument not duly stamped) in respect of the transitional period are not to exceed £10.

15.11 Equally, any instrument stamped under the old rules remains potentially eligible for reclaims under section 54(4) of the 1946 Finance Act. See also paragraphs 15.17 and 15.18 below.

Old regime

15.12 A surrender which occurs before 6 February 2000 will fall under the old regime. So there will be the potential for a reclaim of Stamp Duty when an instrument in respect of it is presented for stamping.

15.13 It has long been the Stamp Office's practice to stamp repurchase summaries where they are submitted in place of the individual instruments of surrender. In line with that practice, it is acceptable for such a summary, relating to all remaining unstamped transactions as at 5 February 2000 to be prepared and submitted for stamping within 30 days of that date. Transactions covered by such an instrument will then be treated as falling within the old regime rather than the new regime. And such a procedure may be convenient for fund managers who wish to draw a clear line between transactions subject to the old and the new regimes.

Stamp Duty where units are given as consideration

15.14 The replacement of Stamp Duty by SDRT on surrenders of units does not affect the Stamp Duty position on the conveyance on sale of property other than units where units are given as consideration. So, for example, where UK shares are sold to a unit trust on subscription for units, there is still either a Stamp Duty or an SDRT charge on the transfer of those UK shares.

Surrenders

15.15 Surrenders are deemed to occur by reference to when they take effect; which for the purpose of SDRT is at the valuation point for which the deal is contracted. This means that the normal dealing record can be taken as the basis for the calculations. So if, for example, a notification (for a fund with daily dealings) was made on a Friday afternoon after that day's valuation point, then the deal would be struck at the valuation point on the following Monday and this would be the effective date for the surrender. The same principle applies to funds which deal less frequently.

Tax calculation

Value of surrenders

15.16 Paragraph 3 charges SDRT of 0.5% on

'whichever is the higher of:

(a) the price the unit might reasonably be expected to fetch on a sale in the open market at the time of surrender, and

(b) its cancellation price, or if it is redeemed its redemption price, at that time, calculated in accordance with the trust instrument.'

15.17 In normal circumstances, you should accept that the cancellation price (or redemption price as appropriate) is no lower than the open market value, both in relation to authorised and unauthorised funds. In particular, you should adopt this view in relation to an authorised fund operating properly within the relevant regulatory requirements.

Income and accumulation units in a unit trust

15.18 Paragraph 4 requires the SDRT calculation to be done separately for each 'class' of unit, and there are provisions to ensure that any consolidations or subdivisions in the units are properly reflected.

15.19 For the purposes of this Paragraph, accumulation units are to be treated as being part of the same class of units as income units relating to the same pool of investments, with a conversion to the appropriate number of income units. So a fund with both income and accumulation units should calculate the liability to SDRT for a given charging period for the fund as a whole. Managers of funds with income and accumulation units will probably find it most natural to restate accumulation units in terms of notional income units for this purpose. A record of the conversion calculations will need to be kept for audit purposes.

15.20 But funds which have only accumulation units will of course have no need to restate them as notional income units.

15.21 Switches between income and accumulation units are not to be treated as surrenders under Paragraph 2 but as a type of consolidation or subdivision of units. A charge to SDRT does not arise on a switch between these types of units; accordingly, these switches should not be included in I or S as defined in Paragraph 4(3).

Classes of shares in OEICS

15.22 Where there are income and accumulation shares of OEICS, these are to be treated according to the same principles applying to income and accumulation units of unit trusts.

15.23 The SDRT liability of an OEIC is calculated for the fund (or sub-fund) as a whole. So OEICS, with more than one class of shares will need to express the number of shares of different classes issued or surrendered in a relevant two-week period in terms of one class of shares. This may be an actual or notional class, provided that the conversions are done on a consistent basis. The fund should keep a record of all conversion calculations.

15.24 As for unit trusts, switches between share classes within a fund will not be surrenders under Paragraph 2 and should also be excluded from I and S for the purposes of Paragraph 4.

Cancelled/altered deals

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15.25 Taking the dealing record of the fund as the base record for SDRT calculations (both for the charging period and for the relevant two-week period) means, that some issues and surrenders will be included that are either cancelled altogether or are altered some time after they were first recorded in the dealing journal. This would include instances where an investor has exercised statutory cancellation rights, or where the deal is not completed as a result of a failed direct debit, or where a deal must be altered to correct an error.

15.26 To remove the need to revise computations in such cases, it is acceptable for the purposes of Paragraph 4, for cancelled and altered deals to be included as amendments to issues or surrenders - whichever is applicable - in the charging period and relevant two-week period in which they occur provided this is done on a consistent basis. But if a fund wishes, it may of course carry out a full recomputation - again provided this is done on a consistent basis.

Reduction of tax charge where surrenders exceed issues

15.27 This operates on a two week rolling basis, so that the SDRT charge on the surrenders in week 1 is reduced if the aggregate number of surrenders in weeks 1 and 2 (S) exceeds the aggregate number of issues in weeks 1 and 2 (I) by multiplying the value of the surrenders in week 1 by the fraction I/S (Paragraph 4).

15.28 Surrenders and issues which are not made entirely for money (eg in specie transfers, whether or not pro rata) are excluded from this fraction (Paragraph 4(5)), as are exempt transfers between unit holders (Paragraph 6(6)).

Reduction where some exempt investments are held

15.29 Where a fund holds some exempt investments (eg gilts, or foreign shares), Paragraph 5 provides further relief, based on the proportion of the fund held in exempt and non-exempt investments over the two week period.

15.30 The amount of SDRT due (after any reduction resulting from surrenders exceeding issues in the relevant two week period) is further reduced by multiplying it by the fraction $N/(N+E)$ where N and E are the average market values of the non-exempt and exempt investments over that two week period.

15.31 Cash or other funds held for day to day management are not classed as investments. So the fraction $N/(N+E)$ does not include cash either in the numerator or the denominator. This means, for example, that a fund holding only cash and UK shares will not qualify for this relief.

15.32 If the total investments in the fund are exempt (so that there are no non-exempt investments) in the particular two week period in point, then the fraction is zero and there will be no SDRT to pay on the surrenders in the week concerned.

Meaning of 'average values' for the $N/(N+E)$ calculation

15.33 Paragraph 5 defines N and E to be average values over the relevant two week period. It is clear that the differing nature of funds will mean that a range of approaches to measuring these averages may be appropriate in different cases. It is, therefore, not the

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intention to lay down a single rule. And a fund to which exceptional circumstances apply may seek to agree a bespoke arrangement with us. It is, in particular, acceptable for funds to use any one of the following approaches (provided the approach is operated consistently)

- Averages of the values of N and E over all of the valuation points falling within the relevant two week period (including values where there is only one such point);
- Averages of the values from valuation points at an equivalent time in each of the two weeks concerned - for example, an average of each Friday's valuation point;
- Averages of the values on the last business day of month 1 and the last business day of month 2 to be used to calculate a ratio $N/(N+E)$ which would be applied to all of the calculations relating to the two week periods ending in month 2.

Exempt investments

15.34 The rules for determining when an investment is exempt are provided for by Paragraph 12 and differ for:

- Investments which are holdings in unit trusts or OEICS; and
- Other (direct) investments.

15.35 Holdings in collective investment schemes are exempt only if the scheme is a bond or gilt fund (of the sort previously falling within section 101 Finance Act 1980). This includes funds which invest in foreign bonds as well as those investing in UK bonds, but is restricted to authorised funds.

15.36 Direct investments are exempt if they are neither:

- Investments the transfers of which would be liable to ad valorem Stamp Duty; nor
- Chargeable securities for the purposes of SDRT.

15.37 So, for example, gilts, commercial paper and other exempt loan capital are exempt whereas UK shares or interests in UK land are not.

15.38 One question which has arisen, is whether foreign shares would be exempt given that if someone were to execute a transfer of such shares in the UK, that transfer would be stampable. This point was addressed by the Economic Secretary in the debate in Standing Committee on the provisions in the 1999 Finance Bill. At column 588 Mr Barry Gardiner (Brent, North) asked 'Will the pro rata relief for funds holding exempt investments ... apply to funds holding foreign shares?' And at column 594 Ms Patricia Hewitt replied 'In line with the purpose of pro rata relief in new schedule 1, the definition of exempt investment includes foreign shares'. Accordingly, you should accept that the exemption will apply where an investment is not of a type which would generally attract ad valorem Stamp Duty - such as shares in a foreign company which does not hold its register in the UK.

15.39 Derivatives are exempt investments only if they relate wholly to exempt investments. So, for example, an index tracking derivative would only be exempt if the index or indices concerned did not include any non-exempt investments.

15.40 Cash or other funds held for day to day management do not count as investments.

Wholly exempt unit trusts

15.41 The SDRT charge on surrenders applies only to those units which are chargeable securities. This means in particular (by virtue of Paragraph 12) that transfers of units in a

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fund which can invest only in exempt investments are always exempt. The requirement that this condition be a part of the terms of the scheme can be met either by its being incorporated in the trust deed or in the scheme particulars. In doing this, it is acceptable for the condition to be expressed, by providing that the fund will invest only in the way described in section 99(5B)(b)(i) and (ii) Finance Act 1986, inserted by Paragraph 12(3).

15.42 Where a unit trust invests in other funds, rather than directly in shares or bonds, the only funds that are treated as exempt investments are authorised funds within Paragraph 12(3).

15.43 Some unit trusts are specifically deemed not to be unit trusts at all for the purposes of Stamp Duty and SDRT and are therefore also excluded. Paragraphs 15 -17 refer to this; and preserve the pre 6 February 2000 position in that regard. In particular, this means that Pension Fund Pooling Vehicles are not subject to the new regime.

In specie redemptions

15.44 In specie redemptions are not subject to the reduction of SDRT in the I/S formula under Paragraph 4. Nor are they taken into account in calculating the formula.

15.45 Pro rata in specie redemptions are excluded from the charge on surrenders by Paragraph 7, but non-pro rata ones are chargeable.

15.46 The charge to SDRT on a non pro rata in specie redemption in a unit trust, that holds at least some exempt investments in the relevant two week period, is reduced by the $N/(N+E)$ fraction under Paragraph 5.

15.47 The test for an in specie redemption to qualify for the pro rata exemption is that the unit holder must get a share of each asset that is proportionate to, or as nearly as practicable proportionate to, the unit holder's share. For this purpose practicability will be judged by reference to trading constraints beyond the control of the fund manager. In particular, the necessity to handle only deliverable lots in certain markets will be accepted as a practical constraint. It is however an all or nothing test in the sense that the whole value of the surrender is chargeable unless the condition is met.

15.48 Whether or not the in specie redemption is pro rata, the transfer of assets to the unit holder will be excluded from SDRT by section 90(1B) Finance Act 1986 inserted by Paragraph 11(4). Where the in specie transfer is carried out on paper, a fixed duty stamp of £5 applies.

