

## Residential development refund scheme

### Part 7: section 83D

This document should be read in conjunction with section 83D Stamp Duties Consolidation Act 1999

Document last updated February 2022

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## 1 Introduction

Section 83D of the Stamp Duties Consolidation Act (SDCA) 1999 provides for a refund of the difference between the stamp duty rate on non-residential property of 2% that applied prior to 11 October 2017 and subsequent higher rates where land is developed for residential purposes. A 6% rate of stamp duty applied to the purchase or transfer (by way of sale or gift) of non-residential land where the deed<sup>1</sup> transferring the land was executed on or after 11 October 2017 and before 9 October 2019. Finance Act 2019 (section 57) increased the rate of stamp duty to 7.5% for transfers executed on or after 9 October 2019.

The refund scheme applies to both single dwelling units (one-off houses) and multi-unit developments. In the case of multi-unit developments, the terms of the scheme are designed to ensure that only developments that contain sufficiently completed dwelling units within a reasonable period can qualify for a refund.

The scheme contains two categories of conditions: those that must be satisfied before a claim for a refund can be made and those that must be satisfied to avoid a clawback of stamp duty already refunded. Although most of the same qualifying conditions apply to both single dwelling units and multi-unit developments, these different types of development are dealt with separately in this document to avoid confusion.

References to 'land' in this document include greenfield sites and land occupied by non-residential buildings such as office blocks and other commercial buildings.

The scheme is not open-ended. Construction operations must commence on or before 31 December 2022 and a 30-month time limit is allowed for completion, effectively terminating the scheme on 30 June 2025.

## 2 Interaction with section 31C

Section 31C SDCA 1999 is an anti-avoidance measure, which was introduced by Finance Act 2017 following an increase in the stamp duty rate applying to sales and transfers of non-residential property from 2% to 6% (now 7.5%). The section is intended to discourage the use of indirect transfers or sales of non-residential property in order to avoid the higher rate that applies on direct transfers or sales. For example, by transferring or selling the shares in a corporate entity holding the property (chargeable at the lower rate of 1%).

Section 31C applies where:

- there is a purchase of shares, units or interests in a corporate entity such as a company, investment undertaking or partnership,

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<sup>1</sup> For stamp duty purposes "deed" is the same as "instrument" – defined in section 1 SDCA 1999 as including every written document.

- that entity derived its value mainly from non-residential property held for development or as trading stock, and
- there is a change in control of the entity.

Where the above conditions are met, the non-residential rate of stamp duty (currently 7.5%) applies to the transaction. For further details, please refer to Stamp duty manual Section 31C: shares deriving value from immovable property, which is available [here](#).

Where stamp duty has been paid in accordance with section 31C, a refund may be claimed under this section provided all the conditions for availing of the refund scheme have been met.

### 3 Single dwelling units

#### 3.1 Acquisition of land

The following conditions relate to the acquisition of land:

- non-residential property in the form of land is transferred,
- the deed conveying or transferring the land is executed on or after 11 October 2017, and
- a stamp duty return is filed and stamp duty paid at the rate of 7.5% (6% on transfers executed before 9 October 2019).

#### 3.2 Area of land allowed for dwelling unit

There is a limit on the area of land that can qualify for a refund. This is related to the footprint of the dwelling unit itself and its associated curtilage. Section 83D (1) defines a “dwelling unit” as:

- (a) a building or part of a building used or suitable for use as a dwelling, and
- (b) the curtilage of the dwelling, up to an area (exclusive of the site of the dwelling unit) of 0.4047 hectares.

Essentially, a dwelling unit is a house or an apartment. In addition to the footprint of the building itself, the definition allows for a certain amount of curtilage. This is not simply the part of the land that is not occupied by the dwelling unit itself or that has not been developed. Rather, curtilage encompasses areas, buildings and structures that are **used in conjunction with** a dwelling unit such as gardens, paths, driveways, yards, garages, sheds, etc. This means that the upper limit of 0.4047 hectares (one acre) applies only where actual curtilage occupies such an area.



