



STATUTORY INSTRUMENTS.

S.I. No. 234 of 2012

STAMP DUTY (E-STAMPING OF INSTRUMENTS AND SELF-ASSESSMENT) REGULATIONS 2012

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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 and Self-Assessment) Regulations 2012.

(2) These Regulations come into operation on 7 July 2012 and apply to instruments executed on or after that day.

(3) The Stamp Duty (E-stamping of Instruments) Regulations 2009 (S.I. No. 476 of 2009) shall not apply to instruments executed on or after 7 July 2012.

Definitions

2. In these Regulations—

“Act of 1997” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“Appeal Commissioners” has the meaning assigned to it by section 850 of the Act of 1997;

“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 notification” means—

(a) a notification to the Commissioners made 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 notification” shall be construed accordingly;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 3rd July, 2012.

“designated account” means a bank account designated by an approved person from which a payment of stamp duty, a clawback or interest, or any combination of stamp duty, a clawback or interest, is 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 calculated in accordance with section 159D of the Principal Act or other amount due and payable or recoverable under any provision of the Principal Act;

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

“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);

“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 purposes of the e-stamping system;

“VAT Number” means the registration number assigned to a person under section 65(2) of the Value Added Tax Consolidation Act 2010 (No. 31 of 2010).

Instruments required to be stamped by means of the e-stamping system

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

Electronic returns

4. (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

5. (1) An electronic return in relation to an instrument to be stamped in accordance with section 2(3) of the Principal Act shall be delivered to the Commissioners before the expiration of 30 days after the instrument is first executed.

(2) Where an electronic return in relation to an instrument is not delivered to the Commissioners in accordance with paragraph (1), sections 14 and 14A 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

6. Subject to these Regulations, sections 917D, 917F (excluding subsection (5)), 917G, 917H, 917J, 917M and 917N of the Act 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

7. (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 aggregate of the amount of the stamp duty chargeable on the instrument and any interest (in this Regulation referred to as the "aggregate amount") or any part of the aggregate amount, shall deduct the aggregate amount or that part of the aggregate amount by electronic means from the designated account of the approved person.

(3) The date of payment of an aggregate amount or any part of an aggregate amount 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 aggregate amount or that part of the aggregate amount from a designated account, provided sufficient funds are available in the designated account to satisfy the deduction of the aggregate amount or that part of the aggregate amount authorised.

Exemption from electronic filing

8. (1) In this Regulation "requirement" means a requirement to—

- (a) deliver or cause to be delivered an electronic return, or
- (b) deliver or cause to be delivered electronically a clawback notification.

(2) Where, in relation to an instrument, an accountable person or any person (who is not an approved person or an authorised person) acting under the authority of an accountable person—

- (a) does not have sufficient access to the internet to comply with the requirement concerned, or
- (b) in the case of an individual, is prevented by reason of age or mental or physical infirmity from being able to comply with the requirement,

the accountable person may, by application to the Commissioners in writing, request to be exempted from the requirement and such application shall include all information relevant to the consideration by the Commissioners of that application.

(3) Where the Commissioners receive an application from an accountable person in accordance with paragraph (2) or otherwise consider it appropriate, they may, if they are satisfied that in all of the circumstances the accountable person could not reasonably be expected to meet the requirement concerned, exempt the accountable person from that requirement.

(4) An exemption under paragraph (3) may be made at any time but where an application has been made under paragraph (2), a decision shall be made within 30 days of its receipt. The Commissioners shall, in all cases, notify the accountable person in writing of the decision.

Right of appeal to Appeal Commissioners

9. (1) Where an accountable person is refused an exemption under Regulation 8(3), he or she may, by notice in writing to the Commissioners within 30 days of receipt of the refusal, appeal the refusal to the Appeal Commissioners, who shall hear the appeal.

(2) On the hearing of an appeal under this Regulation, the Appeal Commissioners shall have regard only to those matters to which the Commissioners may or are required to have regard under Regulation 8.

Paper returns

10. (1) The Commissioners shall, in respect of an instrument required to be stamped by means of the e-stamping system, require a paper return to be delivered to them in place of an electronic return where an exemption under Regulation 8(3) has been granted.

(2) Regulations 4 and 5 shall, with any necessary modifications, apply to a paper return delivered in accordance with these Regulations as if it were an electronic return.

(3) A paper return delivered to the Commissioners in accordance with these Regulations shall be signed by a filer in such manner as the Commissioners think fit.

(4) The stamp duty chargeable on an instrument in respect of which a paper return is delivered in accordance with these Regulations and any interest shall be paid by arrangement with the Commissioners.

Stamp certificates

11. (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 chargeable on the instrument and any interest has not been paid or has been paid in part.

(3) A stamp certificate shall be issued-

(a) where an electronic return has been delivered, in the form of an electronic record which is to be printable in paper form, or,

(b) where a paper return has been delivered, in paper form,

to denote, as appropriate, that—

(i) the stamp duty chargeable on the instrument and any interest has been paid in accordance with the return,

(ii) the instrument is not chargeable with any stamp duty,

(iii) the instrument is a duplicate or counterpart of an original instrument,

(iv) the stamp duty chargeable on the instrument depends in any manner on the stamp duty paid on another instrument.

