

Stamp Duty on Purchases of New Residential Properties

1. Introduction and Scope

1.1 FA 1990 s 112 introduces changes to the way in which stamp duty is to be charged on transfers of new houses or apartments. The background to the section is provided for by the statement made by the Minister for Finance in his budget on 31 January 1990 when he announced his intention to introduce legislation to counter the loss of revenue which results from "a practice... whereby the intending purchaser of a new house can reduce his exposure to stamp duty by entering into separate agreements for the purchase of a site and the construction of a house on it".

1.2 As a result of the new section, stamp duty will be charged on the combined cost of the site and the building, irrespective of whether separate contracts are entered into or not, where the sale of the site and the construction of a house or apartment on that site are connected.

1.3 The section does not alter the position of the following:

- (a) Transfers of houses and apartments of under 1,346 square feet (125 square metres) in floor area, in respect of which a floor-area certificate has been issued and which are exempt under FA 1969 s 49.
- (b) Purchases of sites where it can be shown that no connection or arrangement exists between the sale of the site and the building of a house or apartment on that site, eg where a person buys a site and employs a builder unconnected with the sale of the site.
- (c) Transfers of sites on which the transferee will build a house by his own labour.

2. Meaning of Connection or Arrangement

2.1 The question of the existence of a connection or arrangement, insofar as the transfer of the site and the building of a house or apartment on that site are concerned, will be determined by the facts of each case. In particular, the Revenue Commissioners will have regard to the following:

- (a) whether building has commenced prior to the execution of any instrument of sale or lease;
- (b) whether any relationship or association exists between the builder and the vendor of the site.

2.2 In determining the facts of a case, the Revenue Commissioners may require statements and/or statutory declarations from people concerned with the sale or lease of the land, or with building on that land, or from the persons acting on behalf of such people. The Commissioners will also have regard to other information supplied to them in response to queries.

3. Fall-Back Arrangements (s 3(a))

3.1 The section provides for stamp duty to be assessed on an amount equal to not more than 10 times and not less than 5 times (as the Revenue Commissioners consider appropriate) the value of the site if the total consideration on which the stamp duty assessment is to be based cannot, in the opinion of the Revenue Commissioners, be ascertained when the instrument is presented for stamping. This would arise where information regarding the cost of the building is not available. This type of situation is likely to be extremely unusual and the likelihood is that this option will be exercised only in very exceptional circumstances.

4. Refunds of Excess Duty

4.1 Where the stamp duty has been charged on the basis outlined at para 3.1 above, and is later shown to have been excessive, a refund of duty will be made. For a refund application to succeed, it will be necessary to prove to the satisfaction of the Revenue Commissioners that the duty paid exceeded the amount which would have been initially payable had the combined value of the site and the building been known and available at the date of the stamping of the instrument. The application for refund must be made within 3 years of the stamping of the instrument.

4.2 A refund of stamp duty will also be made in cases where, 2 years after the stamping of the relevant instrument, building has not commenced on the site. The refund would relate to the duty attributed to the cost of building the house or apartment. In this case also, the application for refund must be made within 3 years of the instrument being stamped.

5. Form of Certificate (s (5))

5.1 The section applies to instruments executed on or after 1 September 1990. Under the provisions of s (5), it will be necessary from that date for every instrument which transfers or leases land to contain a statement "in such form as the Revenue Commissioners may specify", certifying whether or not it comes within the ambit of this section. The form of words is to be as follows:

(a) in cases where the instrument comes within the provisions of the section:

"it is hereby certified, for the purposes of the stamping of this instrument, that this is an instrument to which the provisions of FA 1990 s 112 apply"

(b) in cases where the instrument does not come within the provisions of the section:

"it is hereby certified, for the purposes of the stamping of this instrument, that this is an instrument to which the provisions of FA 1990 s 112 do not apply for the reason that... (adding the reason ie specifying the type of property being transferred or leased, for example, agricultural land, existing houses etc.

5.2 Incorrect certificates included in an instrument will be deemed to be incorrect statements for the purposes of FA 1983 s 94.

5.3 In order to ensure that documents are dealt with speedily, the certificate specified above should be included in transfers and leases of land from 1 September 1990. However, in order to allow an adjustment period for taxpayers and practitioners this requirement will not be rigorously applied during the first two months of the implementation of the legislation ie until after 1 November 1990. With effect from 1 November 1990, any instrument effecting a transfer or lease of land which does not contain an appropriate certificate, will not be accepted for stamping.

6. Date of Application

6.1 As already stated, the section applies to instruments executed on or after 1 September 1990. The signing of a contract prior to that date will not, therefore, avoid the effects of the new legislation unless the conveyance is also completed (and not merely signed) before that date.

6.2 Where any sale to which the provisions of s 112 would apply has been completed prior to 1 September 1990, except only that the instrument of sale has not been stamped prior to that date, the Revenue Commissioners will accept that the provisions of s 112 will not apply to any such instrument.

7. Sites Containing Partially - Completed Dwellings

7.1 Where a person enters into a contract for the purchase of a site on which construction work has already commenced, and where it is shown to the satisfaction of the Revenue Commissioners that there is no connection between the sale of the site and the employment of the builder chosen to complete the construction work, then stamp duty will be based on the amount paid for the site and the partially completed structure.

8. Commercial and Industrial Developments

8.1 For properties other than houses and apartments (eg commercial and industrial units):

(a) where the building on the site is not substantially completed at the date of signing of contracts and where the contract for the sale of the site and the building agreement are not interlocked, stamp duty will be assessed on the market value of the site together with the cost of the works done at the date of signing of the contracts. (A certificate from the site architect should be produced, detailing the works performed and the cost of such works at the date of the sale. This certificate, if incorrect, would be an incorrect statement for the purposes of FA 1983 s 94, attracting the sanctions provided for in that Act).

(b) where the building on the site is substantially completed at the date of signing of contracts;

and/or

the contract for the sale of the site and the building agreement is interlocked, stamp duty will be assessed on the entire consideration passing for the site and the building.

8.2 As a general guideline, properties will be regarded by the Revenue Commissioners as "substantially completed" where the cost of the building work completed exceeds 75% of the total cost of the building work agreed.

9. Miscellaneous

9.1 The provisions of FA 1990 s 112 replace all previous practices in relation to the stamping of new "non grant-type" houses and apartments, including those practices summarised in the Law Society's Gazette in November 1976.

9.2 This Statement of Practice is issued for general guidance only and is not a comprehensive legal interpretation of the section.