### 3.3 Commencement of construction

Construction operations must commence on the land within the period of 30 months starting on the day after the date of execution of the deed transferring the land.

Construction operations include clearing a site, drainage, moving earth, excavating, laying foundations and providing roads and access works. While the definition of “construction operations” in section 83D (1) focusses on these types of operations, Revenue is prepared to include additional activities such as the demolition and clearance of existing buildings and structures on the land to clear the site for the construction of housing. Where existing non-residential buildings are being converted for residential use, Revenue is also prepared to treat internal adaptation work as construction operations. Construction operations do **not** include obtaining planning permission, engaging an architect or engineer or drawing up plans.

Under planning regulations made by the Department of Housing, Local Government and Heritage, construction cannot commence until a commencement notice or a 7-day notice has been submitted to the relevant local authority and the local authority has acknowledged the particular notice as valid. The local authority allocates a commencement notice number or a 7-day notice number when notifying the person concerned (usually by email) that the commencement notice or 7-day notice is valid. For a refund claim to be made, construction operations (in accordance with the commencement notice or the 7-day notice) must have actually commenced within the 30-month period following the date of execution of the deed giving effect to the transfer of the land.

Commencement notices and 7-day notices are available for inspection on the [Building Control Management System](#) website or at the relevant local authority office. Templates for a commencement notice or a 7-day notice are contained, respectively, in the second and third schedules to the [Building Control \(Amendment\) Regulations 2009 \(S.I. No. 351 of 2009\)](#).

Delays in commencing construction within the 30-month period after the date of execution of the deed transferring the land are permitted only where construction did not commence because of the following events:

- an appeal to An Bord Pleanála under section 7 of the Building Control Act 1990, or
- a Court Order ordering the cessation of construction.

In either of these instances the clock is stopped from the date the appeal or Court Order is made until it ceases to have effect. However, even where either of these instances arises, construction works must commence on or before 31 December 2022.

### 3.4 Completion of construction

Construction must be completed within 30 months of a local authority acknowledging a commencement notice or a 7-day notice as valid. The scheme is subject to an overall time limit and construction must commence on or before 31 December 2022. The latest date for completion of a development is therefore 30 June 2025.

Delays in completing construction within the allowed 30-month period are permitted only where construction, having commenced, must cease because of the following events:

- an appeal to An Bord Pleanála under section 7 of the Building Control Act 1990, or
- a Court Order ordering the cessation of construction.

In either of these instances the clock is stopped from the date the appeal or Court Order is made until it ceases to have effect. However, even where either of these instances arises, construction work must be completed on or before 30 June 2025.

There are two alternative tests for determining the date of completion: a Certificate of Compliance on Completion or an [Electrical Completion Certificate](#). The Certificate of Compliance on Completion is required to be submitted to, and registered by, a local authority. The completion date is the **date the certificate is registered by the local authority**. Those building single dwelling units may opt out of local authority certification and use an alternative test for completion. This alternative test is the [Electrical Completion Certificate](#) that is provided following connection to the electricity network. The completion date is the **date on the certificate**.

#### **Example - commencement and completion of single dwelling unit**

Sam and Orla buy a ½ hectare site for €50,000. The deed transferring the site is executed on 12 October 2018 and stamp duty of €3,000 is paid at the rate of 6% (deed executed before 9 October 2019). Having obtained planning permission, they lodge their commencement notice with their local authority on 1 March 2019 and this is acknowledged as valid on 10 March 2019. They begin building a house (single dwelling unit) in August 2019. As this is within 30 months after 12 October 2018, they are entitled to claim a refund (see example in section 3.5 below in relation to claiming a refund).

Sam and Orla complete the house in September 2020 and submit a Certificate of Compliance on Completion to their local authority. The local authority registers the certificate on 30 September 2020. As this is within 2 years after the date the commencement notice was acknowledged as valid by the local authority (i.e. 10 March 2019), they are entitled to retain the amount of stamp duty refunded to them.

