



**STAMP DUTY
CLAW BACK
RULES FOR INVESTORS**

The Conveyancing Committee would like to bring the following exchange of letters with the Revenue Commissioners to the attention of practitioners:-

"Revenue Commissioners,

Stamp Duty Customer Services Branch

24th January, 2002

Re: Stamp Duty Rates Applicable to Investors

We wish to advise you that we have experienced queries from practitioners with regard to the stamp duty rules and rates applicable to investors pursuant to the budgetary changes announced on the 5th December, 2001. In the circumstances, we would be obliged if you would kindly furnish us with a direction on the following queries in order that we might advise practitioners accordingly:-

Supposing the owner of an existing principal private dwelling house purchases a new principal private residence prior to 5th December, 2001 and now finds that due to the downturn in the property market, he is unable to sell the existing house and subsequently decides to remain in the existing house and to rent out the newly acquired premises. What are the claw back rules which apply to this situation?

(i) Is it the rates which were in force at the time of purchase (prior to 5th December 2001), i.e. the difference between the 9% (investor) rate and the stamp duty actually paid, or

(ii) Do the rates introduced on 5th December, 2001 apply, which will mean that the purchaser is not now liable to pay any further stamp duty since the stamp duty discharged pre-Budget 2001 as an owner occupier is exactly the same as the liability of an investor post Budget 2001?

In other words, does the purchaser (who turns investor) get the benefit of the post budget 2001 reduced rates on stamp duty or is he liable to the claw back rate of stamp duty which applied at the date of purchase (prior to 5th December, 2001), which would mean that such a person would constitute the only type of investor who is still obliged to pay the 9% stamp duty rate?

(iii) Following on from (ii) above, could you clarify the stamp duty position applicable to a person who purchases a new apartment as a principal private residence for say IR£95,000 in June, 2001 (i.e. no stamp duty is liable on the purchase) and now wishes to rent out the premises? If the claw back rules applicable prior to the 5th December, 2001 are applied, the purchaser will be obliged to pay 3% of the purchase price (less VAT) but if the post Budget 2001 claw back rules apply, then the property is exempt from stamp duty.



"Conveyancing Committee

Law Society of Ireland

6th February, 2002

Re: Stamp Duty Rates Applicable to Investors

I refer to your recent letter which raises some queries from your members in relation to stamp duty.

In view of the questions posed and to avoid confusion I must preface our reply by drawing the attention of your readers to the fact that the changes made in the Finance Act 2002 have no effect on the claw back provisions of the reliefs available for the purchase of a new house by an owner-occupier who certifies that he or she will occupy it as his or her principal private residence.

In your first example, an individual has purchased a new residential property prior to 06 December 2001. If the property in question is grant size (i.e. under 1346 sq.ft/125 sq.m's) and is for owner-occupation, no stamp duty liability will arise, where an effective deed of transfer, with appropriate certification is executed prior to 06 December 2001.

If after 06 December 2001, the purchaser decides to rent out the newly acquired property, a clawback of stamp duty will be due equal to the amount which would have been liable as at the date of transfer, had the purchaser not claimed the relief in question.

Similarly in your second example, again assuming that the property is a grant sized house, where the property is rented out at any stage within five years from the date of the transfer a claw back of the duty otherwise payable if the relief was not claimed, will arise. In the example provided the claw back arising is at the rate of 3% on the VAT exclusive amount.

In general, the effective date for claw back of stamp duty is the original date of transfer. The stamp duty rates which were appropriate as at that date will dictate the amount of duty due.

Your readers will find information regarding stamp duty on the revenue website at www.revenue.ie

Hoping that this information is of some assistance.

Yours sincerely,
Customer Service Stamp Duty Branch"

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