Third party transfers

15.49 There are two different types of 'third party transfers', which are mutually exclusive.

15.50 The first type is where the manager or trustee handles the transfer and alters the register or other records of the legal or beneficial ownership of the unit. Such a transfer counts, as both a surrender and an issue for the purposes of Schedule 19 and the trustee is liable for any SDRT due, just as for other surrenders, though Paragraph 6 provides various exceptions which are discussed below.

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15.51 The second type of 'third party transfers' (which is understood to be rare) relates to the situation where the legal ownership of the unit remains with the same person (for example, a nominee common to both parties) and so the manager is not called upon to change the register or other records. In this situation there is no charge under Schedule 19, but instead there is a charge under section 87 Finance Act 1986 in the normal way for which the buyer is liable, subject to the reliefs provided by new section 90(1A) Finance Act 1999.

15.52 The remainder of this section is concerned with the first type. In the straightforward case of a transfer made for consideration between third parties, the surrender and issue are to be taken into account in the overall calculation along with other surrenders and issues and included in the I/S fraction; SDRT being charged on the surrender in the same way as in any other case.

15.53 These surrenders and issues are considered to 'occur' on the day that the register or other records are changed to reflect the transfer made, as it is not until then that the manager can be said to have accepted the transfer. This differs from the position for other surrenders where the manager is a party to a deal with the surrendering unit holder.

15.54 The value of the surrender for the purposes of the calculation is not directly related to the amount of consideration passing between the unit holders concerned. Rather, it is the market value of the unit concerned at the time. And any payment in respect of the SDRT required by the manager or trustee in connection with such transfers will depend on this figure. So in recognition of this, it is acceptable for the value to be taken as the redemption price at the time the unit holder sends the instruction authorising the manager or trustee to register or otherwise record the transfer; provided this is done promptly thereafter.

Exemptions

15.55 There are a number of situations in which surrenders under third party transfers are exempted from the SDRT charge by virtue of Paragraph 6. In such cases Paragraph 6(6) excludes both the surrender and issue from the I/S fraction in Paragraph 4.

15.56 Third party transfers are exempt in this way if:

- There is no consideration in money or monies worth; or
- The transferee is a charity; or
- The transfer, were there to be a written instrument, is one to which the exempt instruments regulations or the Stamp Duty group relief provision would apply.

15.57 The final bullet point above does not mean that an actual instrument is required, or that the normal adjudication procedures relating to group relief claims have to be gone through. But the trustee will be liable for SDRT on transfers that are not exempt. Therefore, the manager will need to be satisfied (and, on enquiry, satisfy us) about the facts behind any transfer where the parties involved suggest that such an exemption applies. Managers will commonly continue to use stock transfer forms, despite their no longer being relevant for Stamp Duty purposes. Where these bear appropriate certificates, this should normally be accepted as sufficient evidence.

Administration and payment procedures

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15.58 The regulations in SI 1999/3264 provide for the administration and enforcement of the SDRT regime. This has been done in a way that keeps in step with the regulations in SI 1986/1711.

Individual Pension Accounts (IPAs)

15.59 Section 93 and 94 Finance Act 2001 introduced, with effect from 6 April 2001, exemptions from the SDRT charge under Schedule 19 Finance Act 1999 for transactions in collective schemes where units in a unit trust or shares in an OEIC are held within Individual Pension Accounts (IPA's).

15.60 IPA's are a way of saving for a pension but are not pension schemes themselves. Savers put money into the IPA and this money is invested on their behalf. When the investor retires, the fund is used to purchase a pension from a pension provider.

15.61 The exemption allows pension savers holding units or OEIC shares within an IPA to adjust their investments within those unit trusts or OEICs without incurring a charge to SDRT.

15.62 There are three acceptable methods that Investment Fund Managers of unit trusts and OEICs can operate to qualify for the IPA Schedule 19 exemption.

15.63 Firstly, the terms of the unit trust scheme must require that all units be held in IPAs, (or in the case of an OEIC the instrument of incorporation requires that all shares must be held within IPAs). (See Stamp Duty and Stamp Duty Reserve Tax (Definition of Unit Trust Scheme and Open-ended Investment Company) Regulations 2001 (SI2001/964)). Where such unit trusts or OEICs are operated, all surrenders and issues of units or shares will be exempt from a SDRT charge and no monthly return is required to be forwarded by the Investment Fund Manager to SDRT Operations Unit, Worthing.

15.64 Secondly, where, in the case of an OEIC, the company's instrument of incorporation has at least one IPA-only share class, and at least one other share class which has no restriction, surrenders of shares in the IPA share class will not incur any SDRT under Schedule 19. No monthly return is required to be forwarded by the Investment Fund Manager to SDRT Operations Unit, Worthing, where no charge to SDRT arises for a particular month ie if all surrenders were of shares in the IPA-only share class.

15.65 Thirdly, where unit trusts are operated with a mixture of IPA and non-IPA unit holders, surrenders and issues of units to and from an IPA can be disregarded from the Schedule 19 calculation and SDRT charge if, and only if, the person making the relevant monthly Section 19 return attaches or forwards a certificate (Para 4(6) Schedule 19 Finance Act 1999 as inserted by Section 93(3) Finance Act 2001) confirming that:

- at all times in the period to which the return relates, the trustee or manager (as appropriate) was able to identify which of the units under the scheme were held within IPAs, and
- at no time in that period has the trustee or manager imposed any charge on, or recovered any amount from, an IPA unit holder which included an amount directly or indirectly attributable to SDRT payable under Schedule 19.

Payment schedule

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15.66 In keeping with the general pattern for SDRT a monthly return is required on or before the prescribed 'accountable date'. The return for each month relates to surrenders occurring in the weeks for which the relevant two week periods end during that month. The 'accountable date' is the 14th day of the following month and the SDRT is due and payable on, or before, that date.

15.67 The trustee is liable for the tax in accordance with Paragraph 2(3). The regulations define the accountable person as the manager in the case of a unit trust and the authorised corporate director in the case of an OEIC. At any time, where there is no manager or authorised corporate director then the trustee of the unit trust or the OEIC itself is accountable.

Information required in a return

15.68 A monthly return covers a four or five week period of surrenders and comprises four or five subsidiary calculations. In order to carry out the calculation for a particular week (Wk1), for which it is also necessary to take into account movements in the immediately following week (Wk2), the following information is required:

- Number of units surrendered in Wk1 (excluding exempt third party transfers and all in specie redemptions) and the aggregate value, at the time of each surrender, of those units;
- Number of units surrendered in Wk2 (excluding exempt third party transfers and all in specie redemptions);
- Number and aggregate value of units surrendered due to non pro rata in specie redemptions in Wk1;
- Aggregate number of units issued in Wk1 and in Wk2 (excluding exempt third party transfers);
- The market value of the non-exempt assets (N) and the exempt assets (E) taken as a simple average of the respective valuations that represent the relevant two week period. (The pattern of the valuation points should follow consistent established practice. If it is necessary to depart from this practice the reason should be given on the relevant return.)

15.69 Whilst the following information is not part of the calculation, it does need to be declared on the return:

- Number of units surrendered as a result of pro rata in specie redemptions in Wk1;
- Number of units subject to exempt third party transfers in Wk1.

15.70 Where there is a charge to SDRT a return is necessary. But where there is no charge to SDRT for a particular month (for example, where the funds in a unit trust are invested in wholly exempt investments) no return is necessary. A illustrative model form of return is enclosed at the end of this Chapter.

Interest and penalties

15.71 The interest provisions and rates which apply to other SDRT charges apply to tax charged under this new regime.

15.72 Penalties may arise where returns are late (ie submitted after the 'accountable date') or incorrect, as with the notification of other SDRT liabilities.

Late returns

15.73 Late returns are subject to a fixed penalty of £100 unless there is a reasonable excuse for the lateness. You should not regard general difficulties in developing or operating computer systems as constituting a reasonable excuse, though serious equipment failure that was beyond the accountable person's control would be quite likely to.

15.74 If a return is submitted more than a year after the accountable date or, as a result of negligence, a return is incorrect there is a tax-gearred penalty (up to the amount of the tax not accurately returned on time). As normal (as set out in leaflet SO14) such penalties are mitigated to reflect the readiness with which errors are disclosed and co-operation shown in correcting them.

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Illustrative model return form	Week (w)									
	1		2		3		4		5	
	Number of Units	Value (£)	Number of Units	Value (£)	Number of Units	Value (£)	Number of Units	Value (£)	Number of Units	Value (£)
Issues (incl. 3rd party transfers liable for SDRT)										
Week w	330,000		110,000		400,000		200,000		600,000	
Week w+1	110,000		400,000		200,000		600,000		80,000	
(I)	440,000		510,000		600,000		800,000		680,000	
Surrenders (incl. 3rd party transfers liable for SDRT)										
Week w	500,000	160,000	30,000	9,600	100,000	32,000	650,000	208,000	150,000	48,000
Week w+1	30,000		100,000		650,000		150,000		950,000	
(S)	530,000		130,000		750,000		800,000		1,100,000	
Para 4 Calculation (only if S>I) I/S x value of week w surrenders =		132,830		n/a		25,600		n/a		29,673
Plus										
Week w non pro-rata in-specie redemptions	5,000	1,600	3,750	1,200	0	0	0	0	1,500	480
Sub-Total 'A'		134,430		10,800		25,600		208,000		30,153
Para 5 Calculation (where applicable)										
(N) Value of Non-Exempt assets		1,500,000		1,500,500		1,500,250		1,500,600		1,400,000
(E) Value of Exempt assets		500,000		501,000		500,500		500,600		450,000
Sub-Total 'B' (ie(N/N+E) x Sub-Total 'A')		100,823		8,097		19,196		155,969		22,818
SDRT Due		504.12		40.49		95.98		779.85		114.09

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(Sub-total 'B' x 0.5% to nearest penny)

Total SDRT for Month = 1534.53

DECLARATION

Week w Pro-rata In-Specie Redemptions	10,000		0		3,300		0		1,200	
Week w Exempt 3rd Party Transfers	600		1,000		2,000		600		4,500	

Appendix A(1) Stamp Duty: glossary of legal terms

The following is an alphabetical list of some of the legal terms which commonly occur in relation to Stamp Duty. The explanations given are in general terms only and should not be regarded as complete.