If, however, Sam and Orla, having started building their house in time, have problems with their builder which delays the completion of the house until

November 2021, they will be subject to a clawback of the amount of stamp duty refunded to them (see section 3.7 below in relation to clawback). This is because November 2021 is more than 30 months after the local authority acknowledged their commencement notice as valid.

### 3.5 Claiming a refund

#### 3.5.1 Timing of claim

A refund can be claimed as soon as construction commences on foot of a valid commencement notice or a 7-day notice. However, there is a time limit of 4 years on making a claim, starting on the date on which a local authority acknowledges as valid the particular commencement notice or 7-day notice underlying the refund claim.

#### 3.5.2 Amount of refund

The **maximum** amount of the refund is the difference between the amount of stamp duty paid at either 6% or 7.5% and the amount that would have been paid at 2%.

The amount of a refund is determined by the formula **A x B x 11/15** (previously 2/3) where:

- **A** represents the amount of stamp duty paid at the rate of 7.5% (previously 6%) when the land was acquired,
- **B** represents the proportion of the area of the land being developed on foot of a particular valid commencement notice or 7-day notice (whether this is the entire area (100%) or a smaller part), and
- 11/15 (previously 2/3) is the fraction that expresses the difference between the 2% and 7.5% (previously 6%) rates of stamp duty.

The figures in brackets above apply to refund claims in respect of transfers made between 11 October 2017 and before 9 October 2019). Both formulas result in a net rate of 2% where all the conditions for the relief are met as shown in examples 1 and 2 below.

#### **Example 1: 6% rate**

When Sam and Orla bought their ½ hectare site for €50,000 in January 2019 they paid stamp duty of €3,000 at the rate of 6%. The full site is accounted for by the house and its curtilage. They are entitled to claim a refund when they begin building a house (single dwelling unit) in August 2019. A few days after building has commenced they apply to Revenue for a refund of €2,000 calculated as follows using the refund formula **A x B x 2/3**:

A – stamp duty paid at 6% = €3,000

B – proportion of the site developed = 1 (i.e. 0.5/0.5 full site)

€3,000 x 1 x 2/3 = €2,000 refund

Net stamp duty paid: €1,000



**Example 2: 7.5% rate**

If Sam and Orla had bought their ½ hectare site for €50,000 in January 2020, they would have paid stamp duty of €3,750 at the rate of 7.5%. The full site is accounted for by the house and its curtilage. They claim a refund when they begin building a house (single dwelling unit) in February 2020. They are entitled to a refund of €2,750 calculated as follows using the refund formula **A x B x 11/15**

A – stamp duty paid at 7.5% = €3,750

B – proportion of the site developed = 1 (i.e. 0.5/0.5 full site)

€3,750 x 1 x 11/15 = €2,750 refund

Net stamp duty paid: €1,000

**3.5.3 Apportionment**

The calculation of the allowable refund may require that the stamp duty to be refunded is apportioned between allowable and non-allowable elements (see section 3.2 above in relation to curtilage). A refund applies only to the part of the land occupied by a single dwelling unit and its curtilage where the curtilage does not exceed 0.4047 hectares (one acre). Where the land exceeds the area occupied by the dwelling unit and its curtilage, the stamp duty paid is to be apportioned between the footprint of the dwelling unit, together with its curtilage, and the rest of the land. However, where the curtilage exceeds an area of 0.4047 hectares, the area of land that can qualify for a refund is limited to the footprint of the dwelling unit and 0.4047 hectares. Where this happens, the stamp duty paid is to be apportioned between the footprint of the dwelling unit, together with 0.4047 hectares of curtilage, and the rest of the land.

**Example 1: apportionment @ 6% rate**

In May 2018 Fionnuala gets a gift of a 1.2-hectare site for a house (single dwelling unit) from her parents and pays stamp duty of €4,200 on a market value of €70,000. The house will cover an area of 0.1 hectares and curtilage will cover an area of 0.3 hectares (i.e. 0.4 hectares in total). In calculating the amount of the refund claim, the stamp duty paid is to be apportioned between the house and curtilage (0.4 hectares) and the remainder of the site. Applying the refund formula, **A x B x ⅓**:

A – stamp duty paid at 6% = €4,200

B – proportion of the site developed = 0.4 hectares of 1.2 hectares

€4,200 x (0.4/1.2) x ⅓ = €933 refund.

