

Charging of duty on leases, etc. SA1891 s77(1), (2), (5) and (6); RA1909 s8 52.—(1) A lease, or agreement for a lease, or with respect to any letting, shall not be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, or agreement, of or relating to the same subject matter.

(2) A lease made for any consideration in respect of which it is chargeable with ad valorem duty, and in further consideration either of a covenant by the lessee to make, or of such lessee having previously made, any substantial improvement of or addition to the property demised to such lessee, or of any covenant relating to the matter of the lease, shall not be charged with any duty in respect of such further consideration.

(3) Subsection (2) shall not apply as respects any further consideration in the lease consisting of a covenant which if it were contained in a separate deed would be chargeable with ad valorem stamp duty and, accordingly, the lease shall in any such case be charged with duty in respect of any such further consideration under section 7.

(4) An instrument whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease is increased shall not be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

(5) Where—

(a) any property which consists partly of an interest in residential property is leased to any person and that lease (in this subsection referred to as “the first-mentioned lease”) does not form part of a larger transaction or of a series of transactions, or

(b) the lease to any person of property consisting in whole or in part of such an interest forms part of a larger transaction or of a series of transactions,

then the consideration (other than rent) attributable to the first-mentioned lease and the aggregate consideration (other than rent) attributable to that larger transaction or series of transactions, as the case may be, shall be apportioned, on such basis as is just and reasonable, as between that interest in residential property and the other property or part concerned, and that aggregate consideration shall likewise be apportioned as between each other such interest (if any) comprised in that larger transaction or series of transactions and the other property or parts concerned, and notwithstanding the amount or value of the consideration set forth in any instrument—

(i) the consideration so apportioned to that interest shall be deemed to be the amount or the value of the consideration for the lease which is attributable to that interest and the consideration so apportioned to the aggregate of all such interests comprised in that larger transaction or series of transactions shall be deemed to be the amount or value of that aggregate consideration which is attributable to residential property, and

(ii) the consideration so apportioned to the other property or part or parts concerned shall be deemed to be the amount or value of the consideration for the lease, or of that aggregate consideration, as the case may be, which is attributable to property which is not residential property.