OHT Guide

Stamp Duty
Fully Self Assessed System

Following Finance Act 2012, Stamp Duty has become a fully self-assessed tax, so that the onus is on the taxpayer to apply the stamp duty rules and pay the tax correctly.

A number of the measures which implement this "Modernisation of Stamp Duty" were introduced by a Ministerial Order on 07 July 2012 and the main changes include the following:

1. The adjudication process has now been abolished. Previously adjudication was required for certain deeds which effected transfers which were eligible for stamp duty reliefs such as consanguinity relief, or reconstruction and amalgamation relief.

2. The option of making an Expression of Doubt has been amended where genuine doubt exists about the correct tax treatment, an expression of doubt can be made. However this option is not available when the return is filed late (more than 44 days after execution).

3. Records must be retained for 6 years from the later of two dates, the date that the return was made or the date of payment of the stamp duty.

   A penalty of €3,000 has been introduced where this requirement is not met.

4. A surcharge of 5% / 10% of tax now applies for the late filing of a return.

   This surcharge replaces an earlier surcharge provision, to bring stamp duty in line with the surcharges imposed for other taxes (such as income tax, capital gains tax and capital acquisitions tax).

   Revenue have retained the old stamp duty period of grace, so the ROS system will not apply late stamping surcharge if it is presented within 44 days, even though the legislation provides a 30 day period for stamping.

   The 5% surcharge applies where the return is filed after 44 days but within 92 days after the execution of the deed (subject to a maximum of €12,695). The surcharge is 10% of the unpaid duty where the return is not filed within 92 days of the execution of the deed (subject to a maximum of €63,485).

5. A penalty of €3,000 is provided for failure to make a return.

6. Revenue now have the power to enter a premises or place of business for the purpose of auditing a return and they may require the accountable person or an employee to produce records or other documents.

   A penalty of €19,045 has been introduced where this requirement is not met by the accountable person and a penalty of €1,265 in the case of an employee.

7. The timeframe for claiming refunds of stamp duty has been reduced from 6 years to 4 years, which brings stamp duty in line with other taxes such as CAT and income tax.

8. The surcharge for undervaluation has been abolished for instruments executed on or after 07 July 2012.

9. There is no longer a requirement to include Finance Certificates in instruments for stamp duty purposes where the deed is executed on or after 07 July 2012.

This new regime applies to instruments executed on or after 07 July 2012, and the old regime applies to instruments executed before this date.

Recent Changes affecting Stamp Duty Rates

Finance Act 2012 reduced the rate of stamp duty on non-residential property to a flat rate of 2% for instruments executed on or after 07 December 2011, with some provision for transitional relief if deeds were signed before 01 July 2012 and there was a pre-Budget contract.

Finance (No. 3) Act 2011 reduced the rate of stamp duty on residential property to 1% on the first €1m and 2% thereafter.

FA12 provided for the abolition of consanguinity relief on non-residential property from 31 December 2014. Consanguinity relief was abolished on residential property from 08 December 2010.

Caveat: *These notes are intended as a general guide to Stamp Duty. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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