Absolute interest	A full and complete right or title to, or estate in, land combining both the legal and beneficial interests
Ad Valorem	In proportion to the value
Agreement	Includes a legally binding contract made between 2 parties setting out details of actions which each is to perform and to which each has assented but goes wider.
Assignee	A person who takes a right or title in land, such as the unexpired term of a lease, from another person by assignment (could apply to debts)
Assignment (in scotland assignation)	A legal document by which a right or title in land held by one person is passed to another, as when a lessee assigns his lease to another
Assignor	A person who transfers his/her right or title in land to another person by assignment
Back bond or back letter	A document which qualifies, or attaches conditions to, another instrument
Beneficial owner	The person in whom the ultimate right to property is vested with the right to dispose of the property by sale, mortgage, will or otherwise.
Beneficiary	A person for whose benefit property is held by others, such as administrators, executors, trustees etc.
Bill	Bill in Parliament. A draft Act which is discussed in Parliament and is known as an Act when it receives Royal Assent
Blank transfer	Transfer of shares executed without the transferee's name being noted on the instrument of transfer
Body corporate	A succession or collection of persons having in law an existence, rights and duties distinct from those of the individual persons forming it from time to time. Examples are companies registered under the Companies Act 1985, limited and unlimited companies, and bodies controlled by Royal Charter
Bond	A written obligation to pay money or to do some act
Bondholder	A person who lends money under a bond
Bondholder in possession	Under Scots law a bondholder who, through the failure of the borrower to pay interest on the bond, has taken possession of the bonded property. The Scottish equivalent of Mortgagee in Possession.
Books of council and session	The Scottish Register of Deeds and Probative Writs in which deeds etc. may be registered for preservation and execution
Chattels	Personal property or any kind of property, except freehold. Pure personalty, for example choses in action or choses in possession (see below)
Chose in action	'When a man hath cause or may bring an action for some duty due to him', eg debts, copyright (a right to receive shares)

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Chose in possession	A moveable chattel, such as one's goods, the right to which can be enforced by taking physical possession
Clause	A sub-division of a document
Consideration	The price paid for the purchase of an estate or interest in land, or for shares. For Stamp Duty purposes consideration can consist of cash, shares or a debt agreed to be transferred, assumed or discharged. In the case of a transfer of land and buildings or an interest in land or buildings the consideration for Stamp Duty purposes can also be any other property.
Contingent interest	An interest which is dependent on an event which is not certain to occur
Contract	An agreement intended to be legally enforceable whereby two or more parties agree to give or do or abstain from doing something for the other's benefit. A contract of sale normally has four main elements, namely a vendor, a purchaser, a thing sold and a price.
Court of session	The supreme civil court in Scotland, and the one which hears Scottish Stamp Duty cases
Conveyance	A deed by which ownership of land is transferred from one person to another, particularly when the land is unregistered
Counsel	A practising Barrister or Advocate
Covenant	An agreement which creates an obligation contained in a deed
Deed	A written instrument signed sealed and delivered
Demise	The grant of a lease of land
Debenture	Document under a company's seal acknowledging a capital debt and undertaking to repay on an ascertainable date and to pay interest at a fixed rate
Declaration of trust	An acknowledgement by a person that he/she now holds property in trust for another
Disposition	A Scottish deed by which ownership of land is transferred from one person to another
Document	A paper which can be relied upon as proof, or in support, of something
Donor	One who gifts something to another
Donee	One who receives a gift
Draft	An interim stage document
Easement	A right, eg a right of way, which a landowner enjoys over another's land
Encumbrance	A liability borne by property, eg a lease, mortgage, easement, restrictive covenant, rent charge
Equitable interest	A right to enjoy property, or its income, governed by the law of equity
Escrow	A deed or bond delivered to a person who is not a party to it, to be held until conditions are satisfied, when it is delivered and becomes absolute
Excambion	Scottish term for a contract whereby a piece of land is exchanged for another
Fee simple	A legal estate capable of passing by inheritance and not restricted. In practice the term means freehold

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Feu	A grant of land under the Scottish 'feudal' system normally created by a feu charter under which the feuer is required to pay to the grantor an annual sum (feu duty) for the use of the land
Firm	A partnership. In Scots law (but not elsewhere in the UK) a firm is a legal persona, separate and distinct from the partners
Fixed term	The term of a lease which is for a fixed period
Fixtures	Chattels fixed to land or to a building so that they are regarded as part thereof
Freehold	An estate in land held in fee simple, or at least for a term of life without payment of rent. The nearest to absolute ownership of land
Freeholder	A person who owns freehold land
Freehold reversion	A 'reversion' is that part of a landlord's interest which he holds after he has granted a lease. A landlord who is a freeholder holds the 'freehold reversion', which is the right to regain possession when the lease expires
Gift (or 'voluntary disposition')	The grant or transfer of property from one person to another for no consideration or obligation
Goodwill	An intangible asset of a business, being the right to the advantages derived from its past reputation
Ground rent	A rent payable when land is let for building, usually on a long lease (eg 99 or 999 years)
Grant	(1) Transfer of property under written instrument without immediate delivery. (2) The allocation of rights, powers etc. to persons
Grant of representation	Probate
Grassum	A single payment or lump sum paid as the consideration or premium for a lease in Scotland
Head lease	The chief lease of property subject to more than one lease or tenancy
Head rent	The rent payable by a tenant to the superior landlord where a property is subject to more than one lease or tenancy
Hereditament	Real property which in the absence of a will devolves to the heir at common law; classified as: Incorporeal - rights of property, eg easements Corporeal - physical objects, eg land and buildings
Heritage	Scottish property in the form of land and buildings
Housing association	A society, body of trustees, or company not trading for profit established to build, improve or manage houses
Ibid	In the same place or from the same source
Indorsement	The writing on the back of an instrument
Infertment	The means by which a person in Scotland is given possession of heritable property and becomes 'infert'
Insider dealing	Dealing in quoted securities by someone, such as a director, employee or substantial shareholder, who has confidential information
In specie	In its own form (and not in an equivalent), eg in coin, not paper money

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Instrument	Any formal legal document in writing; eg a will, deed etc.
Inter alia	Among others
Interest	A legal right in another person's land
Interlocutor	An order or decision of a Scottish court
Inter vivos	Between living persons
Intestacy	Where a person has died without making a valid will
Inventory	A detailed list of property
Irritancy	The forfeiture of a right following neglect or contravention; eg of a lease for non-payment of rent
Issue	Children, grandchildren and remoter descendants
Issued capital	That part of a company's capital which has been issued to shareholders
Jointly and severally	Persons who are jointly and severally bound are liable to joint actions against them collectively, and to separate actions against them individually
Joint tenant	On the death of a joint tenant the interest passes to the other tenant(s) and can only be left by will by the last surviving tenant. Joint tenants are entitled to possess the whole property; and must have the same interest, the same title, (ie from one instrument), and an estate for the same time
Know-how	Knowledge of how to do or make something with expert skill. Know-how is not regarded as property but what is know-how is a question of fact
Land	The surface of the ground and anything above it or beneath it
Landlord	A person holding an interest in land who grants a lesser interest to another person (a tenant) usually in return for rent
Lease	A contract by a landlord which gives a tenant exclusive possession of land for a definite period of time, usually in return for rent
Leasehold	An estate in land which is held by a tenant under a lease
Leaseholder	A person who holds leasehold land. A lessee or a tenant
Lessee	A person to whom a lease is granted; a tenant
Lessor	A person who grants a lease; a landlord
Let	To grant the use of land in return for rent
Legal charge	Mortgage
Legal owner	Trustee or nominee of the beneficial owner; person in whose name property is registered
Licence	An authority to enter on land, which otherwise would be trespass
Liferent	The equivalent in Scots law to life tenancy
Life tenancy	The right to the use of and the income from property during the life of the beneficiary
Market price	The value of marketable goods which a trader holds in stock, either for sale or for use in the business
Merger	An operation of law which ends a right when it coincides with a greater right enjoyed by the same person; eg a life tenancy is merged with the reversion when both interests come into the same hands . A business merger involves the acquisition of one firm by another , so that only one unit remains
Messuage	A house together with its outbuildings, courtyard, gardens and orchards

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Missives	The preliminary writings exchanged by parties making a contract under Scots law
Mitigation	Reduction (of a penalty). A mitigated penalty is less than the penalty which could be charged
Moiety	One of two equal halves, ie a half share
Mortgage	A charge on land to secure a loan
Mortgagee	A lender of money on a mortgage
Mortgagee in possession	A mortgagee who, through the failure of the borrower to pay interest on the mortgage, has taken possession of the mortgaged property (Scottish equivalent: Bondholder in Possession)
Mortgagor	A borrower of money on a mortgage and whose property is pledged as security for the loan
Moveable property	All assets, tangible or intangible, except interests in land
Mutatis mutandis	With the necessary changes made
Nominal capital	The authorised capital of a company
Notary	Solicitor
Obiter dictum	A statement or opinion expressed 'by the way' or 'in passing' by a judge, not essential for the decision in the case, and not therefore binding as a precedent
Offer for sale	Document offering shares to the public
Ownership	The right to exclusive enjoyment of something. It may be absolute in which case the owner may freely use or dispose of the property, or restricted, as in the case of joint ownership. Beneficial ownership is the right of enjoyment of a thing, as contrasted with legal ownership
Parties	The persons who take part in transactions, or in legal proceedings
Peppercorn rent	A nominal, or insignificant, rent paid to keep alive a title
Premium	A sum of money paid by a tenant to the landlord, usually at the start of a lease, in addition to the rent
Prima facie	At first sight, on the face of it.
Promissory note	An unconditional promise in writing and signed, undertaking to pay on demand, or at a fixed or determinable time, a sum of money to a specified person, or to his order, or to the bearer
Rack rent	The full rent which a property could fetch if let in the open market for a year. The open market rent
Real property	Freehold land and buildings. Realty
Registered land	Land where title is registered at the Land Registry
Reversion	That part of a landlord's interest in his property which he has after granting a lease. If the landlord is the freeholder, the right to regain possession at the end of the term
Reversionary lease	A lease which is to become effective at some future time. Such a lease will be void if it is to take effect more than 20 years after the date of the document creating it (Section 149, Law of Property Act 1925)
Royalty	A fluctuating rent paid under a mining lease, based upon the amounts of minerals extracted in specific periods of time
Settlement	A trust for the benefit of different persons in succession
Settlor	One who makes a settlement of property
Share transfer	The document which is executed to effect a transfer of shares

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Stated case	A statement of facts submitted for the opinion of a court on a point of law. Any person who is dissatisfied with the Commissioners' assessment of Stamp Duty may require them to state and sign a case for the opinion of the court (Section 13, Stamp Act 1891)
Statutory declaration	A statement in prescribed form made before a Commissioner for Oaths, Justice of the Peace or Notary Public
Sub lease	An underlease. A lease granted by a person who is a lessee. The sub lease must be for a period less than the superior lease
Tacit relocation	The continuation of a lease which may happen in certain circumstances where no notice was given to terminate it at the expiry of its term
Tenant	A person who has the right to occupy land owned by a landlord. The right may be for life, a term of years, at will or by sufferance
Tenant in common	A tenant who shares with one or more other tenants the right to occupy the whole, no tenant being entitled to the exclusive right to occupy any part of the land. The interest of a tenant in common, unlike that of a joint tenant, does not pass automatically on death to the other tenant(s)
Term	Period of time a tenant is entitled to hold land under a lease or tenancy
Testing clause	The final clause of a Scottish deed. It states the names of the grantor and witnesses and gives the date and place of execution
Transfer	A deed which transfers ownership of land from the seller, or transferor, to the buyer, or transferee
Trustee	A person who holds property on trust for another
Ultra vires	Beyond the power. A company's action is ultra vires, and therefore void, if it goes beyond the objects detailed in its memorandum of association
Under lease	A sub lease
Undertaking	(1) A promise, usually resulting in a legal obligation. (2) The business, trade or enterprise of a company (in particular with regard to Sections 75 and 76, Finance Act 1986)
Vendor	One who disposes of a thing by sale. A seller, in particular of land
Voluntary disposition	A transfer of ownership without valuable consideration. A gift, in particular of land
Voluntary liquidation	The winding up of a company so it and its creditors may settle their affairs out of court
Warrandice	The guaranteeing of property in Scotland against certain claims

Appendix A(2) SDRT: glossary of terms

The following is an alphabetical list of some of the terms which commonly occur in relation to SDRT. The explanations given are in general terms only and should not be regarded as complete.

