

Surcharges to apply when apportionment is not just and reasonable. FA1997 s121 16.—(1) In this section “residential consideration” means—

(a) in the case of a sale to which section 45 (2)(a) refers, or a lease to which section 52 (5)(a) refers, the amount or value of the consideration for the sale or lease which is deemed to be attributable to residential property, and

(b) in the case of a sale to which section 45 (2)(b) refers, or a lease to which section 52 (5)(b) refers, the amount or value of the aggregate consideration (2) or 52 (5), respectively) which is deemed to be attributable to residential property.

(2) Where—

(a) in relation to any sale, section 45 (2) refers, an estimate (in this section referred to as the “vendor's estimate” or as the “purchaser's estimate”, as the case may be) of the residential consideration shall be made by the vendor and by the purchaser, and

(b) in relation to any lease, section 52 (5) refers, an estimate (in this section referred to as the “lessor's estimate” or as the “lessee's estimate”, as the case may be) of the residential consideration shall be made by the lessor and by the lessee,

and those estimates together with the amount or value of the aggregate consideration (2) or 52 (5), as appropriate) shall be brought to the attention of the Commissioners in the statement delivered under section 8 (2) and that statement shall be signed by the vendor or lessor and by the purchaser or lessee, as appropriate, and where the requirements of this subsection are not complied with any person who executes the instrument whereby that sale or lease is effected shall for the purposes of section 8 (3) be presumed, until the contrary is proven, to have acted negligently.

(3) Where the purchaser's or lessee's estimate (in this subsection referred to as the “submitted value”) is less than or greater than the residential value agreed with, or ascertained by, the Commissioners, subject to the right of appeal under section 21, (in this subsection referred to as the “ascertained value”) then, as a penalty, the duty chargeable on the instrument, shall, where an assessment of duty based on the ascertained value would result in a greater amount than an assessment based on the submitted value, be increased by an amount (in this subsection referred to as the “surcharge”) calculated according to the following provisions:

(a) where the submitted value is less than or greater than the ascertained value by an amount which is greater than 10 per cent of the ascertained value but not greater than 30 per cent of the ascertained value, a surcharge equal to 50 per cent of the difference between the duty chargeable by reference to the ascertained value and the duty chargeable by reference to the submitted value;

(b) where the submitted value is less than or greater than the ascertained value by an amount which is greater than 30 per cent of the ascertained value, a surcharge equal to the difference between the duty chargeable by reference to the ascertained value and the duty chargeable by reference to the submitted value.

(4) (a) Notwithstanding any other provision to the contrary in this Act, the purchaser or lessee, as the case may be, shall, subject to paragraph (b), be entitled to recover from the vendor or lessor one-half of that surcharge.

(b) Where the estimate of the vendor or lessor, as the case may be, is less than or greater than the submitted value, the amount which the purchaser or lessee shall be entitled to recover from the vendor or lessor shall not exceed one-half of what the surcharge would be if the submitted value were equal to the vendor's or lessor's estimate.

(5) Any surcharge payable by operation of this section shall be chargeable and recoverable in the same manner as if it were part of the duty on the instrument to which it relates.