A refund is not available in respect of the remaining 0.8 hectares.

**Example 2: apportionment @ 7.5% rate**

In January 2020 Brian gets a gift of a 1.2-hectare site for a house (single dwelling unit) from his parents and pays stamp duty of €5250 on a market value of €70,000. The house will cover an area of 0.1 hectares and curtilage will cover an area of 0.3 hectares (i.e. 0.4 hectares in total). In calculating the amount of the refund claim, the stamp duty paid is to be apportioned between the house and curtilage (0.4 hectares) and the remainder of the site. Applying the refund formula, **A x B x 11/15**:



A – stamp duty paid at 7.5% = €5250

B – proportion of the site developed = 0.4 hectares of 1.2 hectares  
€5250 x (0.4/1.2) x 11/15= €1283 refund.

A refund is not available in respect of the remaining 0.8 hectares.

### 3.6 Making a claim

The refund must be claimed online through the eRepayments facility on either [ROS](#) or [myAccount](#). Information on the process is available on the [Revenue website](#).

The accountable person (or if there is more than one accountable person, one of them) or the filer of the stamp duty return (acting as agent of the accountable person(s)) may make the claim. If the accountable person(s) wish(es) to authorise a person other than the filer to make the claim they should first contact the National Stamp Duty Office.<sup>2</sup>

The following supporting documentation is required to make a claim:

- a [declaration](#) stating that building work commenced within the 30-month period immediately following the date of execution of the deed.
- where a refund is claimed in respect of **part** of the land transferred by the deed (for example, a single dwelling unit with curtilage less than the area of the land transferred by the deed), the declaration must state the proportion of the area of the land in respect of which the refund is claimed,
- a certified copy of the deed that transferred ownership of the land,
- a copy of the email/correspondence (to include the commencement notice number or the 7-day notice number) from the relevant local authority that acknowledged the commencement notice or the 7- day notice as valid, and
- where there is more than one accountable person, a claim requires the [written consent](#) of all the accountable persons to one of them making the claim and receiving the refund.

The supporting documentation should be uploaded with the refund application onto eRepayments. The claim will be processed online and the refund will be made to the claimant's nominated bank account.

Penalties may apply in the event of a false or incorrect declaration.

Where a refund claim is refused, accountable persons should be advised of the reason for the refusal and the right of appeal to the Tax Appeals Commission.

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<sup>2</sup> Cross Blocks, Upper Castle Yard, Dublin Castle, Dublin 2, D02 F342 or [stampduty@revenue.ie](mailto:stampduty@revenue.ie).

### 3.7 Clawback of refund

A refund may be correctly claimed at the time of claim but may be clawed back at a later stage where construction is not completed within 30 months of the local authority acknowledgement of the relevant commencement notice or 7-day notice as valid. A refund that was incorrectly claimed at the time of the claim is also subject to clawback.

Interest is payable (at the daily rate of 0.0219%) on a clawback amount from the date on which the refund is made to the date the clawback amount is repaid to Revenue.

Where an accountable person fails to pay the clawback amount, Revenue may raise an assessment for this amount. Where there is more than one accountable person, they are jointly and severally liable in relation to the deed and any clawback that may arise.

## 4 Multi-unit developments

### 4.1 Acquisition of land

The conditions set out in section 3.1 above in relation to single dwelling units also apply to multi-unit developments.

### 4.2 Area of land to be developed as residential

To ensure that housing is delivered, a certain proportion of the land must contain dwelling units. Essentially, these are houses or apartments, but other types of property may be considered as residential; one such example is student accommodation. Section 83D (1) defines a “dwelling unit” as:

- (a) a building or part of a building used or suitable for use as dwelling, and
- (b) the curtilage of the dwelling, up to an area (exclusive of the site of the dwelling unit) of 0.4047 hectares.