Alternative Investment Market (AIM)	A market designed for shares of emerging or smaller companies which cannot fulfil all the requirements of the London Stock Exchange for a full quotation listing.
Arbitrage	The simultaneous buying and selling of a security at two different prices in two different markets.
Bear	An investor who believes a stock or share or the overall market will fall in price.
Bearer share	A security not registered on the books of the issuing company and thus payable to whoever owns the bearer share certificate. Normally bearer shares are transferred by delivery without the need for a formal instrument. Dividends are paid upon presentation of dividend coupons attached to the bearer certificate which are dated and numbered.
Bid price	The price at which a dealer in securities will buy stocks, shares and units in a unit trust.
Bond	A marketable debt or loan issued by a company or a government.
Bonus shares	New shares issued free to existing shareholders in proportion to their existing holding.
Book entry	The transfer of share ownership through a change in computerised records without the need for new share certificates to be issued.
Bull	An investor who believes a stock or share or the overall market will increase in price.
Call option	An option which gives the holder the right to purchase the underlying equity.
Convertible shares	Holders have the option to convert shares into ordinary shares during a designated period and at the conversion price.
Cum dividend	The trading of a share with the right to the next dividend payment.
Cumulative shares	If the dividend on, say, a cumulative preference share is not paid on time, payment is deferred, not cancelled.
Custodian	An organisation which holds and stores clients investments in safe custody.
Dbv	Delivery by value.
Debenture	Another term for a Bond.
Deferred shares	Shares that carry negligible rights. They do not usually carry voting rights or entitle the holder to any dividends or a return of capital on a winding-up except in certain limited circumstances.
Derivatives	Within equity markets, derivatives generally involve futures contracts, equity swaps and options which are traded on exchanges.
Dual listing	A security that is listed on more than one exchange.

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DvP	Delivery versus Payment. Securities transferred and delivered in return for payment.
EASDAQ	The European Association of Securities Dealers Automated Quote (Brussels based Stock Exchange).
Equity markets	The various global stock exchanges.
Equity swaps	Market participants can swap assets for cash, using notional amounts and contracts.
Exercise/strike price	The price at which an option contract gives the right to buy (Call) or sell (Put).
Exchange	The marketplace where shares, options and futures on stocks, bonds and commodities are traded.
Future	A future is an agreement to buy or sell a standard quantity of a specified asset on a fixed future date at a price agreed today.
Grey market	An informal market in which investors can buy and sell shares that have not yet been issued.
Global depository receipts (GDRS)	Very similar to ADRs but are generally issued to access two or more international markets.
Interdealer brokers	These are brokers who act as 'middlemen' exclusively to market makers or broker dealers who wish to trade anonymously. IDBs help market traders transact large share volumes by matching the other side of the trade with one or more counterparties.
ISIN code	International Security Identification Number. Every security traded has an identification number or code which may be nationally or internationally issued.
LCH	The London Clearing House.
LIFFE	The London International Financial Futures and Options Exchange.
LSE	The London Stock Exchange.
NASDAQ	The National Association of Securities Dealers Automated Quote (electronic USA Stock Exchange).
OFEX	An unregulated trading system for trading in UK securities which are unlisted and not traded on AIM. OFEX is not a RIE and all trading is undertaken outside of LSE between J P Jenkins Ltd (Market Maker) and other stock exchange member firms acting on behalf of their clients.
Offer for sale	Shares are offered to the public by a sponsoring intermediary to but new or existing shares.
Offer price	The price at which a dealer in securities will sell stocks, shares and units in a unit trust.
OMLX	The London Securities and Derivatives Exchange.
OPTION	An option is a contract which confers the right, but not the obligation, to buy or sell an asset at a given price on or before a given date.
Option holder	A person who has the right to buy (Call) or sell (Put).
Option writer	A person who is selling an option.
Ordinary shares	Shares which usually make up the bulk of the share capital of a company.
Placing	Sale of new shares to institutions or individuals directly or using a financial intermediary. It does not involve an offer to the general public.

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Placing/underwriting agreement	An instrument that deals with the legal aspects of the share flotation including the disclosure listing particulars, warranties, indemnities etc.
Preference shares	Shares which normally rank in priority for dividend.
Premium	The cost of an option paid by the holder and received by the writer.
Primary market	The process whereby financial bodies issue shares in the equity market. The primary market is where the original transfer of money from investors to organisations is undertaken with the issue of shares.
Put option	An option which gives the holder the right to sell the underlying equity.
Redeemable shares	Shares are repayable on a given date, normally at their nominal value.
RIE	Recognised Investment Exchange.
Rights issue	Additional Shares are offered by a company to existing shareholders in a fixed proportion to the number of ordinary shares already held.
Rolling settlement	Exchange system where share transactions are normally settled a fixed number of days after the trade date.
RUR	Register Update Request.
Scrip dividend	The offer by a company of shares in place of a cash dividend.
SEAQ	The Stock Exchange Automated Quotations system. A quote-driven system whereby market-makers are obliged to display to the market their buying and selling share prices. SEAQ is normally used for trading company shares that are outside of the FTSE 100 index.
Secondary market	Markets where shares are traded after the shares have been issued.
SETS	The Stock Exchange Electronic Trading System. An order-book system where buyers and sellers can indicate, via brokers, the prices and quantities at which they wish to trade. SETS is used for trading in the top 100 companies listed on the exchange ie the FTSE 100 index.
Settlement date	The date upon which a share transaction is agreed to be completed with consideration paid and securities transferred and delivered.
Shares	Ordinary equities in companies.
Spread	The difference between a securities dealer's Bid (buy) and Offer (sell) share prices.
Stock	A fixed-interest security ie bonds, loan notes.
Trade date	The date upon which a share transaction is undertaken.
Traded options	Options on equities undertaken on exchange ie LSE LIFFE. Traded options normally have a limited life span of up to nine months and invariably involve contracts in multiples of 1000 quantity of underlying UK securities.

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Traditional options	Options are available on many share equities listed on stock exchanges ie LSE. Most traditional options are tailored to suit agreements between a single seller and a single buyer as distinct from traded options which have standardised contract conditions. The major difference between traded and traditional options is that the former can be freely bought and sold whereas the latter can not be sold on and traded through the secondary market.
Warrants	The right to purchase a specific share, at some future date or dates, at the exercise price.

Appendix B: Stamp Duty cases

The following is a list of the main Stamp Duty cases, some of which are often quoted in correspondence with customers. In many cases there appears a brief note of the main point(s) decided. **Where there is no note**, the case concerns a head of charge, or some other Stamp Duty legislation, which is no longer relevant.

Copies of reports of the cases should be held in every Stamp Office.

1. **British Italian Corporation Ltd v IRC**

2. **Drages Ltd v IRC [1927] 46 TC 389, 6 ATC 727**

3. **Martin v IRC [1904] 91 LT 453**

4. **Riley (Arthur) Ltd v IRC [1931] 46 TC 402**

5. **International Power & Paper Company of Newfoundland Ltd v IRC [1933] 12 ATC 413**

6. **McInnes v IRC [1934] SC 424, [1934] SN 44, [1934] SLT 365**

7. **Prudential Assurance Co Ltd v IRC [1935] 1 KB 101, [1934] All ER 515, 104 LJKB 195, 152 LT 214**

8. **Kimbers (R Kimber) & Co v IRC [1936] 1 KB 132, [1935] All ER 609, 105 LJKB 97, 154 LT 305, 51 TLR 421**

The owner's interest under hire purchase agreements of goods is not an interest in goods, wares or merchandise, or not exclusively so.

A conveyance of land in consideration for £50 and an annual payment of 1 shilling was chargeable on £50 plus 20 x 1 shilling = £51 under Section 56(2) Stamp Act 1891.

A pawnbroker's interest in goods pawned is an interest in goods, wares and merchandise, or almost entirely so.

The improbability of further borrowing under a deed securing debenture stock was immaterial and the contingency principle applied.

A offered to feu to B a plot of land for construction of a house at a feu duty of £44. On the same day a building company under A's control offered to build B a house on the plot for £630. B accepted both offers. After the house was built A granted to B a feu of the ground alone for £44 feu duty. Held that the two agreements comprised a single transaction and that duty was chargeable on the feu duty **and** the price of the house.

Application of Section 3 Stamp Act 1891. A memorandum endorsed on a policy of life insurance altering the sum assured was a separate instrument liable to duty on the difference between the two sums.

A contract for the sale of land was entered into, to be completed within three weeks. On the same day a contract between the same parties, expressed as conditional on completion of the contract for sale, was entered into whereby the vendor contracted to build a house on the land for the purchaser for £1,350. Held that the consideration for the sale was £500 only and that Section 10 Finance Act 1900 applied.

9. Western Abyssinian Mining Syndicate Ltd v IRC [1935] 14 ATC 286

10. Fleetwood-Hesketh v IRC [1936] 1 KB 351, 105 LJKB 676, 153 LT 409, CA

11. Paul v IRC [1936] SC 443, Span v IRC and Blair v IRC

12. Faber v IRC [1936] 1 All ER 617, 155 LT 228

13. Attorney-General v Cohen [1936] 2 KB 246, [1936] 1 All ER 583, 105 LJKB 306, 155 LT 475

14. Carlyon Estate Ltd v IRC [1937] 16 ATC 339

15. Commercial Union Assurance Co Ltd v IRC [1938] 2 KB 551

16. Lever Brothers Ltd v IRC [1938] 2 KB 518

The benefit of a contract is property and an assignment of that benefit for consideration is liable to ad valorem conveyance on sale duty. A document worded as a receipt for consideration may in certain circumstances operate as a conveyance on sale of an equitable interest in property or as an agreement for sale. Subsequent to agreements to feu plots of land, but before feu charters were granted, two prospective feuars entered into contracts with builders for the construction of houses on the land. In one case no part of the house had been built at the date of the feu charter. In another it had been partly built. The feu superiors and the builders were independent. In the third case a house was built on the land under an oral agreement with the landowner that a feu of the site would be granted; and feu charter was granted after the house had been built. Held in all the cases that the feu on the feu charter was assessable on the value of the feu duty only. By a deed of covenant executed in Canada an engineer working in the UK agreed to pay an annuity to a Canadian company in consideration for the issue of shares and debentures. Held that the deed related to a matter or thing done in the UK (the appellant's work) within the meaning of Section 14(4) of the Stamp Act, and was liable to ad valorem duty.

The purchase of several lots at the same auction from the same vendor does not necessarily form part of a larger transaction or series of transactions. To form a series of transactions there must be interdependence between the transactions.

