



**STAMP DUTY
RELIEFS -
FINANCE ACT 2005**

The Conveyancing Committee has been asked by **Revenue** to bring to your notice certain aspects of the Finance Act 2005 relating to stamp duty which entail a change in the certificates required to be inserted in instruments. The provisions relate to the new farm consolidation relief and the stamp duty relief for first time buyers.

Farm Consolidation Relief (Section 121 Finance Act 2005)

Section 121 inserts a new Section 81B into the Stamp Duties Consolidation Act 1999 which provides for a stamp duty relief for an exchange of farm land between two farmers for the purposes of consolidating each farmer's holding.

The new relief will mean that no stamp duty will be charged on an exchange of such lands where the lands are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will be charged on the amount of the difference in the value of the lands concerned. Where consideration is paid in respect of the difference (or part of the difference) in those values, it must be payable in cash.

This new relief applies to instruments executed on or after 1 July 2005 and on or before 30 June 2007 and the instrument must contain a certificate to the effect that the provisions of section 81B of the Stamp Duties Consolidation Act 1999 apply where the relief is claimed.

Further information regarding the relief and the wording of the new certificate (which is also available on the Revenue website (www.revenue.ie)) is attached at Appendix 1.

First Time Buyer Relief (Section 126 Finance Act 2005)

Section 126 of the Finance Act 2005, firstly, confirms the changes to section 92B of the Stamp Duties Consolidation Act 1999 announced in the Budget, reducing the stamp duty rates for first time buyers who are owner occupiers of secondhand houses. The revised stamp duty rates apply to instruments executed on or after 2 December 2004.

Secondly, this section also ensures that all new houses with a floor area under 125 square metres will have to have a Floor Area Compliance Certificate within the meaning of section 91A of the Stamp Duties Consolidation Act 1999 to avail of an exemption from stamp duty by providing that first time buyer relief is no longer available to such houses. To facilitate this change Certificate No. 5 in Table 4 of Leaflet SD10A has been amended to restrict application of first time buyer relief to secondhand houses. This change applies to instruments executed on or after 1 March 2005.

Further information in relation to the changes to the first time buyer relief (which is also available on the Revenue website (www.revenue.ie)) is attached at Appendix 2.



A revised version of Leaflet SD 10A, which includes the wording of all Revenue certificates required in instruments for stamp duty purposes, is also available on the Revenue website.

APPENDIX I

FARM CONSOLIDATION RELIEF

Purpose of the Farm Consolidation Relief

Section 81B of the Stamp Duties Consolidation Act 1999 provides for a new stamp duty relief which applies in respect of an exchange of land between two farmers for the purposes of consolidating each farmer's holding.

What is Farm Consolidation Relief?

The new relief provides that where there is a valid consolidation certificate in existence at the time of an exchange of lands, no stamp duty will be charged on an exchange of such lands where the lands are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will only be charged on the amount of the difference in the value of the lands concerned. This stamp duty is payable by the person or persons to whom the land which is of greater value is transferred. Where consideration is paid in respect of the difference (or part of the difference) in those values, it must be payable in cash.

The new relief applies to instruments executed on or after 1 July 2005 and on or before 30 June 2007.

What is a consolidation certificate?

A consolidation certificate is a certificate issued by Teagasc for the purposes of the relief to each farmer concerned in an exchange of lands. This certificate identifies the lands involved, the owners of such lands, and certifies that Teagasc is satisfied that the exchange of lands complies or will comply with the conditions of consolidation.

The conditions of consolidation together with instructions on how to apply for a consolidation certificate and the supporting documentation required to be submitted when an application is made for a consolidation certificate will be set down in guidelines to be made by the Minister for Agriculture and Food with the consent of the Minister for Finance.

Who is eligible for the relief?

The farmers involved in an exchange of lands are eligible for the relief. A farmer is a person who spends not less than 50% of his or her normal working time farming. The relief can also apply to an exchange of lands where not all the joint owners, on either side of the exchange, are farmers. However, the relief does not apply where any of the parties to the exchange is a company.

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What type of land does the relief apply to?

The relief applies to exchanges of agricultural land including land suitable for occupation as woodlands on a commercial basis in the State and farm buildings on that land. Dwellinghouses or the lands occupied with such dwellinghouses are not included unless they are derelict and unfit for human habitation.

What conditions must be met before relief will be granted?

- The deed of transfer must contain a certificate to the effect that the provisions of section 81B of the Stamp Duties Consolidation Act 1999 apply to the transfer. The wording of this certificate is:

“It is hereby certified that section 81B (farm consolidation relief) of the Stamp Duties Consolidation Act 1999, applies to this instrument.”

