



STATUTORY INSTRUMENTS.

S.I. No. 476 of 2009

STAMP DUTY (E-STAMPING OF INSTRUMENTS) REGULATIONS
2009

(Prn. A9/1746)

STAMP DUTY (E-STAMPING OF INSTRUMENTS) REGULATIONS
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STAMP DUTY (E-STAMPING OF INSTRUMENTS) REGULATIONS
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The Revenue Commissioners, in exercise of the powers conferred on them by section 17A (inserted by section 111 of the Finance Act 2008 (No. 3 of 2008)) of the Stamp Duties Consolidation Act 1999 (No. 31 of 1999) hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Stamp Duty (E-stamping of Instruments) Regulations 2009.

(2) The operation of the e-stamping system by the Commissioners shall commence on 30 December 2009 in accordance with these Regulations.

Definitions

2. In these Regulations and in the Schedules to these Regulations—

“certificate identification number”, in relation to a stamp certificate, means a calculated alpha numeric identifier allocated by the e-stamping system as the unique identifier of the stamp certificate;

“clawback” means a clawback payable to the Commissioners under any provision of the Principal Act;

“clawback form” means—

(a) a form in a format approved by the Commissioners for the purpose of notifying them electronically through the e-stamping system, or

(b) a paper form approved by the Commissioners for the purpose of notifying them,

that a clawback has arisen and “paper clawback form” shall be construed accordingly;

“designated account” means a bank account designated by an approved person from which a payment of stamp duty, clawback and either or both interest and any penalty are to be debited by the Commissioners following authorisation given for such debit by the approved person or an authorised person on behalf of the approved person;

“interest” means the amount of interest charged, chargeable, payable or recoverable in respect of unpaid stamp duty or other amount due and payable or recoverable under any provision of the Principal Act;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 8th December, 2009.*

“particulars delivered stamp” means a stamp within the meaning of section 12 of the Principal Act denoting that all particulars prescribed by the Commissioners have been delivered;

“party to the instrument” means any person who is a party to an instrument other than an accountable person;

“penalty” means a penalty of the kind referred to in section 14, 15 or 16 of the Principal Act;

“PPS Number”, in relation to an individual, means the individual’s Personal Public Service Number within the meaning of section 262 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005);

“Principal Act” means the Stamp Duties Consolidation Act 1999 (No. 31 of 1999) and any enactments amending or extending that Act;

“tax reference number” means—

- (a) in relation to a person who is an individual, the individual’s PPS Number,
- (b) subject to paragraph (c), in relation to a person who is not an individual—
 - (i) the reference number allocated by the Commissioners to the person to be stated on any return of income form or notice of assessment, in relation to the income of such person,
 - (ii) where the person is an employer, the reference number stated in the notice of registration issued by the Commissioners to the employer under Regulation 7(4) of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001), or
 - (iii) the person’s VAT Number, and
- (c) in relation to a person who is a foreign body corporate and who does not have a reference number specified in paragraph (b), the reference number allocated by the Commissioners to the body corporate solely for the purpose of the delivery of an electronic return or a paper return to the Commissioners for the purpose of the e-stamping system;

“VAT Number” means the registration number assigned to the person under section 9(1A) (inserted by section 171 of the Finance Act 1992 (No. 9 of 1992)) of the Value Added Tax Act 1972 (No. 22 of 1972).

E-stamping system

3. The purpose of these Regulations is to provide for an e-stamping system that allows an approved person, an authorised person or a filer, as the case may

be, in accordance with arrangements made under these Regulations to deliver an electronic return or a paper return to the Commissioners in relation to an instrument and—

- (a) (i) in the case of an approved person or an authorised person, where the return delivered is an electronic return, to obtain a calculation of the stamp duty and either or both interest and any penalty chargeable on the instrument, or
- (ii) in the case of a filer, where the return delivered is a paper return, to provide a calculation of the stamp duty and either or both interest and any penalty chargeable on the instrument,
- (b) to receive an assessment of the stamp duty and either or both interest and any penalty chargeable on the instrument where the opinion of the Commissioners in relation to the chargeability of the instrument to duty has been expressed in accordance with section 20 of the Principal Act,
- (c) to pay the stamp duty and either or both interest and any penalty chargeable on the instrument in accordance with the calculation or assessment—
 - (i) where the return delivered is an electronic return, by electronic means, or
 - (ii) where the return delivered is a paper return, by arrangement with the Commissioners, and
- (d) to obtain a stamp certificate issued by the Commissioners which bears a certificate identification number and such other particulars as the Commissioners think fit.