The consideration for a conveyance included not only cash (£100) but also the right to receive an issue of shares in the purchasing company. Held that the value of the shares was part of the consideration liable to ad valorem duty.

A policy issued by an insurance company securing repayment of a sum with interest is not within Section 60 of the Stamp Act 1891.

17. Eastern National Omnibus Co Ltd v IRC [1939] 1 KB 161, [1938] 3 All ER 526, 108 LJKB 167, 160 LT 270

An agreement not to carry on business in a certain area in consideration for money may be chargeable as an agreement for the sale of goodwill.

18. Glasgow Corporation v IRC (1939) SC 28

19. Anderson v IRC [1938] 4 All ER 491

20. Jopling v IRC [1940] 3 All ER 279

21. Associated British Engineering Ltd v IRC [1941] 1 KB 15

An instrument which is said to merely record a prior oral transaction may be chargeable if it in fact implements or forms part of the transaction which it purports to record.

22. GHR Company v IRC [1943] KB 303, [1943] 1 All ER 424, 112 LJKB 311, 169 LT 206, 59 TLR 211.

A vendor agreed to sell certain properties to GHR, subject to a mortgage, and the company undertook to pay the consideration to the vendor's trustees. The vendor died without executing a conveyance, and the personal representatives assented in writing to the vesting of the property in GHR. Held that the assent was liable to ad valorem duty as a conveyance on sale.

23. Curzon Offices Ltd v IRC [1944] 1 All ER 163

A company transferred property to a wholly owned subsidiary, Curzon Offices Ltd, under an arrangement with an unassociated company that part of the consideration was left on mortgage, and that on the day after completion the unassociated company would buy the entire share capital of the subsidiary. The unassociated company also guaranteed repayment of money lent by a bank to provide the cash part of the consideration. Held that under the arrangement the unassociated company had to provide the consideration for the transfer, and the transfer was not exempt from duty under Section 42 of the Finance Act 1930.

24. Wigan Coal & Iron Co Ltd v IRC [1945] 1 All ER 392, 173 LT 79, 61 TLR 231

25. Attorney-General v Northwood Electric Light and Power Co Ltd [1947] 1 All ER 483

26. The Polish Combatants' Association Ltd v IRC

This judgment sets out the meaning of 'established for charitable purposes only'.

27. Attorney-General v London Stadiums Ltd [1949] 2 All ER 1007

28. Fuller and Shrimpton v CIR
[1950] 2 All ER 976

29. Rex v CIR (ex parte Evill)
[1951] 2 TLR 857

An author assigned copyrights to trustees. The trustees refused to give the Revenue details requested, and applied for an Order directing the Commissioners to express their opinion as to the amount of the duty. The application was dismissed. Held that the Commissioners were entitled to such information as they deemed necessary to enable them to assess the duty.

30. McTaggart v MacEachern's
Judicial Factor (1949) SC 503

31. Nestle Co Ltd v CIR [1953] 1
All ER 877

32. Platt v CIR

33. Leigh Spinners Ltd v CIR
[1956] 46 TC 425, [1956] TR 87

A company wrote to its shareholders seeking their approval of a scheme designed to provide them with cash from the company's assets. The letter explained that the scheme entailed a sale of all the shares in the company to an unassociated company, and then the formation of the appellant company to which the company would transfer the whole of its undertaking, less £145,000 cash, in exchange for the issue of shares in the appellant company, and then the sale by the company to its shareholders of the shares in the appellant company. Held that it was an integral part of the scheme that the shareholders of the company should purchase the shares in the appellant company. The claim for exemption under Section 42 of the Finance Act 1930 was dismissed because the company had failed to satisfy the court that it was the beneficial owner of the shares in question.

34. Escoigne Properties Ltd v
IRC [1958] AC 549, [1958] 1 All
ER 406

Where a subsidiary goes into liquidation between the date of a contract for sale and the date of the transfer, a claim to exemption under Section 42 of the Finance Act 1930 should not be denied on the ground that, because of the liquidation, the subsidiary cannot be the beneficial owner of the property transferred. The transfer is to be stamped in respect of the equitable interest which passed before the liquidation.

**35. Viscount Portman v CIR
[1956] TR 353**

Agreement to purchase property from a company. Later agreement to sell other properties to the company. Transactions completed by one deed. Held that the 'deed of exchange' gave effect to two mutual sales and was chargeable to ad valorem duty on the aggregate money consideration.

**36. Western United Investments
Ltd v CIR [1958] Ch 392, [1958]
1 All ER 257, [1958] 2 WLR 192**

Under an agreement for the sale of shares the consideration of £5.5m was to be paid without interest by 125 annual instalments of £44,000. Clause 3 provided that, should the purchaser fail to pay any instalment, all unpaid instalments would immediately become payable. Held that in determining the amount which is chargeable under Section 56(2) of the Stamp Act (that is 'the total amount which will or may, according to the terms of sale, be payable during the period of twenty years') there should be disregarded those terms of sale, such as clause 3, which become effective only when other terms of sale are broken. The terms of the sale for the purposes of Section 56(2) of the Stamp Act 1891 were those on which the parties contemplated payment would be made, namely 125 instalments of £44,000.

**37. Parway Estates Ltd v IRC
[1957] 45 TC 135, [1957] TR
329,36 ATC 310**

A contract for the sale of property operates to confer rights on the purchaser, and has the effect in equity of making the purchaser the beneficial owner of the property.

**38. Grey v IRC [1958] Ch 375,
[1958] 1 All ER 246**

The Commissioners may take into account in any adjudication not only the facts furnished to them but also facts which may be inferred from the furnished facts.

39. Holmleigh (Holdings) Ltd v IRC [1958] TR 403, 37 ATC 406, 46 TC 435

A complicated agreement for the sale of shares was made between the directors of a company, its shareholders and an unassociated company. It was argued that as the company was not itself a party to the agreement no equity in relation to the shares could have been set against it. Held, however, that an order could have been obtained to require the directors to carry out their undertakings to the unassociated company to procure the company to transfer the shares. When a company is controlled by persons who have bound themselves to procure a sale by the company, the company is no longer the beneficial owner of the property concerned. Observed that the mere allotment of shares is not sufficient for them to be 'issued'. Shares which are not registered are not regarded as issued.

40. E C (Holdings) Ltd v IRC (1959) 38 ATC 73

In a Case Stated for the opinion of the Court in an appeal upon adjudication the Commissioners need not set out in the Case Stated their reasons for their assessment but it is more convenient for the Court if they do so.

41. Oughtred v IRC [1958] Ch 383, [1958] 1 All ER 252, [1958] 2 WLR 174

An instrument which implements an agreement for sale is liable to ad valorem duty. It is not necessary for the instrument to be between the same parties as the agreement, nor for it to relate to the self-same property. It is sufficient that it is the means by which the parties choose to implement the bargain they have made.

42. Independent Television Authority v IRC [1961] AC 427, [1960] 2 All ER 481, [1960] 3 WLR 48

Where the consideration specified in a document is neither a maximum nor a minimum but is variable upwards or downwards in certain circumstances, duty is chargeable in relation to the specified sum.

43. Glasgow Corporation v IRC (1961) SLT 349

44. Ridge Nominees Ltd v IRC
[1962] Ch 376, [1961] 2 All ER
354, [1961] 3 WLR 393

A company made a written offer to shareholders of another company to purchase their shares. As is usual, the offer was conditional upon 90% acceptance by a specified date. Accepting shareholders delivered transfers and signed acceptances before that date. When 90% acceptances had been received, the acquiring company took action under Section 209 of the Companies Act 1948 compulsorily to acquire the remainder. Held that (1) a transfer of shares to a purchaser attracts duty as a transfer on sale at the moment of first execution notwithstanding that at that time the contract is conditional and may never be completed (2) the transfers executed under Section 209 were also liable to ad valorem duty as the person appointed under the statute to execute them was deemed to be duly authorised.

45. Henty & Constable (Brewers) Ltd v IRC [1961] 2 All ER 372, [1961] 1 WLR 1018, [1961] TR 53, 40 ATC 63

Assets transferred by the liquidator of a company to purchasers of shares in that company (the transfers not having been registered nor proved to be stamped) do not represent the shares purchased. The transfer was not executed upon the sale of the assets but was merely a consequence of the sale of the shares and attracted a fixed duty of 50p as a conveyance or transfer of any other kind. The general principle is that a transfer by a liquidator to shareholders of assets in satisfaction of their rights in a winding up does not attract ad valorem duty.

46. Littlewoods Mail Order Stores Ltd v IRC [1961] Ch 210, [1961] 1 All ER 195, [1961] 2 WLR 25, [1960] TR 321

A lease may be treated as a conveyance for certain purposes. Periodic payments which are inherent in the property sold, such as rent, are not part of the consideration for the sale. Section 73 of the Stamp Act applies exclusively to an exchange of real or heritable property for other real or heritable property, or the partition or division of real or heritable property.

47. Fitch Lovell Ltd v IRC [1962] 3 All ER 685, [1962] 1 WLR 1325, [1962] TR 129, 41 ATC 321

Transfers of shares which omitted the consideration, the name of the transferee and the date were held to be conveyances or transfers on sale.

48. Henry Ansbacher & Co v CIR [1962] 1 All ER 686, [1962] 3 All ER 843

- 49. E Gomme Ltd v CIR {1964} 3 All ER 497, [1964] 1 WLR 1348, [1964] TR 281, 43 ATC 282**
- Section 57 of the Stamp Act establishes that Stamp Duty is payable in respect of the transfer of assets without deducting liability which is attached to the asset or which the transferee agrees to discharge.
- 50. William Cory & Son Ltd [1964] 3 All ER 66, [1964] 1 WLR 1332, [1964] TR 321, 43 ATC 215**
- No distinction is to be drawn between the words 'contract' and 'agreement'; and a contract, coupled with the immediate transfer of shares, granting to the transferee an option to purchase the shares, is not an agreement for the sale of an equitable interest. The provisions of Section 90 of the Finance Act 1965 ('Conveyance in contemplation of a sale') nullified the result in this case.
- 51. Central & District Properties Ltd v CIR [1966] 2 All ER 433, [1966] 1 WLR 1015, [1966] TR 147, 45 ATC 169, HL**
- Company A offered to acquire the whole of the issued share capital of company B in consideration for the issue of shares, with certain cash adjustments. The offer was accompanied by an offer by company C of negotiable letters of entitlement for the purchase of shares in company A at a discounted price. Held that the offer by company C was part of the consideration for the acquisition.
- 52. Shop & Store Developments Ltd v IRC [1966] Ch 108, [1965] 2 All ER 684; reversed [1967] 1 AC 472, [1967] 1 All ER 42**
- Held that interest on Stamp Duty falling to be repaid was not payable under Section 91 of the Finance Act 1965 for a period before that Section came into force. A further decision in relation to Section 42 of the Finance Act 1930 was nullified by Section 27 of the Finance Act 1967.
- 53. Rodwell Securities Ltd v IRC [1968] 1 All ER 257**
- Exemption under Section 42 of the Finance Act 1930 refused because the required relationship did not exist between the parties concerned.
- 54. Gable Construction Co Ltd v IRC [1968] 2 All ER 968, [1968] 1 WLR 1426**
- Held that a 'deed of variation' which provided for varied premiums and additional rents under two leases, but which did not increase the terms of the leases or demise any further land, was chargeable to 'Bond, Covenant' duty but that the duty payable was limited by Section 77(5) to the amount of lease duty.
- 55. Metal Box Plastic Films Ltd v IRC [1969] 3 All ER 1001**
- Exemption under Section 42 FA 1930 refused because the required relationship did not exist between the parties to the transaction on which relief was claimed.