In addition to the footprint of the building itself, the definition allows for a certain amount of curtilage. Curtilage is a concept that has traditionally been associated with houses and it encompasses areas, buildings and structures that are used **in conjunction with a house** such as gardens, paths, driveways, yards, garages, sheds, etc. However, Revenue accepts that it should also apply to apartment blocks, albeit appropriately adapted. In this regard, the types of areas used in conjunction with an apartment block to be treated as curtilage would include:

- landscaped areas immediately surrounding the apartment block for the use of residents;
- access pathways;
- on-site residents’ car parking spaces;
- storage for maintenance equipment;

- bicycle storage; and
- bin storage.

In relation to section 4.2.1 below curtilage can be taken into account for the footprint '75% test' but not for the gross floor space '75% test'.

#### 4.2.1 '75% test'

In the case of a multi-unit development, there are two alternative conditions to be satisfied – referred to as the '75% test' – in relation to ensuring the delivery of housing. On completion of a multi-unit development, or a phase in such a development, at least one of the following '75% tests' must be satisfied:

- at least 75% of the total surface area of the land must be occupied by dwelling units (footprint test), or
- the gross floor space of the dwelling units must account for at least 75% of the total surface area of the land (gross floor space test).

Gross floor space (defined in section 83D (1)) is a measurement of the internal floor area of a building. The area to be measured is from the inside of the external walls on each floor of a building, ignoring internal walls and partitions.

The two alternative tests are designed to facilitate both low-rise (footprint test) and multi-storey (gross floor space test) buildings. Depending on the number of floors in a multi-storey building, the dwelling units may satisfy the gross floor space test but account for a relatively small part of the surface area of the land and leave more than 25% of the surface area not occupied by residential development.

It is the area covered by the commencement notice or 7-day notice that is used for the purposes of the '75% test'. In a multi-phase development, separate commencement notices or 7-day notices are required by a local authority in respect of each phase of the development. Where the land is developed in a single phase, the '75% test' applies to the entirety of the land. Where the land is developed in two or more phases, the '75% test' applies to each phase. However, where the '75% test' is not satisfied in respect of one or more phases, it is possible to apply the test on completion of the entire development.

After satisfying the '75% tests', whatever part of the land, covered by the commencement notice or the 7-day notice, is not occupied by dwelling units can be used for non-residential development, whether ancillary to or unconnected with the dwelling units.

#### **Example - footprint test**

A builder buys a 0.5-hectare site for €500,000 on which he plans to build 20 houses in a single phase. The houses and their curtilage will cover a surface area of 85% of the site and so satisfy the footprint 75% test. The remainder of the site will be used for access roads, footpaths and green areas.

### Example - gross floor space test

A building company buys a 1-hectare site on which it plans to build a 10-storey block of apartments in a single phase. As the footprint of the building (including curtilage) will cover only 60% of the surface area of the site, the footprint test will not be satisfied. However, as the gross floor space of the entire building will exceed 75% of the surface area of the site, the alternative gross floor area '75% test' will be satisfied. The company also plans on building some shops on the rest of the site, but this will have no impact on the satisfaction of the '75% test'.

### 4.3 Commencement of construction

Construction operations must commence on the land within the period of 30 months starting on the day after the date of execution of the deed transferring the land. See section 3.3 above in relation to-

- what constitutes construction,
- the requirement to submit a commencement notice or a 7-day notice to a local authority and for that notice to be acknowledged as valid by the local authority, and
- permitted delays in commencing construction.

The land may be developed in a single phase or in a number of phases. In a multi-phase development, separate commencement notices are required by a local authority in respect of each phase of the development. The 30-month timeframe for the commencement of construction operations **applies only to the first phase of a development**. However, a refund can be claimed in respect of a particular phase only where construction of the dwelling units in that phase has actually commenced.

### 4.4 Completion of construction

Construction must be completed within 30 months of a local authority acknowledging a commencement notice or a 7-day notice as valid. In the case of a phased development carried out under separate commencement notices, each phase must be completed within 30 months of the date of the relevant commencement notice. See section 3.4 above in relation to permitted delays in completing construction.