Instruments required to be stamped by the e-stamping system

4. Subject to paragraph 3 of Schedule 1, any instrument described in paragraphs 1 and 2 of that Schedule, shall be stamped by means of the e-stamping system.

Electronic returns

5. (1) Before an instrument required to be stamped by means of the e-stamping system is stamped by the Commissioners, an accountable person, in relation to the instrument, shall cause an electronic return in relation to that instrument to be delivered to the Commissioners by an approved person or an authorised person, acting under the authority of the accountable person.

(2) Where there is more than one accountable person, in relation to an instrument, the delivery of an electronic return by an approved person or an authorised person acting under the authority of one accountable person shall satisfy the requirement in paragraph (1).

(3) Subject to paragraph (4), an electronic return referred to in paragraph (1) shall include, as respects—

- (a) (i) the accountable person or each of them, if there is more than one,
- (ii) the party to the instrument or each of them, if there is more than one,

the details set out in paragraph 1 of Schedule 2, and

- (b) the instrument, the details set out in paragraph 2 of Schedule 2.

(4) Notwithstanding paragraph (3), the Commissioners may, as they think fit in particular circumstances, dispense with the requirement to provide them with any of the details set out in paragraph 1 of Schedule 2.

(5) Notwithstanding paragraphs (1) and (2), a person not acting under the authority of an accountable person may deliver an electronic return in relation to an instrument where it can be shown to the satisfaction of the Commissioners that an approved person or an authorised person acting on behalf of the accountable person is, in the opinion of the first-mentioned person, unlikely to deliver an electronic return.

Time by which electronic returns are to be made

6. (1) An electronic return, in relation to an instrument to be stamped in accordance with either paragraph (a) or (b) of section 2(3) of the Principal Act, shall be delivered to the Commissioners before the end of the relevant 30 day period by reference to which the instrument is to be stamped.

(2) Where an electronic return, in relation to an instrument, is not delivered to the Commissioners in accordance with paragraph (1), section 14 of the Principal Act shall apply in relation to the stamping of the instrument on, or following, the delivery of the return.

Electronic transmission of information

7. Subject to these Regulations, sections 917D, 917F (excluding subsection (5)), 917G, 917H, 917J, 917M, and 917N (inserted by section 209 of the Finance Act 1999 (No. 2 of 1999)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) shall, with any necessary modifications, apply to an electronic return delivered to the Commissioners by means of the e-stamping system as if the reference to a return transmitted electronically in those sections was a reference to an electronic return referred to in these Regulations.

Payment of stamp duty by electronic means

8. (1) Every approved person shall, for the purposes of the e-stamping system, maintain a designated account with a financial institution to enable the transfer of funds by electronic means from the person's designated account with the financial institution to an account specified by the Commissioners.

(2) The Commissioners, on receiving an authorisation from an approved person or an authorised person to debit the amount of the stamp duty and either

or both interest and any penalty chargeable on an instrument or any part of the amount chargeable, shall deduct the amount chargeable or that part of the amount chargeable by electronic means from the designated account of the approved person.

(3) The date of payment of an amount chargeable or any part of an amount chargeable referred to in paragraph (2), shall be the date on which an authorisation by an approved person or an authorised person is given to debit the amount or that part of the amount from a designated account, provided sufficient funds are available in the designated account to satisfy the deduction of the amount authorised.

Paper returns

9. (1) Subject to paragraph (3), the obligation of an accountable person to cause an electronic return to be delivered to the Commissioners, in accordance with these Regulations, shall be treated as fulfilled by the accountable person if the information that would otherwise be required to be transmitted electronically by means of an electronic return is delivered to the Commissioners on a paper return approved by the Commissioners and Regulations 5 and 6, shall, with any necessary modifications, apply to such paper return as if the paper return was an electronic return.

(2) Where paragraph (1) applies, the obligations under Regulation 8 shall not apply.