56. Brooklands Selangor Holdings Ltd v IRC [1970] 1 All ER 76, [1970] 1 WLR 429

A company may cease to be the beneficial owner of shares in another company, but continue to be the equitable owner. The expression 'beneficial ownership' is not to be equated with the expression 'equitable ownership' in the technical sense in which that term is used in equity. Held that since a company could not deal as it pleased with its shares in another company, but was bound to transfer them to another, it was not the beneficial owner of those shares.

57. Sun Alliance Insurance Ltd v IRC [1972] Ch 133, [1971] 1 All ER 135

Held that a Court Order enabling a scheme of arrangement to bring about the transfer of shares was a conveyance or transfer within the meaning of Section 54 of the Stamp Act, and was liable to ad valorem duty.

58. Times Newspapers Ltd v IRC

Exemption claim under Section 42 FA 1930 upon the merger of The Times and The Sunday Times. Held that the instruments were not executed in pursuance of an arrangement whereby the consideration or any part of the consideration was to be provided by an outsider.

59. Baytrust Holdings v IRC and Firth (Thos) and John Brown (Investments) Ltd v IRC [1971] 3 All ER 76, [1971] 1 WLR 1333

Two subscriber shares on which the relationship under Section 42 of the Finance Act 1930 depended were committed as consideration to outsiders. Held that Firth was not the beneficial owner of them. The cases also turned on questions about 'reconstruction' and 'undertaking' of a company. Held that all that had happened to Firth, in effect, was that certain assets which it no longer required for employment in its business had been passed on to its shareholders in the form of shares in a new company; and that was not a reconstruction. Held also that the word 'undertaking' denotes the business or enterprise undertaken by a company; and that while Firth's holdings of shares in two companies were acquired in the course of Firth's business, they were not a part of that business.

60. Canada Safeway Ltd v IRC [1973] Ch 374, [1972] 1 All ER 666.

Prior to Section 149 of the Finance Act 1995, Section 42 of the Finance Act 1930 referred to 'issued share capital'; and it was held that the expression refers to the nominal value and not to the actual value of the shares.

61. Associated British Maltsters Ltd v IRC

- 62. Crane Fruehauf v IRC [1974] 1 All ER 811, [1974] STC 110** Held that transfers under hand signed conditionally on, and not delivered until, the issue of the consideration shares were ineffective until satisfaction of the condition; and the consideration shares fell to be valued at that time.
- 63. Reed International Ltd v IRC [1975] 3 All ER 218** Judgment sets out the meaning of 'funded debt'. Whether long term indebtedness incurred in consideration of the cancellation of shares constitutes 'funded debt by whatever name known' or 'any capital raised which has the character of borrowed money'.
- 64. Wimpey (George) & Co Ltd v IRC [1974] 2 All ER 602, [1974] 1 WLR 975** Held that an agreement creating an option to purchase land was chargeable ad valorem as a conveyance on sale, in respect of the consideration paid for the grant of the option. The words 'in connection with' and 'arrangement' are to be construed widely within Section 27 Finance Act 1967.
- 65. Clarke Chapman-John Thompson Ltd v IRC [1975] 3 All ER 701**
- 66. Terrapin International Ltd v IRC [1976] 2 All ER 461, [1976] 1 WLR 665** Held that execution of a deed is a process, not a single matter at a single instance. It consists of signature, sealing and delivery unconditionally. A deed delivered in escrow does not attract duty until the conditions subject to which it was delivered have been fulfilled. Until that time it is not 'first executed' within Section 14(4) of the Stamp Act. The deed became unconditionally delivered when the conditions were satisfied, and it then became a deed effective for its purpose, and was liable to duty at the rate in force at that time.
- 67. Agricultural Mortgage Corporation v IRC [1975] 2 All ER 155** Held that government advances to the appellant constituted an issue of loan capital.
- 68. IRC v Ufitec Group Ltd [1977] 3 All ER 924** Contract held not to be precedent to the formation of a binding contract under which the beneficial ownership passed.
- 69. Thorn v IRC [1976] 2 All ER 622** Held that ad valorem duty was payable on a disposition of the whole of the combined interests in the income of the life tenant during the life of the life tenant and on the value of the reversionary interest.
- 70. Coventry City Council v IRC [1979] Ch 142, [1978] 1 All ER 1107** Held that the contingency principle applies to ad valorem lease duty calculated by reference to rent.
- 71. Chelsea Land and Investment Co Ltd v CIR [1978] 2 All ER 113** Held that an unlimited company was a 'particular existing company' within the meaning and context of Section 55 of the Finance Act 1927.

- 72. Cummins Engine Co Ltd v CIR [1981] STC 604, [1982] SLT 170** Held that the tenant's option to terminate a lease before the end of its 99 year term did not reduce that term.
- 73. Cambridge Petroleum Royalties Ltd v IRC [1982] STC 325**
- 74. Sutton District Water Co v IRC [1982] STC 459**
- 75. Blendett v IRC and Quitelece v IRC [1984] STC 95, CA** Held in Blendett that consideration payable partly on the execution of a conveyance, and the balance on a date more than 20 years afterwards, was not 'money payable periodically for a definite period exceeding twenty years'. Money could not be said to be payable 'for a period' unless a payment fell to be made between the payment which marked the beginning and the payment which marked the end of the period. In Quitelece the consideration was also paid partly on execution, but the balance was paid in three equal yearly instalments starting on the 23rd anniversary of the lease. Held that the purchase price was clearly payable by instalments, but not 'payable periodically for a definite period'. That phrase envisaged the payment of more than one instalment during the twenty years following the date of the instrument.
- 76. Arbuthnot Financial Services Ltd v IRC [1985] STC 211**
- 77. Combined Technologies Corporation PLC v IRC [1985] STC 348**

78. Ingram V IRC [1986] Ch 585, [1986] 2 WLR 598

Ingram agreed to buy a freehold residence for £145,000. The sale was effected not by the simple execution of a transfer but instead by means of an agreement for lease and the transfer, by sub-sale through an intermediary, of the freehold subject to that lease. The additional steps were inserted to save Stamp Duty. Held that where a preordained series of transactions was entered into for the purpose of avoiding Stamp Duty, the court would disregard steps inserted into that series of transactions which had no business purpose and treat the transactions as a single transaction achieving the preordained end. The transfer was therefore assessed to ad valorem duty on the total consideration agreed at the outset. The avoidance scheme depended on the exclusion from charge of agreements for leases for terms exceeding 35 years, but this was changed by Section 111 of the Finance Act 1984.

79. National Smokeless Fuels Ltd v IRC

80. BTR plc v IRC [1986] STC 433

BTR made a formal offer of shares and cash for the ordinary share capital of T. The offer was conditional upon a number of factors, including a minimum percentage of acceptances being received. Once BTR had received the required percentages of acceptances the offer was declared unconditional. Held that acceptances and transfers delivered in response to a conditional offer became, on the offer becoming unconditional, effective instruments of transfer; and that an irrevocable acceptance of an unconditional offer could not be subject to further conditions.

81. IRC v Kent Process Control Ltd [1989] STC 245

A company to whom shares are issued is to be regarded as the beneficial owner of those shares unless a limitation on its ability to deal with them had been imposed by the issuing company as part of the terms of their issue.

**82. Swithland Investments Ltd
and Swithland Leisure Ltd v
IRC [1990] STC 448**

The mere purchase of shares in one company by another did not bring about an amalgamation of the company or of its undertakings. The transfers were not therefore made in connection with any scheme for reconstruction or amalgamation under Section 55 (1) of the Finance Act 1927. That Section has now been abolished, but Swithland may have a bearing on the meaning of the term 'reconstruction' for the purposes of a claim under Section 75 of the Finance Act 1986.

**83. Prudential Assurance Co Ltd
[1993] 1 WLR 211, [1992] STC
863**

Held that two contracts reflecting the price for the land and the building works, where there was no provision for the land to be re-transferred or any part of the price to be repaid, were chargeable with ad valorem duty on the value of the land and building works at the date of the transfer.

**84. Guinness plc v IRC [1994]
STC 86**

Guinness offered to acquire all the shares in company D for a mixture of new ordinary Guinness shares and cash. Shareholders in D could elect to receive preference shares instead of the cash element, or cash instead of the ordinary shares. Held that the contract constituted by the offer and its acceptance was an indivisible contract for the transfer of all the D shares held by the accepting shareholders for a composite consideration of shares and cash. Accordingly the cash element of the consideration fell to be compared to the nominal value of all the consideration shares in testing the 10% condition in paragraph 10(2)(b) of Schedule 19 to the Finance Act 1973. That provision related to capital duty, which has now been abolished, but this case may have a bearing on the application of Section 76(3)(b) of the Finance Act 1986.

**85. Bone (Peter) Ltd v CIR
[1995] STC 921**

Held that an agreement for the sale of a business also operated as the transfer of the equitable estate in freehold property, and was chargeable to ad valorem duty under Section 54 of the Stamp Act 1891.

**86. Glenrothes Development
Corporation v IRC [1994] STC
74**

Held that the consideration for a sale for Stamp Duty purposes included the VAT on the supply which was to be paid by the purchaser. This was on the basis that 'consideration' involved the principle of reciprocity or mutuality of contractual obligations and the purchaser had to pay the VAT in order to secure the performance of the contract for sale by the vendor.

87. Parinv (Hatfield) Ltd v IRC
[1996] STC 933

Held that an offshore declaration of trust was not effective in avoiding a charge to ad valorem duty on a transfer of land.

88. L M Tenancies 1 plc v IRC
[1996] STC 880

Held that the contingency principle applied to a lease where the premium was calculated in accordance with the formula 'a x b' where 'a' was a specified sum and 'b' was the closing price of certain stock 25 days after the lease was executed.

M & G Securities Ltd v IRC

This twinned case was not taken under the usual Stamp Duty Case Stated appeal procedure under Section 13 of the Stamp Act 1891. It was instead taken under the more unusual originating summons procedure.

And

Schroder Unit Trusts Ltd v IRC

[1999] STC 315

The case involved the question of the proper Stamp Duty due upon the surrender of units in a unit trust where the unit holders receive a pro-rata distribution of the underlying assets in the trust and the surrender was other than upon a winding up of the trust. The appellants had reclaimed the ad valorem Stamp Duty, due on the transfer of the units back to the managers, under the provisions of Section 54(4) of the Finance Act 1946. Held that the appellants were entitled to the repayments of Stamp Duty which they had claimed.

