CHAPTER 1 INTRODUCTION

Scope of Chapter

1.1 Introduction

Stamp duty is a tax on instruments and not on transactions which distinguishes it from all other taxes in Ireland. The duty is levied primarily by the Stamp Duties Consolidation Act, 1999 ("SDCA"), as amended by Finance Acts. Thus to assess a potential stamp duty liability on a document it is necessary to consider the impact of the relevant legislation (using the interpretative guidelines set down by the courts), and the legal effect of the document in question. This book seeks to explore the mechanics of stamp duty by examining it from a number of different angles.

General principles

Heads of charge

Exemptions & reliefs

Transactions

Property

Administration

1.2 Charging Provision

The main charging provision for stamp duty is s2(1) of the SDCA which states:

> *"2(1) Any instrument which:*
>
> *(a) is specified in Schedule 1, and*
>
> *(b) is executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State, shall be chargeable with stamp duty."*

s2(1)(b) SDCA Thus, to come within the basic charging provision there must be an instrument, it must be one which is listed in Schedule 1 of the SDCA, and finally it must fall within the territoriality provisions in s2(1)(b) SDCA.

s1(1) SDCA Stamp duty is a mandatory tax since 1991. Section 1(1) SDCA lists the categories of accountable persons, being the persons liable for the payment of stamp duty on an instrument which is either unstamped or insufficiently stamped. Stamp duty is a self assessment tax. The accountable person should ensure that a stampable document is delivered to the Revenue, together with all relevant information within the appropriate time period. One of the features of the mandatory nature of stamp duty is that any unpaid stamp duty (and any surcharges and/or penalties) is a debt due by the accountable person to the Minister for Finance for the benefit of the Central Fund. The debt may be recovered by legal action at the instance of the Attorney General, the Minister for Finance or the Revenue Commissioners. In addition, the Revenue Commissioners may raise an assessment for stamp duty payable even if the document is not actually presented for stamping.

1.3 E-Stamping and Self Assessment

One of the most significant developments in the area of stamp duty occurred in December 2009, with the introduction of e-stamping, and the requirement to file a stamp duty return. The previous system of presenting documents at the counter of the Revenue Commissioners is no longer permissible. Since 30th December 2009, all stamp duty must be accompanied by a return which should be made electronically through ROS, or in very exceptional circumstances where revenue direct, by using a paper return.

The use of e-stamping allowed for the introduction of self assessment for all documents executed on or after 7th July 2012. The main change being that adjudication is no longer available nor necessary for documents executed on or after that date. This is discussed in more detail in Chapter 33.12.

1.4 Tax on Instruments

With some limited but important exceptions (see Chapter 2), there must be a written document in existence before a charge to stamp duty can arise. A written instrument may be created due to legal requirements, or simply because the parties wish to have a written record of the transaction. In certain circumstances it may be possible to effect a transaction without creating any instrument thereby avoiding any stamp duty charge.

1.5 Heads of Charge

Sch 1 SDCA

To be chargeable to stamp duty an instrument must be one of those listed in Schedule 1 SDCA which sets out categories of instruments which are within the charge to stamp duty and their applicable rate of duty. A document may fall to be subject to duty under a particular head because it is expressly listed in Schedule I, deemed to be a particular type of document by legislation, or held to be so treated under case law.

An overview of the main heads of charge is set out in Chapter 3.

1.6 Territoriality

An instrument which comes within a head of charge must also have a degree of connection with the State. The duty only arises if either:-

(a) it is executed in the State; or

(b) wherever executed it relates to;

(i) property situated in the State, or

(ii) any matter or thing done or to be done in the State.

The residence of the parties to an instrument *per se* has no bearing on whether it comes within the charge to stamp duty. The territorial application of stamp duty is considered in detail in Chapter 4.

1.7 Rate of Stamp Duty

The duty chargeable on a particular instrument may be a fixed rate of duty or the rate may be *ad valorem,* meaning that stamp duty is assessed at the applicable rate by reference to the value of the transaction. An instrument may be exposed to duty under more than one head of charge, and if so the Revenue Commissioners are empowered to select the head of charge that yields the most duty.

1.8 Exemption and Reliefs

Where an instrument might otherwise come within the charge to stamp duty, it may be possible to avail of an exemption or claim a relief in respect of stamp duty charge.

Exemptions may be general, meaning that the instrument is not liable to stamp duty under any head of charge, or, may be specific in that it provides exemption only under a particular head of charge. Reliefs are usually specific.

An instrument which benefits from a specific exemption or relief may still be chargeable to stamp duty if it falls under another head of charge for which there is no available exemption or relief. There is no general presumption that an ambiguity in the wording of an exemption or relief be construed in favour of the taxpayer.

In broad terms the distinction between exemptions and reliefs was that the tax payer does not have to make an application to claim an exemption whereas a relief must usually be specially claimed. In many cases an exemption was supported by a certificate contained in an instrument which recites the relevant exemption and the basis for its application. However subsequent to the introduction of self assessment, the requirement to insert certificates or make an application to obtain a relief has been removed.

If there is any uncertainty about the availability of an exemption or a relief the onus is on the taxpayer to establish the availability of such exemption or relief.