

Business Services

Update on E-stamping: mandatory e-filing and e-payment

Introduction

The e-stamping system was introduced on 1 January 2010 and for the following 18-month period it was possible to file stamp duty returns online via Revenue Online System (ROS) or alternatively by means of a paper return and to pay the stamp duty via ROS, electronic funds transfer or by cheque. On 1 June 2011 it became mandatory to file stamp duty returns via ROS (subject to very limited exceptions) and to make payment of stamp duty via ROS (or in limited cases by EFT).

In this article I propose to examine a number of issues arising from these changes and to focus on some of the continuing difficulties being experienced by practitioners using the e-stamping system.

Mandatory E-stamping

In the 18 months following the introduction of e-stamping, a very high percentage of returns were voluntarily filed electronically with payment being made via ROS. The fact that the e-stamping system operates off a firm's business digicert rather than the TAIN digicert and the requirement for the practitioner to set up a nominated bank account out of which stamp duty payments had to be paid resulted in some practitioners using the paper return alternative and other filing stamp duty returns via ROS but arranging for payment via cheque or EFT. The paper returns contained a high level of errors due to the cumbersome form of the paper returns which consumed a significant level of resources within the Revenue Commissioners.

On 1 June 2011, the e-stamping regulations were amended to remove the optional ability to file a paper form of stamp duty return as an alternative to an electronic stamp duty return (Stamp duty (E-stamping of Instruments)(Amendment)(No. 2) Regulations 2011, S.I. 222 of 2011). The amended regulations permit the Revenue Commissioners to exempt a person from having to pay and file electronically where they are satisfied that the person does not have the capacity to do so. Incapacity is limited to cases where there is insufficient access to the Internet or where an individual is prevented by reason of age or physical or mental infirmity from filing and paying electronically. A person aggrieved by the failure of the Revenue Commissioners to exempt them from having to pay and file electronically can bring an appeal to the Appeal Commissioners.

The amended e-stamping regulations provide for a limited residual category of cases where paper return are accepted:

- Instruments executed prior to 1 January 2002;
- Instruments presented to the Revenue Commissioners prior to 30 December 2009; or
- Where an instrument is required to be stamped where an exemption has been granted.

Mandatory E-payment

Since the introduction of e-stamping it has been the objective of the Revenue Commissioners to reduce the level of administration involved in payment of stamp duty. The Revenue Commissioners required practitioners to make stamp duty payments from a nominated account operated by the practitioner. Whilst this approach was capable of being operated by solicitors who generally operate clients' accounts, it was a less straightforward matter for other tax practitioners who generally did not handle clients monies. In the 18 months following the introduction of e-Stamping such practitioners filed the stamp duty returns on behalf of their client either via ROS or by paper return, with the payment being made by means of a cheque drawn on the client or by EFT payment made by the client.

Following representations by the Irish Tax Institute, the Revenue Commissioners have accepted that in certain cases they will accept practitioners continuing to make payment by EFT in cases where the tax practitioner holds a TAIN digicert but files the stamp duty return via ROS. Where the client holds a ROS certificate however, the Revenue Commissioners require payment to be made via ROS.

Forms Used in Connection with E-stamping

Following the introduction of e-stamping there was confusion as to which of the forms which were used by the Revenue Commissioners prior to e-stamping were replaced by the new system and which were still required. The Revenue Commissioners have subsequently issued guidance on this topic which is reproduced in the table overleaf.



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Form No. /Name	Comments	Still Required
SD4	This form relates to the transfer of unquoted shares. The details in Page 1 (Parts 1-4) of the SD4 are now captured under the e-Stamping system. The details in Page 2 (Parts 5-7) should be completed where a valuation of the shares is required. Adjudication is mandatory in the case of a gift.	Page 1 (Parts 1-4) no longer required. Page 2 (Parts 5-7) still required.
ADJN 14	This form provides for an apportionment of the consideration between the different classes of chargeable/non-chargeable assets where there is a contract chargeable under section 31 SDCA 1999. Under e-stamping only the total consideration apportioned to the chargeable assets is required. Details of the apportionment should be furnished if adjudication is required or in the context of a post-stamping audit.	Form required where apportionment details are required to be furnished.
ADJN6	Statutory Declaration required in support of a claim for relief under section 79 SDCA 1999 on transfers between associated companies. Adjudication is mandatory.	Still required.
ADJN 120	Provides apportionment details where relief is claimed for commercial woodlands under section 95 SDCA 1999. Adjudication is not mandatory but in practice is required.	Still required.
Section 80 SDCA 1999 -Statutory Declaration	Statutory Declaration required in support of a claim for relief under section 80 SDCA 1999 in relation to a scheme of reconstruction or amalgamation. A draft declaration is available on request. Adjudication is mandatory.	Still required.
SD81C	Required where Farm Consolidation relief under section 81C SDCA 1999 is claimed. Adjudication is mandatory.	Still required.
SD2B	Required where Young Trained Farmer relief under section 81AA SDCA 1999 is claimed. Adjudication is mandatory.	Still required.
Apportionment Details (residential/non-residential property)	In the case of a mixed property the consideration must be apportioned between the residential and the non-residential element of the property. Section 16 SDCA 1999 (surcharge for mis-apportionment) provides for an estimate of the residential consideration, made by the vendor and the purchaser, to be included in the statement required under section 8(2) SDCA 1999. Such a statement is not required to be delivered where the instrument is stamped by means of the e-stamping system.	Apportionment details are now included in the Stamp Duty Return filed under e-stamping. The vendor's estimate should be obtained and retained by the purchaser and should be made available on request by Revenue.
Clawback - notification of receipt of rent	A clawback arises in relation to the reliefs granted under sections 91A, 92 and 92B SDCA where the house purchased is subsequently rented. The person who receives the rent is obliged to notify the payment of the rent to Revenue.	Replaced by the new electronic/paper Clawback Form under e-stamping.
ST21	Particulars Delivered Form. Under section 12(5) SDCA 1999 the requirement is no longer operable for instruments stamped under the e-stamping system.	No longer required.
Warrant for Adjudication	Information now captured in the stamp duty return.	No longer required.
ST RFND 1	For completion in relation to a refund of stamp duty. Under e-stamping a refund is claimed by filing an amended return or a proxy return (where the instrument was stamped before 30 December 2009).	No longer required.