(3) The Commissioners shall, in particular circumstances, require a paper return to be delivered to them in place of an electronic return.

(4) A paper return delivered to the Commissioners shall be signed by a filer in such manner as the Commissioners think fit.

(5) The stamp duty and either or both interest and any penalty chargeable on an instrument in respect of which a paper return is delivered shall be paid by arrangement with the Commissioners.

Stamp certificates

10. (1) Where the Commissioners are satisfied that an electronic return or a paper return in respect of an instrument has been delivered to them, they shall for the purpose of stamping the instrument—

(a) where an electronic return has been delivered, issue a stamp certificate electronically to the approved person or the authorised person, as the case may be, or

(b) where a paper return has been delivered, issue a stamp certificate, processed electronically through the e-stamping system, to the filer in paper form.

(2) Nothing in paragraph (1) shall require the Commissioners to issue a stamp certificate where the stamp duty and either or both interest and any penalty chargeable on the instrument has been paid in part.

(3) A stamp certificate shall be issued in the form of an electronic record which is to be printable in paper form or, as the case may be, be issued in paper form to denote, as appropriate, that—

- (a) the stamp duty and either or both interest and any penalty chargeable on the instrument has been paid in accordance with the return,
- (b) the instrument has been duly stamped,
- (c) the instrument is not chargeable with any stamp duty,
- (d) the instrument is a duplicate or counterpart of an original instrument,
- (e) the stamp duty with which the instrument is chargeable depends in any manner on the stamp duty paid on another instrument.

(4) An approved person, an authorised person or a filer, as the case may be, shall, on receipt of a stamp certificate issued for an instrument by the Commissioners, attach the stamp certificate to the instrument.

Amended stamp certificates

11. (1) Where an electronic return or a paper return has been delivered to the Commissioners in respect of an instrument and an approved person, an authorised person or a filer, as the case may be, (in this Regulation referred to as an “applicant”) delivers an amended electronic or paper return to the Commissioners—

- (a) to vouch a claim under any provision of the Principal Act for a repayment of stamp duty and either or both interest and any penalty paid in respect of the instrument,
- (b) to show to the satisfaction of the Commissioners that the instrument is insufficiently stamped or that the stamp certificate issued contains an error, or
- (c) for any other reason,

the Commissioners, where they are satisfied as to the authenticity of the amended return, shall, subject to paragraph (2), issue an amended stamp certificate electronically or in paper form to the applicant in place of the stamp certificate most recently issued.

(2) Where a stamp certificate is to be replaced in accordance with paragraph (1) as a result of stamp duty or additional stamp duty becoming due and payable, the Commissioners shall issue an amended stamp certificate on payment of the unpaid stamp duty and either or both interest and any penalty.

(3) An amended stamp certificate shall be issued—

- (a) electronically, in a case where the return was an amended return delivered electronically, or

(b) in paper form, in a case where the return was an amended return delivered in paper form.

(4) An applicant shall, on receipt of an amended stamp certificate issued in respect of an instrument by the Commissioners, attach the amended stamp certificate to the instrument.

Stamp certificate where instrument stamped prior to the e-stamping system

12. (1) Where an instrument has been stamped by the Commissioners by means of an impressed stamp and a filer delivers a paper return to the Commissioners—

- (a) to vouch a claim under any provision of the Principal Act for a repayment of stamp duty and either or both interest and any penalty paid in respect of the instrument,
- (b) to show to the satisfaction of the Commissioners that the instrument is insufficiently stamped, or
- (c) for any other reason,

then the Commissioners, where they are satisfied as to the authenticity of the paper return, shall, subject to paragraph (2), issue a stamp certificate in paper form to the filer in place of the impressed stamp which shall be cancelled by the Commissioners in such manner as they think fit.

(2) Where an impressed stamp is to be replaced in accordance with paragraph (1) as a result of stamp duty or additional stamp duty becoming due and payable, the Commissioners shall issue a stamp certificate on payment of the unpaid stamp duty and either or both interest and any penalty.

(3) A filer shall, on receipt of a stamp certificate issued in respect of an instrument by the Commissioners, attach the stamp certificate to the instrument.

Clawback of relief

13. (1) This Regulation applies where a clawback arises under any provision of the Principal Act.