The scheme is subject to an overall time limit. Construction must commence on or before 31 December 2022. The latest date for completion of a development is therefore 30 June 2025.

On completion, a Certificate of Compliance on Completion is required to be submitted to, and registered by, a local authority. The **date the certificate is registered by the local authority** is treated as the completion date for the purposes of the scheme.



## 4.5 Claiming a refund

### 4.5.1 Timing of claim

A refund can be claimed as soon as construction commences on foot of a commencement notice or a 7-day notice that has been acknowledged as valid by a local authority. In relation to a multi-phase development, construction must actually commence on a particular phase before a refund can be claimed in respect of that phase. However, there is a time limit of 4 years on making a claim, starting on the date on which a local authority acknowledges the particular commencement notice or 7-day notice underlying the refund claim as valid.

In relation to the '75% test', a refund claim should not be made where the test will not be satisfied. However, in relation to a multi-phase development, not satisfying the '75% test' in respect of a particular phase or phases does not necessarily result in the loss of eligibility for a refund. Where the '75% test' will not be satisfied in relation to a phase or phases of a development but will be satisfied in respect of the entire development, there is the option of deferring the refund claim(s) until construction commences on the final phase of the entire development. It is not possible to defer a refund claim until a subsequent phase(s) is completed as the option to defer applies only to the satisfaction of the '75% test' in respect of the **entire** development. Any earlier refund claims require the satisfaction of the '75% test' for each phase of a development.

### 4.5.2 Amount of refund

The **maximum** amount of the refund is the difference between 2% and the rate paid since the scheme commenced which is currently 6% or 7.5%.

The amount of a refund is determined by the formula **A x B x 11/15** (previously 2/3) where:

- **A** represents the amount of stamp duty paid at the rate of 7.5% (previously 6%) when the land was acquired,
- **B** represents the proportion of the area of the land being developed on foot of a particular valid commencement notice or 7-day notice (whether this is the entire area of the land or a part of the land in a phase of a development), and
- 11/15 (previously 2/3) is the fraction that expresses the difference between the 2% and 7.5% (previously 6%) rates of stamp duty on non-residential land.

A table of the rate and refund fraction applying in relation to transfers of land is set out below:

Date of transfer	Stamp duty rate	Fraction for refund formula
11 October 2017 to 8 October 2019	6%	2/3
9 October 2019 onwards	7.5%	11/15

**Example: footprint 75% test (6% rate)**

A builder buys a 0.5-hectare site for €500,000 on which he plans to build 20 houses in a single phase. The deed conveying the site is executed on 11 March 2019 and stamp duty is paid at the rate of 6%. The houses and their curtilage will occupy the full site and satisfy the footprint 75% test. He submits a commencement notice to his local authority on 14 June 2019 and this is acknowledged as valid on 19 June 2019. He commences building the following week and applies for a refund a few days later. Applying the refund formula  $A \times B \times \frac{2}{3}$ :

A – stamp duty paid at 6% on €500,000 = €30,000

B – proportion of the site developed = 1 (i.e. 0.5/0.5 full site)

€30,000 x 1 x  $\frac{2}{3}$  = €20,000 refund.

**Example: footprint 75% test (7.5% rate)**

A builder buys a 0.5-hectare site for €500,000 on which he plans to build 20 houses in a single phase. The deed conveying the site is executed on 11 January 2020 and stamp duty is paid at the rate of 7.5%. The houses and their curtilage will occupy the full site and satisfy the footprint 75% test. He submits a commencement notice to his local authority on 14 February 2020 and this is acknowledged as valid on 21 February 2020. He commences building the following week and applies for a refund a few days later. Applying the refund formula  $A \times B \times \frac{11}{15}$ :

A – stamp duty paid at 7.5% on €500,000 = €37,500

B – proportion of the site developed = 1 (i.e. 0.5/0.5 full site)

€37,500 x 1 x  $\frac{11}{15}$  = €27,500 refund.