Appendix C(1): previous rates of duty

The tables on the following pages are in chronological order. If more detail is required please consult your Technical Service Unit Manager.

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	Start date	End date
1	up to	29 April 1910
2	30 April 1910	31 July 1947
3	1 August 1947	9 July 1952
4	10 July 1952	31 July 1956
5	1 August 1956	31 July 1958
6	1 August 1958	31 July 1963
7	1 August 1963	31 July 1967
8	1 August 1967	31 July 1970
9	1 August 1970	31 July 1972
10	1 August 1972	31 April 1974
11	1 May 1974	5 April 1980
12	6 April 1980	21 March 1982
13	22 March 1982	19 March 1984
14	20 March 1984	26 October 1986
15	27 October 1986	19 December 1991
16	20 December 1991	19 August 1992
17	20 August 1992	22 March 1993
18	23 March 1993	7 July 1997
19	8 July 1997	23 March 1998
20	24 March 1998	15 March 1999
21	16 March 1999	30 September 1999
22	1 October 1999	27 March 2000

1. Rates up to 29 April 1910

All sales

Up to £25	6d (2½p) per £5 or part of £5.
£25 to £300	2s6d (12½p) per £25 or part of £25.
more than £300	5s (25p) per £50 or part of £50.

2. Rates from 30 April 1910 to 31 July 1947

Documents containing a £500 certificate of value

Up to £25	6d (2½p) per £5 or part of £5.
£25 to £300	2s6d (12½p) per £25 or part of £25.
£300 to £500	5s (25p) per £50 or part of £50.

Documents not certified

Up to £25	1s (5p) per £5 or part of £5.
£25 to £300	5s (25p) per £25 or part of £25.
more than £300	10s (50p) per £50 or part of £50.

3. Rates from 1 August 1947 to 9 July 1952

Documents containing a £500 certificate of value

Up to £25	6d (2½p) per £5 or part of £5.
£25 to £300	2s6d (12½p) per £25 or part of £25.
£300 to £500	5s (25p) per £50 or part of £50.

Documents containing a £1,500 certificate of value

Up to £25	1s (5p) per £5 or part of £5.
£25 to £300	5s (25p) per £25 or part of £25.
£300 to £1,500	10s (50p) per £50 or part of £50.

Documents containing a £1,950 certificate of value

£1,500 to £1,950	£15 plus £2.10s (£2.50p) for every £50 or part of £50 in excess of £1,500.
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Documents not certified

Up to £25	2s (10p) per £5 or part of £5.
£25 to £300	10s (50p) per £25 or part of £25.
more than £300	£1 per £50 or part of £50.

4. Rates from 10 July 1952 to 31 July 1956

Documents containing a £500 certificate of value

Up to £25	6d (2½p) per £5 or part of £5.
£25 to £300	2s6d (12½p) per £25 or part of £25.
£300 to £500	5s (25p) per £50 or part of £50.

Documents containing a £3,000 certificate of value

Up to £25	1s (5p) per £5 or part of £5.
£25 to £300	5s (25p) per £25 or part of £25.
£300 to £3,000	10s (50p) per £50 or part of £50.

Documents containing a £3,450 certificate of value

Up to £25	1s6d (7½p) per £5 or part of £5.
£25 to £300	7s6p (37½p) per £25 or part of £25.
£300 to £3,450	15s (75p) per £50 or part of £50.

Documents not certified

Up to £25	2s (10p) per £5 or part of £5.
£25 to £300	10s (50p) per £25 or part of £25.
over £300	£1 per £50 or part of £50.

5. Rates from 1 August 1956 to 31 July 1958

Documents containing a £3,500 certificate of value

Up to £25	6d (2½p) per £5 or part of £5.
£25 to £300	2s6d (12½p) per £25 or part of £25.

£300 to £3,500 5s (25p) per £50 or part of £50.

Documents containing a £4,250 certificate of value

Up to £25 1s (5p) per £5 or part of £5.
£25 to £300 5s (25p) per £25 or part of £25.
£300 to £4,250 10s (50p) per £50 or part of £50.

Documents containing a £5,000 certificate of value

Up to £25 1s6d (7½p) per £5 or part of £5.
£25 to £300 7s6p (37½p) per £25 or part of £25.
£300 to £5,000 15s (75p) per £50 or part of £50.

Documents not certified

Up to £25 2s (10p) per £5 or part of £5.
£25 to £300 10s (50p) per £25 or part of £25.
over £300 £1 per £50 or part of £50.

6. Rates from 1 August 1958 to 31 July 1963

Documents containing a £3,500 certificate of value

Up to £3,500 Nil

Documents containing a £4,500 certificate of value

Up to £25 6d (2½p) per £5 or part of £5.
£25 to £300 2s6d (12½p) per £25 or part of £25.
£300 to £3,500 5s (25p) per £50 or part of £50.

Documents containing a £5,250 certificate of value

Up to £2.10s (£2.50p) 6d (2½p)
Over £2.10s (£2.50p) to £5 1s (5p)
£5 to £25 1s (5p) per £5 or part of £5.
£25 to £300 5s (25p) per £25 or part of £25.
£300 to £5,250 10s (50p) per £50 or part of £50.

Documents containing a £6,000 certificate of value

Up to £1.5s (£1.25p) 6d (2½p)
Over £1.5s (£1.25p) to £2.10s (£2.50p) 1s (5p)
Over £2.10s (£2.50p) to £5 1s6d (7½p)
£5 to £25 1s6d (7½p) per £5 or part of £5.
£25 to £300 7s6p (37½p) per £25 or part of £25.
£300 to £6,000 15s (75p) per £50 or part of £50.

Documents not certified

Up to £1.5s (£1.25p) 6d (2½p)
Over £1.5s (£1.25p) to £2.10s (£2.50p) 1s (5p)
Over £2.10s (£2.50p) to £3.15s (£3.75p) 1s6d (7½p)
Over £3.15s (£3.75p) to £5 2s (10p)

Please note this document was last updated in 2001

£5 to £25	2s (10p) per £5 or part of £5.
£25 to £300	10s (50p) per £25 or part of £25.
Over £300	£1 per £50 or part of £50.

7. Rates from 1 August 1963 to 31 July 1967

Documents containing a £4,500 certificate of value

Up to £4,500	Nil
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Documents containing a £6,000 certificate of value

Up to £6,000	Approximately 5s (25p) per £50 or part of £50.
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Documents not certified

Any amount	Approximately 10s (50p) per £50 or part of £50.
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8. Rates from 1 August 1967 to 31 July 1970

Documents containing a £5,500 certificate of value

Up to £5,500	Nil
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Documents containing a £7,000 certificate of value

Up to £2.10s (£2.50p)	3d (1¼p)
Over £2.10s (£2.50p)	
to £5	6d (2½p)
£5 to £20	6d (2½p) per £5 or part thereof.
Over £20 to £35	2s6d (12½p)
Over £35 to £60	5s (25p)
Over £60 to £80	7s6p (37½p)
Over £80 to £100	10s (50p)
£100 to £300	2s6p (12½p) per £25 or part of £25.
£300 to £7,000	5s (25p) per £50 or part of £50.

Documents not certified

Up to £1.5s (£1.25p)	3d (1¼p)
Over £1.5s (£1.25p)	
to £2.10s (£2.50p)	6d (2½p)
Over £2.10s (£2.50p)	
to £3.15s (£3.75p)	9d (3¾p)
Over £3.15s (£3.75p)	
to £5	1s (5p)
£5 to £20	1s (5p) per £5 or part of £5.
Over £20 to £35	5s (25p)
Over £35 to £60	10s (50p)
Over £60 to £80	15s (75p)
Over £80 to £100	£1
£100 to £300	5s (25p) per £25 or part of £25.
Over £300	10s (25p) per £50 or part of £50.

9. Rates from 1 August 1970 to 31 July 1972

Documents containing a £5,500 certificate of value

Up to £5,500 Nil

Documents containing a £7,000 certificate of value

Up to £100	1s (5p) per £10 or part of £10.
£100 to £300	2s (10p) per £20 or part of £20.
Over £300	5s (25p) per £50 or part of £50.

Documents not certified

Up to £10	1s (5p) per £5 or part of £5.
£10 to £100	2s (10p) per £10 or part of £10.
£100 to £300	4s (20p) per £20 or part of £20.
Over £300	10s (50p) per £50 or part of £50.

(Rationalisation prior to the introduction of decimal currency on 15 February 1971)

10. Rates from 1 August 1972 to 30 April 1974

Conveyance or Transfer

Documents containing a £10,000 certificate of value

Up to £10,000 Nil

Documents containing a £15,000 certificate of value

Up to £100	5p per £10 or part of £10.
£100 to £300	10p per £20 or part of £20.
£300 to £15,000	25p per £50 or part of £50.

Documents not certified or lease premiums where the rent is more than £150 per year, or transfers of stock

Up to £10	5p per £5 or part of £5.
£10 to £100	10p per £10 or part of £10.
£100 to £300	20p per £20 or part of £20.
Over £300	50p per £50 or part of £50.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £250	Nil
Over £250	25p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25	5p per £5 or part of £5.
£25 to £100	25p per £25 or part of £25.
Over £100	50p per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25	30p per £5 or part of £5.
£25 to £100	£1.50p per £25 or part of £25.
Over £100	£3 per £50 or part of £50.

Term over 100 years

Up to £25	60p per £5 or part of £5.
£25 to £100	£3 per £25 or part of £25.
Over £100	£6 per £50 or part of £50.

11. Rates from 1 May 1974 to 5 April 1980

Conveyance or Transfer, or Premium for a lease

Documents containing a £15,000 certificate of value

Up to £15,000	Nil
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Documents containing a £20,000 certificate of value

Up to £100	5p per £10 or part of £10.
£100 to £300	10p per £20 or part of £20.
£300 to £20,000	25p per £50 or part of £50.

Documents containing a £25,000 certificate of value

Up to £10	5p per £5 or part of £5.
£10 to £100	10p per £10 or part of £10.
£100 to £300	20p per £20 or part of £20.
£300 to £25,000	50p per £50 or part of £50.

Documents containing a £30,000 certificate of value

Up to £5	10p
Over £5 to £100	15p per £10 or part of £10.
£100 to £300	30p per £20 or part of £20.
£300 to £30,000	75p per £50 or part of £50.

Documents not certified, or lease premiums where the rent is more than £150 per year, or transfers of stock

Up to £10	10p per £5 or part of £5.
£10 to £100	20p per £10 or part of £10.
£100 to £300	40p per £20 or part of £20.
Over £300	£1 per £50 or part of £50.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £250	Nil
Over £250	50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25	10p per £5 or part of £5.
£25 to £100	50p per £25 or part of £25.
Over £100	£1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25	60p per £5 or part of £5.
£25 to £100	£3 per £25 or part of £25.

Over £100	£6 per £50 or part of £50.
Term over 100 years	
Up to £25	£1.20p per £5 or part of £5.
£25 to £100	£6 per £25 or part of £25.
Over £100	£12 per £50 or part of £50.

