Filing and paying Stamp Duty on Instruments

Chapter 2: Obligation to file a Stamp Duty Return

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Table of Contents

1 Instruments executed on or after 7 July 2012

The obligation to file a return is contained in **Regulation 4** and **Schedule 1** of the Stamp Duty (e-Stamping of Instruments and Self-Assessment) Regulations 2012 (S.I. No. 234 of 2012)[1].

For instruments (written documents) liable to Stamp Duty where **no exemption or relief applies**, you need to file a Stamp Duty return.

For instruments liable to Stamp Duty **where an exemption or relief applies**, the obligation to file a return will depend on the circumstances, as outlined below:

(a) you need to file a return to claim an exemption or relief provided for in **Chapter 1 of Part 7** of the Stamp Duties Consolidation Act, 1999 (SDCA): (currently comprises sections 79-83DB).

(b) subject to (c), **if** the instrument is:

- a conveyance or transfer, on sale or by way of gift, of the fee simple of land or an interest in land,
- a lease of land for a term exceeding 30 years, or
- an assignment of a lease of land where the unexpired term of the lease is 30 years,

then, you will need to file a return to claim a Stamp Duty exemption or relief provided for in:

- Sections 84 – 113 (Chapter 2 of Part 7) of the SDCA 1999;
- Schedule 1 to the SDCA 1999, with the exception of:
    - where the consideration for the transfer of shares, stocks and marketable securities is €1,000 or less,
    - exemption for foreign loan securities, and
    - leases for less than 35 years and less than €50,000
- Miscellaneous Acts (a list of these Acts is contained in the Miscellaneous Acts which contain Stamp Duty Exemptions Tax and Duty Manual (TDM)).

(c) you do not need to file a return in the following circumstances:

(i) where the instrument is creating **a joint tenancy of the family home** between spouses to which section 14 of the Family Home Protection Act 1976 applies (the exemption for transfers between spouses is contained in section 96 of the SDCA), as the Property Registration Authority (PRA) do not require a stamp cert;

(ii) where the instrument is creating **a joint tenancy of the shared home** between civil partners to which section 38 of the Civil Partnership and

[1] https://www.irishstatutebook.ie/eli/2012/si/234/made/en/pdf

Certain Rights and Obligations of Cohabitants Act 2010 applies (the exemption for transfers between civil partners is contained in section 96 of the SDCA) as the PRA do not require a stamp cert;

(iii) where section 87B(2) (Merger of Companies) of the SDCA applies, stamp duty shall not be chargeable on an instrument made for the purposes of the transfer of assets pursuant to a merger, a cross-border merger or an SE merger;

(iv) where section 106B(2) and 106B(3) (Housing Authorities and the Housing Agency) of the SDCA applies, that is, transfers to or by a housing authority and transfers to or by the Housing Agency, do not require a stamp cert;

(v) where section 108B(3) (National Asset Management Agency) of the SDCA applies; and

(vi) where paragraph (1) of the “LEASE” head of charge in Schedule 1 of the SDCA applies, that is, a lease for any indefinite term not exceeding 35 years.

2 Instruments executed before 7 July 2012

The obligation to file a return is contained in **Regulation 5** and **Schedule 1** of the Stamp Duty (e-Stamping of Instruments) Regulations 2009 (S.I. No. 476 of 2009)[2] For instruments within the charge to Stamp Duty where no exemption or relief applies, you need to file a Stamp Duty return.

For instruments within the charge to Stamp Duty **where an exemption or relief applies**, the obligation to file a return will depend on the circumstances, as outlined below:

(a) you need to file a return to claim an exemption or relief provided for in **Chapter 1 of Part 7** of the SDCA (currently comprises sections 79-83DB).

(b) subject to (c), **if** the instrument is:

- a conveyance or transfer, on sale or by way of gift, of the fee simple of land or an interest in land,
- a lease of land for a term exceeding 30 years, or
- an assignment of a lease of land where the unexpired term of the lease is 30 years,

then, you will need to file a return to claim a Stamp Duty exemption or relief provided for in:

- sections 84 to 113 (Chapter 2 of Part 7) of the SDCA 1999,
- Schedule 1 to the SDCA 1999, with the exception of:
    - where the consideration for the transfer of shares, stocks and marketable securities is €1,000 or less,
    - exemption for foreign loan securities, and
    - leases for less than 35 years and less than €50,000

[2] https://www.irishstatutebook.ie/eli/2009/si/476/made/en/pdf

and

- Miscellaneous Acts (a list of these Acts is contained in the Miscellaneous Acts which contain Stamp Duty Exemptions TDM).

(c) you do not need to file a return in the following circumstances:

(i) the instrument is creating a **joint tenancy of the family home** between spouses to which section 14 of the Family Home Protection Act 1976 applies (the exemption for transfers between spouses is contained in section 96 of the SDCA), as the Property Registration Authority (PRA) did not require a stamp cert;

(ii) where section 106B (Housing Authorities and the Housing Agency) of the SDCA applies, section 106B was amended by the Finance Act 2011 with effect for instruments executed on or after 1 April 2011 (for instruments executed on or after 1 April 2011 you should file a return if the exemption in section 106B(3) applies);

(iii) where section 108B(3) (National Asset Management Agency) of the SDCA applies;

(iv) where paragraph (1) of the "LEASE" head of charge in Schedule 1 of the SDCA applies, that is, a lease for any indefinite term not exceeding 35 years.

You need to file a return for an instrument executed before 30 December 2009 which was liable to Stamp Duty under –

- the SDCA 1999 or previous Stamp Duty legislation, but which qualified for an exemption or relief and –
  - was required to be adjudicated

    or
  - where adjudication did not apply, was required to be stamped with a Particulars Delivered (PD) stamp (now a stamp cert).

This requirement had not been in place before 30 December 2009.

For more information, see Part 7 of Stamp Duty Manual: Exemptions and Reliefs**.**

2.1 Particulars Delivered (PD) Stamp

Particulars delivered: before e-stamping a ST21 form had to be filed for all instruments even if they were not liable for Stamp Duty. Form ST21 contained PPS numbers and basic details of a transaction. It is no longer in use since 30/12/2009 when E-Stamping was introduced.

The circumstances in which an instrument (written document) requires a Particulars Delivered (PD) Stamp are set out in Section 12 SDCA.

Revenue now stamps an instrument by means of the e-stamping system. If a deed was stamped pre e-stamping without a PD stamp and now requires this to present to the PRA, a paper return will have to be completed.

Section 12(5) of the SDCA provides that a PD stamp is not required where:

- an instrument has been stamped, or
- an instrument is not required under the e-stamping Regulations to be stamped by means of the e-stamping system.

If you have an instrument that should have been stamped with a PD stamp and:

- the instrument has not been stamped with duty, you should file the return:
    - online, when the date of execution of the instrument is on or after 1 January 2002.
    - in paper form, when the date of execution of the instrument is before 1 January 2002.
- the instrument has been stamped with duty, you should file a return in paper form and tick on the return that it is a 'proxy' return.

When the return has been filed and the stamp certificate has been attached to the instrument, the instrument will then have been stamped by means of the e-stamping system. This eliminates the need for a PD stamp because Section 12(5) will now apply to the instrument.