(2) Where paragraph (1) applies, notification of a clawback shall be made to the Commissioners—

- (a) in the case of an instrument stamped by the Commissioners by means of the e-stamping system, by the delivery to them electronically of a clawback form through the e-stamping system by an approved person or an authorised person or by the delivery to them of a paper clawback form, or
- (b) in the case of an instrument stamped by the Commissioners by means of an impressed stamp, by the delivery to them of a paper return and a paper clawback form.

(3) Where notification of a clawback is made to the Commissioners and—

(a) it is made electronically, the Commissioners shall, on receiving an authorisation from an approved person or an authorised person, as the case may be, to debit the aggregate of the amount of the clawback and any interest arising on the clawback (in this Regulation referred to as an “aggregate amount”), deduct the aggregate amount payable by electronic means from the designated account of the approved person, or

(b) it is made on a paper clawback form, payment of the aggregate amount must accompany the paper clawback form.

(4) The Commissioners shall acknowledge receipt of a payment of an aggregate amount to the person who made the payment.

(5) Paragraph (3) of Regulation 8 shall, with any necessary modifications, apply to an aggregate amount within the meaning of this Regulation as it applies to an amount chargeable within the meaning of that paragraph.

Lost instruments

14. (1) This Regulation applies where an instrument has been stamped by the Commissioners by means of an impressed stamp and the instrument has been subsequently lost.

(2) Where paragraph (1) applies, the Commissioners, on the delivery to them of a paper return by a filer, may issue a stamp certificate in respect of the replacement instrument where the provisions of section 155 of the Principal Act are complied with.

Record of stamp certificate

15. The Commissioners shall keep a record of any stamp certificate issued by them, whether electronically or in paper form, in such manner and form as they think fit.

Delegation

16. Any act required to be performed or discharged by the Commissioners under these Regulations may be performed or discharged by an officer of the Commissioners.

SCHEDULE 1

Regulation 4

1. An instrument executed on or after the coming into operation of the e-stamping system which—

- (a) is chargeable to stamp duty under the Principal Act and in respect of which stamp duty is due and payable, or
- (b) is chargeable to stamp duty under the Principal Act or any other enactment but which qualifies for an exemption or exclusion from the charge to stamp duty and which—
 - (i) is required, in accordance with section 20 of the Principal Act, to be stamped with a particular stamp denoting that it is not chargeable with any stamp duty, or
 - (ii) where clause (i) does not apply and not being an instrument to which paragraph 3 applies, is—
 - (I) a conveyance or transfer on sale of the fee simple of land or an interest in land,
 - (II) a conveyance or transfer operating as a voluntary disposition inter vivos for the fee simple of land or an interest in land,
 - (III) a lease of land for a term exceeding 30 years, or
 - (IV) an assignment of a lease of land where the unexpired term of the lease exceeds 30 years.

2. An instrument executed before the coming into operation of the e-stamping system which—

- (b) was chargeable to stamp duty under the Principal Act, under any enactment in force before the enactment of that Act or under any other enactment but which qualified for an exemption or exclusion from the charge to stamp duty and was required to be stamped—
 - (i) in accordance with section 20 of the Principal Act, with a particular stamp denoting that it is not chargeable with any stamp duty, or
 - (ii) where section 20 did not apply, with a particular delivered stamp

but the requirement has not been complied with before the coming into operation of the e-stamping system.

3. This paragraph applies to—

- (a) an instrument creating a joint tenancy between spouses to which section 14 of the Family Home Protection Act 1976 (No. 27 of 1976) applies,
- (b) a conveyance, transfer or lease of a house, building or land by or to a housing authority or the Affordable Homes Partnership to which section 106B of the Principal Act applies,
- (c) a lease for any indefinite term or any term not exceeding 35 years to which paragraph (1) of the Heading “LEASE” in Schedule 1 to the Principal Act applies, or
- (d) an instrument to which section 108B of the Principal Act applies.

SCHEDULE 2

Regulation 5

1. (a) The details relating to an accountable person and any other party to an instrument are—
 - (i) name, and
 - (ii) tax reference number.
 - (b) Where an accountable person or a party to an instrument, is acting in a fiduciary capacity in relation to the instrument, the name and tax reference number of the person or persons with whom the fiduciary relationship exists.
2. The details relating to an instrument required to be furnished in the electronic return are—
 - (a) such particulars contained in the instrument as may be relevant to the calculation or, as the case may be, assessment of stamp duty and either or both interest and any penalty chargeable on the instrument, and
 - (b) any other information that the Commissioners may reasonably require.

