

# OHT Guide

## Stamp Duty

### A Self Assessed System



Stamp Duty is a fully self-assessed tax, so that the onus is on the taxpayer to apply the stamp duty rules and pay the tax correctly. The key points on filing stamp duty returns are set out below:

1. The Stamp Duty pay & file deadline is 30 days from the date of first execution, but in practice Revenue allow 44 days.
2. Records must be retained for 6 years from the date the return is made or the date of payment of the stamp duty. A penalty of €3,000 applies.
3. A surcharge of 5% / 10% of tax applies for the late filing of a return. Revenue have retained the old stamp duty period of grace, so the ROS system will not apply late stamping surcharge if a return is presented within 44 days, even though the legislation provides a 30 day period for stamping.

A 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% where the return is not filed within 92 days of the execution of the deed (subject to a maximum of €63,485).

4. A penalty of €3,000 is provided for failure to make a return.
5. Revenue now 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 applies if this requirement is not met by the accountable person, with a penalty of €1,265 for an employee.

6. 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.

7. The surcharge for undervaluation has been abolished for instruments executed on or after 07 July 2012.
8. 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.
9. The adjudication process has been abolished. Previously adjudication was required for certain deeds which effected transfers which were eligible for stamp duty reliefs.
10. An Expression of Doubt can be made where genuine doubt exists about the correct tax treatment. However this option is not available when the return is filed late (more than 44 days after execution).

This “self-assessed” tax regime applies to instruments executed on or after 07 July 2012, and the old regime applies to instruments executed before this date.

#### Who pays the Stamp Duty?

The “accountable person” pays Stamp Duty (see below). In most cases that will be the person receiving the property. However there are some exceptions. For example in the case of a gift all parties to the instrument are accountable persons.

If there is more than one accountable person, they are jointly and severally liable to pay Stamp Duty.

#### Accountable person for various property transfer types

##### Transfer type

Property generally

Lease

Other cases (for example, if the property transferred or leased is a gift)

##### Accountable person

*The purchaser or transferee of the property (the person receiving the property)*

*The lessee (the person renting the property)*

*The parties to the instrument*

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**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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