

STAMP DUTY

Stamp Duty is a tax that the government levies on the documents used in the transfer of assets. The most common charge to Stamp Duty which affects people is the Stamp Duty that arises in relation to the transfer of property. There are different rates of Stamp Duty for both residential and non-residential properties and there are reliefs and exemptions available, which may reduce or eliminate the Stamp Duty payable.

RESIDENTIAL PROPERTY

Residential property includes both houses and apartments. It is defined as "a building or part of a building which at the date of the transfer was used or was suitable for use as a dwelling or was in the course of being constructed or adapted for use as a dwelling". It applies to the dwellinghouse together with grounds of up to one acre. Budgets over the last several years have made some significant changes to the Stamp Duty payable on residential property.

Whilst previously, there had been reliefs available for First Time Buyers of property or to buyers of property where the size of the house was under 125 sq m in size, these reliefs have been abolished. It now makes no difference whether you are a First Time Buyer, Owner Occupier or Investor when purchasing residential property.

At the time of writing, Stamp Duty on residential property is payable at a rate of 1% on properties valued up to €1 million, with a rate of 2% applying to amounts over €1 million.

NON-RESIDENTIAL PROPERTY

Non-residential property is any property other than residential property, stocks or marketable securities and policies. It includes sites, offices, business premises, shops, public houses, land and goodwill attaching to a business.

At the time of writing, the rate of Stamp Duty for non-residential property is a fixed rate of 6% of the value of the asset transferred.

MIXED PROPERTY

Where a deed deals with mixed property (i.e. a property that may include both residential and non-residential elements), the consideration in the deed will be apportioned between the residential and non-residential values of the property and

the Stamp Duty on each is calculated according to the relevant rates as set out above.

LEASES

Stamp Duty is also payable on leases of property and is payable both on the rent and the premium payable under the lease. The premium is the lump sum which may be paid to the landlord as part of the consideration for the lease. The duty payable on the premium is at the rate for residential or non-residential property as outlined above.

The duty payable on the rent is determined by the term of the lease. A lease for a term not exceeding 35 years or an indefinite period is chargeable at the rate of 1% of the average annual rent, a lease for a term exceeding 35 years but not exceeding one hundred years is chargeable at the rate of 6% of the average annual rent, and a lease for a term exceeding 100 years is chargeable at a rate of 12% of the average annual rent.

A lease of a house or apartment that does not exceed thirty five years, or is for an indefinite term, *and* where the rent does not exceed €40,000 per year, is not liable for Stamp Duty.

VOLUNTARY DISPOSITIONS

A voluntary disposition is where property is transferred for less than its full value (most commonly as a gift to a family member). Stamp Duty is payable on the transfer and will be charged on the current market value of the property i.e. the value it would make if it was offered for sale on the open market.

EXEMPTIONS AND RELIEFS

1. Consanguinity Relief

At the time of writing this relief applies only to transfers of land to certain relatives, which include a parent, step-parent, grandparent, child, brother, sister, half-brother, half-sister, aunt, uncle, nephew or niece.

The relief has been scaled back significantly in recent budgets and there are a number of criteria that must be met by both the person transferring the land, and the person receiving it.

Where the relief can be applied, Stamp Duty will be payable at 1% instead of the usual 6% that would normally apply.

2. Transfers between spouses

A transfer between spouses of any property is exempt from Stamp Duty. The exemption will not apply if the property is transferred to any person other than a spouse (e.g. if the property is transferred to more than one person). Certain transfers following the dissolution of a marriage are also not chargeable to Stamp Duty where the transfer is made as a result of specified court orders.

3. Young Trained Farmer Relief

This is a total exemption from Stamp Duty where agricultural land and buildings are transferred to or bought by a young trained farmer. The parties involved do not have to be related in order for the exemption to apply. To be a young trained farmer, an individual must be under the age of thirty-five at the date of the execution of the instrument and have completed a recognised qualifying farming course. The young trained farmer will be also required to furnish a statutory declaration confirming their intention to spend not less than 50% of his or her normal working time farming the land and cannot sell or otherwise dispose of the property for a period of five years after the transfer.

4. Farm Consolidation Relief

This relief may apply where a farmer sells land and purchases lands in order to consolidate his holding. At the time of writing the sale and the purchase must occur within 24 months of each other and in the period between 1 July 2018 and 31 December 2020 and a valid consolidation certificate must be issued from Teagasc. If the relief applies a Stamp Duty rate of 1% will apply instead of the standard 6%. This relief also applies to gifts.

GENERAL NOTES

Stamp Duty is self-certifying in that the Revenue Commissioners accept valuations submitted to them. However, if it is found that false valuations are submitted, penalties will be imposed. Also, if any of the conditions of the various reliefs/exemptions are not adhered to, the Revenue are entitled to clawback the difference between the duty paid and the amount which would have been paid, had the higher rate of Stamp Duty been imposed.

Once an instrument has been executed by both parties, it becomes chargeable to Stamp Duty and this must be paid to the Revenue Commissioners within 30 days of execution. The duty is paid by the Purchaser so it is important that this is factored into the calculations of both the purchase price and the amount that you may need to borrow to finance the purchase. Normally the purchaser's solicitor will arrange to pay the Stamp Duty on their client's behalf. Therefore, the Stamp Duty will be required to be paid to the purchaser's solicitor prior to completion. Failure to pay the Stamp Duty within thirty days will result in penalties and interest being imposed.

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