(4) A stamp certificate issued by the Commissioners shall bear a certificate identification number and such other particulars as the Commissioners think fit.

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

Amended stamp certificates

12. (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 return 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 any interest 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 any interest due.

(3) An amended stamp certificate shall be issued-

- (a) where an amended electronic return has been delivered, in the form of an electronic record which is to be printable in paper form, or,
- (b) where an amended paper return has been delivered, in paper form,

to denote, as appropriate, that—

- (i) the stamp duty chargeable on the instrument and any interest has been paid in accordance with the amended return,
- (ii) the instrument is not chargeable with any stamp duty,
- (iii) the instrument is a duplicate or counterpart of an original instrument,
- (iv) the stamp duty chargeable on the instrument depends in any manner on the stamp duty paid on another instrument.

(4) An amended stamp certificate issued by the Commissioners shall bear a certificate identification number and such other particulars as the Commissioners think fit.

(5) 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.

Clawback of relief

13. (1) This Regulation applies where a clawback arises under any provision of the Principal Act in relation to an instrument that has been stamped in accordance with these Regulations.

(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 following the delivery of an electronic return, by the delivery to them electronically of a clawback notification through the e-stamping system by an approved person or an authorised person, or
- (b) in the case of an instrument stamped by the Commissioners following the delivery of a paper return, by the delivery to them of a paper clawback notification by a filer or by the delivery to them electronically of a clawback notification through the e-stamping system by an approved person or an authorised person.

(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 the “aggregate amount”) or any part of the aggregate amount, deduct the aggregate amount or that part of the aggregate amount payable by electronic means from the designated account of the approved person, or

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

(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 7 shall, with any necessary modifications, apply to an aggregate amount or any part of an aggregate amount as it applies to an amount chargeable within the meaning of that paragraph.

Record of stamp certificate

14. 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

15. 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

1. An instrument executed on or after 7 July 2012 which—
 - (a) is chargeable to stamp duty under the Principal Act and in respect of which stamp duty is due and payable,
 - (b) is chargeable to stamp duty under the Principal Act but which qualifies for an exemption or relief from the charge to stamp duty under Chapter 1 of Part 7 of that Act, or
 - (c) 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, not being an instrument to which paragraph 2 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. 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) an instrument creating a joint tenancy between civil partners to which section 38 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24 of 2010) applies,
 - (c) an instrument to which section 87B(2) of the Principal Act applies,
 - (d) an instrument to which section 106B(2) of the Principal Act applies,
 - (e) an instrument to which section 108B(3) of the Principal Act applies, or
 - (f) a lease for any indefinite term or any term not exceeding 35 years to which paragraph (1) under the Heading “LEASE” in Schedule 1 to the Principal Act applies.

SCHEDULE 2

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 assessment of stamp duty chargeable on the instrument and any interest,
 - (b) pursuant to section 20 of the Principal Act, an assessment of the amount of the stamp duty chargeable on the instrument and any interest, and
 - (c) any other information that the Commissioners may reasonably require.

GIVEN under my hand,
29 June 2012.

NIALL CODY,
Revenue Commissioner.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The Regulations provide for the stamping of instruments using the e-stamping system and apply to instruments executed on or after 7 July 2012.

Regulation 1 contains the commencement provisions and also provide that the 2009 Regulations do not apply to instruments executed on or after 7 July 2012.

Regulation 2 contains definitions which are self-explanatory.

Regulation 3 gives details, in conjunction with Schedule 1 to the Regulations, as to which instruments are required to be stamped by the e-stamping system. These include—

- (a) an instrument on which stamp duty is payable,
- (b) an instrument that qualifies for exemption from stamp duty under any provision in Chapter 1 of Part 7, and
- (c) an instrument that qualifies for exemption from stamp duty under any provision and which 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. However, exempt instruments listed in Paragraph 2 of Schedule 1 do not need to be stamped.

Regulation 4 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 5 provides for the time limits within which electronic returns are to be delivered. Where a return is not delivered within 30 days, a surcharge will arise. Interest will also arise if payment of the stamp duty is not made on time.

Regulation 6 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 7 provides for a mechanism for payment by electronic means of the stamp duty due on an instrument.

Regulation 8 provides for an exemption from the obligation to pay and file electronically if the person does not have the capacity to do so and in this context “capacity” is taken to mean sufficient access to the Internet and in the case of an individual is not prevented by reason of age, physical or mental infirmity from filing and paying electronically.

Regulation 9 provides that a person aggrieved at a failure to exempt them from the requirements to file electronically may appeal that failure to the Appeal Commissioners.

Regulation 10 applies Regulation 4 and 5, subject to any necessary modification, to a paper return.

Regulation 11 provides that the Commissioners will issue a stamp certificate when the full stamp duty and interest 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 12 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 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 that the Commissioners will retain a record of each stamp certificate issued.

Regulation 15 allows an officer of the Commissioners to perform or discharge acts required to be carried out by the Commissioners under the Regulations.

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