



A serious difficulty has arisen in respect of stamp duty in relation to conveyances/transfers of grant sized new houses (reference to “houses” includes apartments where appropriate) to first time buyers and owner/occupiers - the Conveyancing Committee's interim practice note published in the November 2004 Gazette refers.

Prior to July 2004, a purchaser of a grant sized new house could avail either of the exemption for such houses where a Floor Area Certificate had issued or, alternatively, elect to stamp as an owner/occupier of a new house in which case duty was paid on the site value or 25% of the entire consideration which typically would have been under the stamp duty threshold.

The second option has now been removed and accordingly, to avoid a charge to stamp duty on a grant sized new house, a purchaser must claim the exemption. In order to claim the exemption a “Floor Area **Compliance Certificate**” [FACC] **must be in existence on the date of the deed of transfer/conveyance.**

(Note: the option to pay duty based on the site value or 25% of the entire consideration remains in place in respect of houses over 125 sq.m.).

A representative of the committee met officials from the Department of the Environment, Heritage and Local Government recently, and it has been confirmed that the Department will not issue a FACC until such time as the house has complied, or the Department inspectors are satisfied that it will comply, with a wide range of requirements (contained in the Department's circular HA1) which go far beyond the internal measurements of the house or compliance with Building Regulations, and extend to such matters as durability of building materials, their compliance with Irish Agrément Board standards, the appropriateness of building methodologies etc. The Department also indicated that if the issue of a FACC was delayed, this was indicative of a substantive problem with the house.

In the first instance therefore, purchasers of new houses should not complete the purchase unless the FACC is to hand, and should not accept an undertaking either from the builder or his/her solicitor. Appropriate special conditions should be inserted, as stamp duties are, by law, a matter for the purchaser.

Particular problems arise in the case of contracts which are subject to stage payments.

The stage payment contract typically provides for a site purchase contract together with a building agreement with stage payments, at signing (15% to include booking deposit), first floor joist level (25%), roof (25%), plastering (25%) and completion (10%).

STAMP DUTY: FLOOR AREA COMPLIANCE CERTIFICATES



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(Contd.)

Where the builder and the house are registered with the HomeBond or Premier schemes the purchaser is protected in relation to the stage payments up to the limits of those schemes. In relation to subsequent stage payments, however, the purchaser has no security and accordingly it is necessary for the purchaser to take ownership by transfer or conveyance of the site contemporaneously with the payment of the first floor joist level stage payment. This is necessary for three reasons, firstly because a purchaser, in the absence of a transfer of the site ownership would be an unsecured creditor in the event of the builder's insolvency, secondly, no financial institution will advance the monies to meet the further stage payments without the transfer of site ownership, and thirdly, the purchaser will most likely be contractually bound to complete the conveyance / transfer at that stage.

The difficulty is that while in the case of stage payments the purchaser must take a conveyance/transfer at the first floor joist level, it will be seen that the FACC will not issue until the premises has been substantially completed, or even some time afterwards if there are problems with the particular house. The result of this is that people who clearly are intended to benefit from the relief as first time buyers and / or owner/occupiers of grant sized new houses, are likely to lose the relief.

Practitioners must advise purchasers in such circumstances that if they buy subject to stage payments, they will be unable to obtain exemption from stamp duty.

Urgent representations are being made to the Department of Finance in relation to the matter, but in the interim, the foregoing appears to represent the position. The committee also wishes to take this opportunity to restate its long held view that stage payments in new housing are anti-consumer and should be abolished.