

Lease combined with building agreement for dwellinghouse or apartment. FA1990 s112(1) to (8) (part) 53.—(1)

(a) In this section—

“building” includes any improvement of any land, and any alteration to the character of any land, preliminary to the erection on that land of a dwellinghouse or apartment;

“land” includes any interest in any land but does not include the result of any act of building.

(b) For the purposes of this section, references to the repayment of stamp duty to a person who paid it include reference to any other person who satisfies the Commissioners that such person is entitled to recover moneys owing to the person.

(2) Notwithstanding subsection (2) of section 52, where, in connection with, or as part of any arrangement involving, a lease of any land, a dwellinghouse or apartment has been built, or is in the course of being built, or is to be built, on that land, any instrument whereby such lease is effected shall be chargeable to stamp duty under subparagraph (a) of paragraph (3) of the heading “LEASE” in Schedule 1, as if the property concerned were residential property on an amount equal to the aggregate of—

(a) any consideration (other than rent) paid in respect of the lease of that land, and

(b) any consideration paid, or to be paid, in respect of the building of the dwellinghouse or apartment on that land.

(3) Without prejudice to the generality of subsection (2), a dwellinghouse or apartment shall be regarded as having been built or being in the course of being built or to be built in connection with, or as part of any arrangement involving, a lease of any land where building has commenced prior to the execution of any instrument effecting the lease.

(4) (a) Where in the case of any instrument of lease to which this section applies, the aggregate consideration to which subsection (2) relates cannot, in the opinion of the Commissioners, be ascertained at the date on which the instrument is presented for stamping, then the instrument shall be chargeable to stamp duty as if the amount of the aggregate consideration which is chargeable under subsection (2) was equal to 10 times the unencumbered open market value of the land at the date of the instrument of lease or to such lower multiple, not being less than 5, of the open market value of the land as the Commissioners consider appropriate having regard to the relevant information available to them.

(b) Where it is shown to the satisfaction of the Commissioners that the amount of the stamp duty paid under this subsection exceeded the stamp duty with which the instrument would have been charged under subsection (2) had the aggregate consideration paid or to be paid in respect of the dwellinghouse or apartment been ascertainable at the date of stamping of the instrument, then the amount of such excess stamp duty shall, on an application to the Commissioners within 3 years after the date of stamping of the instrument, be repaid to the person or persons by whom the stamp duty was paid and such repayment shall bear simple interest at the rate of 0.5 per cent, or such other rate (if any) as stands prescribed by the Minister

by regulations, for each month or part of a month from the date of payment of the excess duty up until the date of such repayment and income tax shall not be deductible on payment of interest under this subsection and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(5) For the purpose of determining whether this section shall apply to any instrument, the Commissioners may require the delivery to them, in such form as they may specify, of a statement or a statutory declaration by—

(a) any person directly or indirectly concerned with the lease of the land or with the building of a dwellinghouse of apartment on the land, and

(b) any solicitor acting on behalf of any person to whom paragraph (a) relates,

of any facts which the Commissioners consider relevant in making any such determination.

(6) Any instrument to which the heading “LEASE” in Schedule 1 applies shall contain a statement, in such form as the Commissioners may specify, certifying whether or not this section is applicable to such instrument, and the furnishing of an incorrect certificate shall be deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997 .

(7) Where stamp duty has been charged on any instrument by reference to this section and, within 2 years after the date of stamping of the instrument, building has not commenced, then this section shall be deemed not to have applied to the instrument and, accordingly, the Commissioners shall, on application to them within 3 years after the date of stamping of the instrument by the person or persons by whom the stamp duty was paid, repay to such person or persons the amount of the stamp duty paid by such person or persons which, but for the other provisions of this section, would not have been chargeable and such repayment shall bear simple interest at the rate of 0.5 per cent, or such other rate (if any) as stands prescribed by the Minister by regulations, for each month or part of a month from the date of payment of the excess duty up until the date of such repayment and income tax shall not be deductible on payment of interest under this subsection and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(8) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under that regulation.