12. Rates from 6 April 1980 to 21 March 1982

Conveyance or Transfer, or Premium for a lease

Documents containing a £20,000 certificate of value

Up to £20,000	Nil
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Documents containing a £25,000 certificate of value

Up to £100	5p per £10 or part of £10.
£100 to £300	10p per £20 or part of £20.
£300 to £25,000	25p per £50 or part of £50.

Documents containing a £30,000 certificate of value

Up to £10	5p per £5 or part of £5.
£10 to £100	10p per £10 or part of £10.
£100 to £300	20p per £20 or part of £20.
£300 to £30,000	50p per £50 or part of £50.

Documents containing a £35,000 certificate of value

Up to £5	10p
Over £5 to £100	15p per £10 or part of £10.
£100 to £300	30p per £20 or part of £20.
£300 to £35,000	75p per £50 or part of £50.

Documents not certified, or lease premiums where the rent is more than £250 per year, or transfers of stock

Up to £10	10p per £5 or part of £5.
£10 to £100	20p per £10 or part of £10.
£100 to £300	40p per £20 or part of £20.
Over £300	£1 per £50 or part of £50.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £400	Nil
Over £400	50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25	10p per £5 or part of £5.
£25 to £100	50p per £25 or part of £25.
Over £100	£1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25	60p per £5 or part of £5.
£25 to £100	£3 per £25 or part of £25.
Over £100	£6 per £50 or part of £50.

Term over 100 years

Up to £25	£1.20p per £5 or part of £5.
£25 to £100	£6 per £25 or part of £25.
Over £100	£12 per £50 or part of £50.

13. Rates from 22 March 1982 to 19 March 1984

Conveyance or Transfer, or Premium for a lease

Documents containing a £25,000 certificate of value

Up to £25,000	Nil
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Documents containing a £30,000 certificate of value

Up to £100	5p per £10 or part of £10.
£100 to £300	10p per £20 or part of £20.
£300 to £30,000	25p per £50 or part of £50.

Documents containing a £35,000 certificate of value

Up to £10	5p per £5 or part of £5.
£10 to £100	10p per £10 or part of £10.
£100 to £300	20p per £20 or part of £20.
£300 to £35,000	50p per £50 or part of £50.

Documents containing a £40,000 certificate of value

Up to £5	10p
Over £5 to £100	15p per £10 or part of £10.
£100 to £300	30p per £20 or part of £20.
£300 to £40,000	75p per £50 or part of £50.

Documents not certified, or lease premiums where the rent is more than £300 per year, or transfers of stock

Up to £10	10p per £5 or part of £5.
£10 to £100	20p per £10 or part of £10.
£100 to £300	40p per £20 or part of £20.
Over £300	£1 per £50 or part of £50.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500	Nil
Over £500	50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25	10p per £5 or part of £5.
£25 to £100	50p per £25 or part of £25.

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Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.
£25 to £100 £3 per £25 or part of £25.
Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.
£25 to £100 £6 per £25 or part of £25.
Over £100 £12 per £50 or part of £50.

14. Rates from 20 March 1984 to 26 October 1986

Conveyance or Transfer, or Premium for a lease

Documents containing a £30,000 certificate of value

Up to £30,000 Nil

Documents not certified, or lease premiums where the rent is more than £300 per year, or transfers of stock

Up to £500 50p per £50 or part of £50.
Over £500 £1 per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil
Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.
£25 to £100 50p per £25 or part of £25.
Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.
£25 to £100 £3 per £25 or part of £25.
Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.
£25 to £100 £6 per £25 or part of £25.
Over £100 £12 per £50 or part of £50.

15. Rates from 27 October 1986 to 19 December 1991

Conveyance or Transfer, or Premium for a lease

Please note this document was last updated in 2001

Documents containing a £30,000 certificate of value

Up to £30,000 Nil

Documents not certified, or lease premiums where the rent is more than £300 per year

Up to £500 50p per £50 or part of £50.
Over £500 £1 per £100 or part of £100.

Transfers of Stock

No provision for certification

Any amount 50p per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil
Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.
£25 to £100 50p per £25 or part of £25.
Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.
£25 to £100 £3 per £25 or part of £25.
Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.
£25 to £100 £6 per £25 or part of £25.
Over £100 £12 per £50 or part of £50.

16. Rates from 20 December 1991 to 19 August 1992

Conveyance or Transfer, or Premium for a lease

Documents containing a £250,000 certificate of value

Up to £250,000 Nil

Documents not certified, or lease premiums where the rent is more than £2,500 per year

Up to £500 50p per £50 or part of £50.
Over £500 £1 per £100 or part of £100.

Transfers of Stock

No provision for certification

Any amount 50p per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil
Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.
£25 to £100 50p per £25 or part of £25.
Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.
£25 to £100 £3 per £25 or part of £25.
Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.
£25 to £100 £6 per £25 or part of £25.
Over £100 £12 per £50 or part of £50.

17. Rates from 20 August 1992 to 22 March 1993

Conveyance or Transfer, or Premium for a lease

Documents containing a £30,000 certificate of value

Up to £30,000 Nil

Documents not certified, or lease premiums where the rent is more than £300 per year

Up to £500 50p per £50 or part of £50.
Over £500 £1 per £100 or part of £100.

Transfers of Stock

No provision for certification

Any amount 50p per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil
Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.

Please note this document was last updated in 2001

£25 to £100	50p per £25 or part of £25.
Over £100	£1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25	60p per £5 or part of £5.
£25 to £100	£3 per £25 or part of £25.
Over £100	£6 per £50 or part of £50.

Term over 100 years

Up to £25	£1.20p per £5 or part of £5.
£25 to £100	£6 per £25 or part of £25.
Over £100	£12 per £50 or part of £50.

18. Rates from 22 March 1993 to 7 July 1997

Conveyance or Transfer, or Premium for a lease

Documents containing a £60,000 certificate of value

Up to £60,000	Nil
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Documents not certified, or lease premiums where the rent is more than £600 per year

Up to £500	50p per £50 or part of £50.
Over £500	£1 per £100 or part of £100.

Transfers of Stock

No provision for certification

Any amount	50p per £100 or part of £100.
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Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500	Nil
Over £500	50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25	10p per £5 or part of £5.
£25 to £100	50p per £25 or part of £25.
Over £100	£1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25	60p per £5 or part of £5.
£25 to £100	£3 per £25 or part of £25.
Over £100	£6 per £50 or part of £50.

Term over 100 years

Up to £25	£1.20p per £5 or part of £5.
£25 to £100	£6 per £25 or part of £25.

Please note this document was last updated in 2001

Over £100 £12 per £50 or part of £50.

19. Rates from 8 July 1997 to 23 March 1998

Conveyance or Transfer, or Premium for a lease

Documents containing a £60,000 certificate of value

Up to £60,000 Nil

Documents containing a £250,000 certificate of value

Up to £500 50p per £50 or part of £50.

£500 to £250,000 £1 per £100 or part of £100

Documents containing a £500,000 certificate of value

Up to £500,000 £1.50p per £100 or part of £100

Documents not certified

Any amount £2 per £100 or part of £100.

Transfers of Stock

No provision for certification

Any amount 50p per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil

Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.

£25 to £100 50p per £25 or part of £25.

Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.

£25 to £100 £3 per £25 or part of £25.

Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.

£25 to £100 £6 per £25 or part of £25.

Over £100 £12 per £50 or part of £50.

20. Rates from 24 March 1998 to 15 March 1999

Conveyance or Transfer, or Premium for a lease

Please note this document was last updated in 2001

Documents containing a £60,000 certificate of value

Up to £60,000 Nil

Documents containing a £250,000 certificate of value

Up to £500 50p per £50 or part of £50.
£500 to £250,000 £1 per £100 or part of £100

Documents containing a £500,000 certificate of value

Up to £500,000 £2 per £100 or part of £100

Documents not certified

Any amount £3 per £100 or part of £100

Transfers of Stock

No provision for certification

Any amount 50p per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil
Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.
£25 to £100 50p per £25 or part of £25.
Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.
£25 to £100 £3 per £25 or part of £25.
Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.
£25 to £100 £6 per £25 or part of £25.
Over £100 £12 per £50 or part of £50.

21. Rates from 16 March 1999 to 30 September 1999

Conveyance or Transfer, or Premium for a lease

Documents containing a £60,000 certificate of value

Up to £60,000 Nil

Documents containing a £250,000 certificate of value

Up to £250,000 £1 per £100 or part of £100

Please note this document was last updated in 2001

Documents containing a £500,000 certificate of value

Up to £500,000 £2.50p per £100 or part of £100

Documents not certified

Any amount £3.50p per £100 or part of £100

Transfers of Stock

No provision for certification

Any amount 50p per £100 or part of £100.

Lease or Tack - Rental element (Rate or average annual rate)

Term not exceeding 7 years or indefinite

Up to £500 Nil

Over £500 50p per £50 or part of £50.

Term over 7 years up to 35 years

Up to £25 10p per £5 or part of £5.

£25 to £100 50p per £25 or part of £25.

Over £100 £1 per £50 or part of £50.

Term over 35 years up to 100 years

Up to £25 60p per £5 or part of £5.

£25 to £100 £3 per £25 or part of £25.

Over £100 £6 per £50 or part of £50.

Term over 100 years

Up to £25 £1.20p per £5 or part of £5.

£25 to £100 £6 per £25 or part of £25.

Over £100 £12 per £50 or part of £50.

22. Rates from 1 October 1999 to 27 March 2000

Conveyance or Transfer, or Premium for a lease

Documents containing a £60,000 certificate of value

Up to £60,000 Nil

Documents containing a £250,000 certificate of value

Up to £250,000 1% rounded up to the next multiple of £5.

Documents containing a £500,000 certificate of value

Up to £500,000 2½% rounded up to the next multiple of £5.

Documents not certified

Any amount 3½% rounded up to the next multiple of £5.

Transfers of Stock

Please note this document was last updated in 2001

Any amount $\frac{1}{2}\%$ rounded up to the next multiple of £5.

Lease or Tack - Rental element (average rent)

Term not more than 7 years or indefinite

Up to £500 Nil

Over £500 1% rounded up to the next multiple of £5.

Term more than 7 years but not more than 35 years

Any amount 2% rounded up to the next multiple of £5.

Term more than 35 years but not more than 100 years

Any amount 12% rounded up to the next multiple of £5.

Term over 100 years

Any amount 24% rounded up to the next multiple of £5.

Please note this document was last updated in 2001

Appendix C(2): interest rates

	On or after	Rate charged (%)	Rate paid (%)
1	6 March 1993	6.25	6.25
2	6 January 1994	5.50	5.50
3	6 October 1994	6.25	6.25
4	6 March 1995	7.00	7.00
5	6 February 1996	6.25	6.25
6	6 August 1997	7.25	7.25
7	6 January 1999	6.50	6.50
8	6 March 1999	5.75	5.75
9	1 October 1999	7.50	3.00
10	6 February 2000	8.50	4.00
11	6 May 2001	7.50	3.50
12	6 November 2001	6.50	2.50