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Tax Reference Numbers

In a previous article in the September 2010 edition of the *Irish Tax Review*, I examined the difficulties and risks posed by the requirement to have a valid tax reference number for each of the parties to the document to be stamped. Response times from the Revenue Commissioners in respect of applications for customer reference numbers for foreign companies are excellent and there has been some improvement in response times in respect of applications for PPSN's from the Department of Social Protection. The lack of an adequate means of verifying tax reference numbers remains an issue. It is essential that before taking responsibility for stamping a document, a practitioner should have obtained the tax reference numbers of all parties to the relevant document and have appropriate verification of those tax reference numbers.

Adjudication Cases

There is a high level of stamp duty returns being adjudicated even where they are not situations requiring mandatory adjudication. This is giving rise to backlogs in issuing stamp certificates. It may also give rise to risk of late filing penalties being applied. This arises because in "straight stamping" cases the Revenue Commissioners normally allow 44 days for the filing of a stamp duty return whereas in adjudication cases a 30 day period applies. There have been numerous reports of the Revenue Commissioners seeking to apply late filing penalties in cases of stamp duty returns which were filed more than 30 days but within 44 days of execution of the relevant document being selected for non statutory adjudication. In such cases the practitioner is faced with a potentially embarrassing (and costly) situation with one's client; though in most cases involving non statutory adjudication, if the practitioner objects strenuously to the imposition of such penalties he should be successful in having them dropped. However, the prudent course of action in all cases is to ensure that stamp duty returns are filed with 30 days of the execution of the relevant documents.

Business Transfer Agreements

In many acquisitions of businesses the assets acquired comprise a mixture of assets some of which attract a stamp duty charge (e.g. land and goodwill) and some which do not (e.g. certain types of intellectual property). In such situations in order to calculate the stamp duty liability it is necessary to apportion the consideration between the different classes of chargeable and non chargeable assets. However the e-stamping system does not permit the overall consideration to be apportioned between the chargeable and non chargeable categories of assets. The Revenue Commissioners have issued guidelines on how to complete a stamp duty return in respect of business purchases. The guidelines suggest that only the amount of the overall consideration which relate to chargeable assets should be inputted in the stamp duty return and that a short description of the assets (not exceeding 35 characters) be entered in the "property address" field in the stamp duty return. The guidelines further indicate that in the event of adjudication or a stamp duty audit that an ADJN 14 containing an apportionment of the consideration between the different classes of chargeable and non chargeable assets will be requested.

It is submitted that this leaves practitioners in a wholly unsatisfactory position in a number of respects. Firstly, practitioners need to calculate the stamp duty liability without reference to the e-stamping system because if they attempt to rely on the e-stamping return as a calculation tool (or even as a means of checking their own calculations) it may lead to an erroneous result. Secondly, practitioners are unlikely to be aware of the increased significance being placed on them having precise details of the apportionment of the consideration across the classes of chargeable and non chargeable assets and the likelihood of adjudication or a post stamping audit must surely be greater in light of the clear defect in the e-stamping system in respect of business purchase transactions.

Form 52

Where shares are issued for non cash consideration pursuant to a contract which has not been reduced to writing a Form 52 must be completed setting out details of the contract. A Form 52 is deemed to be an instrument for stamp duty purposes (section 58(2) Companies Act 1963) and may attract a stamp duty liability. A stamp duty return must be filed in respect of Form 52. The online return in respect of Form 52 has proved very problematic and time consuming for practitioners. The Revenue Commissioners have issued some guidelines as to how to complete such returns though these are in the nature of a workaround for a design defect in the e-stamping system.



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Stamp Duty Audits and Document Retention

Since the introduction of the e-stamping system the Revenue Commissioners receive a return in respect of the underlying transaction and they only have sight of the relevant documents in adjudication and penalty mitigation cases. It is highly likely that the Revenue Commissioners will carry out an increased number of audits of transactions which were the subject of stamp duty returns. Audits will be carried out in accordance with the Revenue Commissioners' Code of Practice for Revenue Audits.

As explained in a previous article in the September 2010 edition of the *Irish Tax Review* the obligation to retain documents is imposed on the taxpayer but in practicality the taxpayer will turn to the agent who filed the stamp duty return for assistance in the event of an audit. A practitioner who files a stamp duty return that does not reflect the facts and circumstances of which he is aware is exposed to a €3000 penalty for each such incorrect return. In that context it is important for practitioners involved in filing stamp duty returns to be able to record the information which was provided and on which the stamp duty return was prepared.

The configuration of the online stamp duty return does not permit the filer to print off a full record of the stamp duty return. Whilst there is a facility to print off the summary calculation sheet this comprises only the actual information inputted. It does not contain any record of any elections made in the course of inputting the relevant information in the stamp duty return. There is no ready means for a practitioner to maintain a full record of all information inputted into a stamp duty return.

Conclusion

There has been a very good level of acceptance by practitioners of the e-stamping system and it operates well in most standard situations. However, there are still a number of significant shortcomings and numerous more minor ones which are not addressed in this article. It is to be hoped that the Revenue Commissioners will devote the necessary level of attention and technical resources to remedying these shortcomings when undertaking upgrades of ROS.

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