GIVEN under my hand,
3 December 2009.

MICHAEL O'GRADY,
Revenue Commissioner.

EXPLANATORY NOTE

These Regulations are to be read in conjunction with section 111 of the Finance Act 2008, section 79 of the Finance (No. 2) Act 2008 and part of paragraph 5(d) of Schedule 5 to the Finance (No. 2) Act 2008 which have been commenced by Ministerial Commencement Order.

Regulation 1 contains the commencement provisions for the e-stamping system.

Regulation 2 contains definitions which are self-explanatory.

Regulation 3 explains the function of the e-stamping system and the services available from it.

Regulation 4 gives details, in conjunction with Schedule 1 of the Regulations, as to which instruments are required to be stamped by the e-stamping system. This Regulation is intended to generally mirror the existing system in relation to the stamping requirement (including the PD stamping) of instruments. The **new** exceptions to this will be that a Lease for a dwellinghouse for a term between 30 and 35 years (which is exempt from duty but currently requires a PD stamp), exempt transfers by or to the Affordable Homes Partnership under section 106B and exempt transfers by or to the National Assets Management Agency will not be required to be stamped (by having to deliver a return to the Commissioners) under the e-stamping system. Tax reference numbers will be required in respect of parties to instruments stamped by means of the e-stamping system.

Regulation 5 describes who is to deliver an electronic return under the authority of the accountable person and in conjunction with Schedule 2 of the Regulations, the information that is required to be given in the electronic return.

Regulation 6 provides for the time limits within which electronic returns are to be delivered. The 30 day period (referred to in paragraph (a) or (b) of section 2(3) of the SDCA) that currently applies to instruments will apply to returns in the case of instruments being stamped. Section 14 of the SDCA will apply to instruments where the return is not delivered within the relevant 30 day period or where the return is delivered on time but the stamp duty is not paid on time.

Regulation 7 applies certain provisions of the Taxes Consolidation Act 1997 relating to the submission of returns electronically via the Revenue-on-line system (ROS) to electronic returns to be submitted via the e-stamping system.

Regulation 8 provides for a mechanism for payment by electronic means of the stamp duty due on an instrument.

Regulation 9 provides for an option to deliver a paper return instead of an electronic return and also applies Regulation 5 and 6, subject to any necessary modification, to such paper return. In practice, the Commissioners will require

a paper return for all instruments executed before 1 January 2002 which are unstamped at the date of the commencement of the e-stamping system.

Regulation 10 provides that the Commissioners will issue a stamp certificate when the full stamp duty and interest and any penalty chargeable on an instrument has been paid. The stamp certificate issued will reflect the stamped status of the instrument. On receipt of the stamp certificate, it must be attached immediately to the instrument concerned.

Regulation 11 provides for the situations where an amended stamp certificate may be issued by the Commissioners. The situations are where a claim for repayment is made (e.g. young trained farmer relief), where an instrument has been insufficiently stamped (e.g. a relief has been incorrectly claimed) or where the stamp certificate issued contains an error (e.g. the date of the instrument has been entered incorrectly on the return).

Regulation 12 is similar to **Regulation 11** in that it provides for the issue of a stamp certificate where the original stamp on the instrument concerned was a stamp impressed on the instrument before the commencement of the e-stamping system. The original impressed stamp will be cancelled by the Commissioners.

Regulation 13 provides for the facility to pay a clawback of any relief arising together with any interest on-line through the e-stamping system or by submission of a paper form to be processed by the Commissioners through the e-stamping system.

Regulation 14 provides where an instrument stamped by means of an impressed stamp is lost that the Commissioners may issue a stamp certificate following submission of the necessary information required under section 155 of the SDCA and a paper return.

Regulation 15 provides that the Commissioners that the Commissioners will retain a record of a stamp certificate issued.

Regulation 16 allows an officer of the Commissioners to perform or discharge acts required to be carried out by the Commissioners under the Regulations.

BAILE ÁTHA CLIATH
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