**Example: multi-phase development satisfying '75% test' for each phase**

A builder will build 30 houses in two phases. In phase 1 he will build 15 houses on half of the site. In phase 2 he will build another 15 houses on the other half of the site. Each phase will satisfy the 75% footprint test. His commencement notice for phase 1 is acknowledged as valid by the local authority and he starts construction within 30 months of the execution of the deed conveying the site to him. He claims a refund for phase 1 at this stage. Assuming he paid €100,000 stamp duty for the entire site, his refund is calculated using the formula  $A \times B \times \frac{2}{3}$  as follows:

A – stamp duty paid = €100,000

B – proportion of the site developed =  $\frac{1}{2}$

€100,000 x  $\frac{1}{2}$  x  $\frac{11}{15}$  = €36,667\* refund.

When the local authority acknowledges his commencement notice for phase 2 as valid, he can start construction on this phase (having already met the 30-month commencement timeframe at phase 1) and claim a refund of another €26,667.

If 6% stamp duty had applied on the original purchase a refund of €33,333 would be available ( $100,000 \times 1/2 \times 2/3$ )

#### **Example: multi-phase development not satisfying '75% test' for each phase**

A building company purchases a 5-hectare site and gets planning permission for 100 houses to be built in three phases. It is not possible to spread the houses evenly over the three phases. This will impact on the company's ability to satisfy the '75% test'.

The commencement notice for phase 1 covers an area of 1 hectare for 10 houses, a nursing home and some shops. As the houses will occupy only 60% of the area included in that commencement notice, the company is not in a position to claim a refund. The commencement notice for phase 2 covers an area of 2 hectares for 40 houses that will occupy 90% of the area included in that commencement notice. The commencement notice for phase 3 also covers an area of 2 hectares but includes 50 houses so that the '75% test' will be satisfied for the entire development. The company can claim a refund of two-thirds of the stamp duty paid once construction commences on phase 3.

The company could claim a refund in respect of phase 2 as that phase satisfies the 75% footprint test. However, by waiting until phase 3 and then claiming for the entire development, the company is entitled to a larger overall refund.

#### **Example: mixed use development**

A builder is developing a site in two phases. Phase one is putting facilities and retail units in place and it will not qualify for a refund. However, phase two is a block of apartments which will when completed meet the 75% floor test for the overall site. The maximum refund available for the site can be granted in full if construction is completed within 30 months of the date of the residential commencement notice. This scheme is subject to an overall time limit. Construction of the apartments must commence on or before 31 December 2022. The latest date for completion of a development is therefore 30 June 2025.

#### **Example: mixed-use development**

A developer buys a 5-hectare site for €5m and pays stamp duty of €375,000. He wants to build a mixture of houses and retail units. However, by carrying out the work as a single phase he will not be able to meet either of the '75% tests'. He decides to develop the site in two phases – phase 1 housing and phase 2 retail – so that he can at least meet the '75% test' for the housing phase.

The commencement notice for the housing phase covers 3.5 hectares and the commencement notice for the retail phase covers the remaining 1.5 hectares. Assuming he satisfies the '75% test', the housing phase can qualify for a refund but not the retail phase. Applying the formula  $A \times B \times 11/15$ :

A – stamp duty paid at 7.5% = €375,000

B – proportion of the site developed = 3.5/5

€375,000 x (3.5/5) x 11/15 = €192,500 refund.

If 6% stamp duty had applied on the original purchase a refund of €140,000 would be available (300,000 x 3.5/5 x 2/3)

#### 4.5.3 Apportionment

The calculation of the allowable refund may require that the stamp duty paid or to be refunded is apportioned between allowable and non-allowable elements or between the phases in a development. Apportionment is not required in the case of a development (or phase in a development) containing both residential and non-residential elements as satisfaction of the '75% test' determines whether or not the development qualifies for a refund.

Apportionment may be required where the land transferred contains both residential and non-residential elements; for example, agricultural land with an existing house. The house would have been chargeable at the residential rate of stamp duty and so does not qualify for a refund.

#### **Example: apportionment of site between residential and non-residential rates**

A builder buys a 2-hectare site in 2018 on which is situated an existing house in poor condition occupying 0.5 hectares of the site. He plans to refurbish the house and to build another 20 houses on the rest of the site. He pays stamp duty of €16,000 comprising €4,000 for the house and its curtilage (1% rate for residential) and €12,000 for the rest of the site (6% rate for non-residential). When calculating the amount of the stamp duty refund, A in the formula ( $A \times B \times \frac{2}{3}$ ) is €12,000, i.e. the amount of stamp duty paid at the rate of 6%. In addition, B in the formula will apply to the property that was the subject of the 6% stamp duty (1.5 hectares), the non-residential element on the original conveyance.

Note that on and after the 9 October 2019 the rate has changed to 7.5% and 11/15 replaces 2/3. The claims examples below use both rates

#### 4.6 Making a claim

See section 2.6 above in relation to how to make a refund claim and the supporting documentation required. In relation to the declaration stating the proportion of the area of the land in respect of which the refund is claimed, this is relevant, for example, where the refund claim relates to a phase in a multi-phase development.



The following example illustrates a multi-phase development in which a builder purchases a 1-hectare site for a mixture of residential and commercial development to be carried out in three phases. €60,000 stamp duty is paid on the deed of transfer at the rate of 6%/7.5%. There are three valid commencement notices covering all the land transferred by the deed of transfer.

<b>Phase 1</b>	<b>Phase 2</b>
<ul style="list-style-type: none"> <li>• valid commencement notice covers 0.2 hectares</li> <li>• residential development</li> <li>• footprint 75% test satisfied</li> </ul>	<ul style="list-style-type: none"> <li>• valid commencement notice covers 0.3 hectares</li> <li>• residential development</li> <li>• gross floor area 75% test satisfied</li> </ul>
<b>Phase 3</b>	
<ul style="list-style-type: none"> <li>• valid commencement notice covers 0.5 hectares               <ul style="list-style-type: none"> <li>• commercial development</li> </ul> </li> </ul>	

#### **Claim for phase 1 (start of construction)**

The area of the site qualifying for a refund is the area covered by the valid commencement notice or 7-day notice; i.e. 0.2 hectares. This figure is to be entered on the eRepayments system when claiming a refund. The refund is calculated as follows:

$$(6\% \text{ rate}) \text{ €}60,000 \times (0.2/1) \times \frac{2}{3} = \text{€}8,000$$

$$(7.5\% \text{ rate}) \text{ €}60,000 \times (0.2/1) \times \frac{11}{15} = \text{€}8,800$$

#### **Claim for phase 2: (start of construction on phase 2)**

The area covered by the valid commencement notice or 7-day notice (and to be entered on the eRepayments system) is 0.3 hectares. The refund is calculated as follows:

$$(6\% \text{ rate}) \text{ €}60,000 \times (0.3/1) \times \frac{2}{3} = \text{€}12,000$$

$$(7.5\% \text{ rate}) \text{ €}60,000 \times (0.3/1) \times \frac{11}{15} = \text{€}13,200$$

#### **Claim for phase 3:**

No refund may be claimed in respect of the remaining 0.5 hectares in phase 3 as it is used for commercial development.

Penalties may apply in the event of a false or incorrect declaration.

Where a refund claim is refused, accountable persons should be advised of the reason for the refusal and the right of appeal to the Tax Appeals Commission.

#### 4.7 Clawback of refund

A refund may be correctly claimed at the time of claim but may be clawed back at a later stage where certain qualifying conditions are not subsequently satisfied. This can happen where:

- construction is not completed within 30 months<sup>2</sup> years of the local authority acknowledgement of the relevant commencement notice or 7-day notice as valid, or
- the '75% test' is not satisfied when construction is completed.

A refund that was incorrectly claimed at the time of the claim is also subject to clawback. Interest is payable (at the daily rate of 0.0219%) on a clawback amount from the date on which the refund is made to the date the clawback amount is repaid to Revenue.

Where an accountable person fails to pay the clawback amount, Revenue may raise an assessment for the clawback amount. Where there is more than one accountable person, they are jointly and severally liable in relation to the deed and any clawback that may arise.