- The following documentation/information must be submitted to the Revenue Commissioners with the deed of transfer when it is presented for adjudication:
 - a consolidation certificate which is valid on the date of execution of the deed effecting the exchange - ***a consolidation certificate is valid for one year from the date it is issued,***
 - a declaration* to the effect that each **farmer** who is a party to the deed of transfer will, for a period of 5 years from the date of execution of the deed of transfer, remain a farmer and will farm the land exchanged,
 - a declaration* to the effect that each **person** who is a party to the deed of transfer will, for a period of 5 years from the date of execution of the deed of transfer, retain ownership of his or her interest in the exchanged land and that the land will be used for farming,
 - the PPS number* of each person who is a party to the deed of transfer.
- Where there is more than one deed of transfer required to effect an exchange of lands, all the deeds must contain the appropriate certificate that section 81B applies to the deed and must be presented for adjudication at the same time. Where the lands exchanged are not of equal value and there is more than one deed of transfer required to effect an exchange of lands, only the principal deed is chargeable to stamp duty and the other deeds of transfer will be adjudicated as not chargeable with any duty.

* A leaflet which will contain an application form relating to the relief will be published shortly.

Can the relief be clawed back?

The amount of relief actually granted will be clawed back, by way of a penalty, if the



land or part of the land is disposed of, within 5 years from the date of execution of the deed of transfer giving effect to the exchange of lands.

The amount of the penalty is the difference between the duty that would have been charged on the value of **all** the lands transferred to the farmer, in the first instance, (i.e. under section 37 of the Stamp Duties Consolidation Act 1999) had the relief not applied and the duty (if any) which was charged under section 81B. Interest is also charged on the penalty at the rate of 0.0273 per cent per day from the date of the disposal to the date the penalty is paid.

Are there any situations where the relief will not be clawed back?

A clawback of the relief will not occur where the land is compulsorily acquired or is the subject of another exchange of lands which qualifies for farm consolidation relief.

In addition, a clawback of the relief will not occur where a farmer or other joint owner disposes of part of the land to a spouse for the purpose of creating a joint tenancy or where one joint owner disposes of part of the land to another joint owner, who is a farmer.

What other penalties can apply?

Any person who furnishes a false declaration will be liable to a penalty of an amount equal to the difference between 125% of the duty which would have been charged on all the lands transferred to that person, had the relief not applied and the duty (if any) which was charged under section 81B together with interest on the penalty at the rate of 0.0273 per cent per day from the date of execution of the deed of transfer to the date the penalty is paid.

A similar penalty, together with appropriate interest (as above), applies where an invalid consolidation certificate is used to obtain the relief.

APPENDIX 2

FIRST TIME BUYER RELIEF

Section 126 of the Finance Act 2005 amends section 92B of the Stamp Duties Consolidation Act 1999 which provides for relief from stamp duty for first time buyers of residential property. The effect of the changes are set out below together with some general information in relation to “frequently asked questions” regarding the application of the relief.

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Revised Rates

The stamp duty rates payable by first time buyers who are owner occupiers of second hand residential property up to €635,000 have been reduced. The revised stamp duty rates, which apply to **instruments executed on or after 2 December 2004**, are set out below:

Residential Property

<i>Aggregate Consideration</i>	<i>First Time Buyer Rate- before 2 December 2004</i>	<i>First Time Buyer Rate- on/after 2 December 2004</i>
Up to €127,000	Exempt	Exempt
€127,001 - €190,500	Exempt	Exempt
€190,501 - €254,000	3%	Exempt
€254,001 - €317,500	3.75%	Exempt
€317,501 - €381,000	4.5%	3%
€381,001 - €635,000	7.5%	6%
Over €635,000	9%	9%

New Houses

The relief under section 92B is no longer applicable to instruments executed on or after 1 March 2005 which give effect to the purchase of new houses with a floor area under 125 square metres. First time buyers who are owner occupiers will continue to be exempt from stamp duty on the purchase of such houses under section 91A of the Stamp Duties Consolidation Act 1999 where a Floor Area Compliance Certificate has been issued by the Minister for the Environment, Heritage and Local Government.

Partial relief under section 92 of the Stamp Duties Consolidation Act 1999, based on the new rate structure outlined above, will continue to apply to first time buyers who are owner occupiers of new houses where the floor area of such houses exceeds 125 square metres.

Certification

There has been no change in the stamp duty threshold bands and the transaction certificate to be included in the instrument should continue to recite the appropriate threshold amount.

There has been a change in the certification required to avail of first time buyer relief on the purchase of a secondhand house following the exclusion of new houses with a floor area under 125 square metres from the scope of the relief. The certificates required to be inserted in instruments, where first time buyer relief is claimed on the purchase of a secondhand house, are set out in Table 3 of Leaflet SD 10A (Certificate Numbers 3A/B, 5, 6, 7B and 8A/B) and the wording of those certificates is set out in Table 4 of Leaflet SD 10A.



The new wording of Certificate No.5 in Table 4 is as follows:-

“It is hereby certified that this instrument gives effect to the purchase of a dwellinghouse/apartment and that section 92B(3A)(residential property first time purchaser relief) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument.”

By certifying that Section 92B(3A) does not apply it is being confirmed that the instrument does not relate to a new house with a floor area under 125 square metres and only relates to a secondhand house. The revised certificate should be included in instruments executed on or after 1 March 2005 where first time buyer relief is claimed on the purchase of a secondhand house.

FREQUENTLY ASKED QUESTIONS

Who is a first time buyer?

A first time buyer is a person, (or, where there is more than one buyer, each of such persons):

- who has not on any previous occasion, either individually or jointly, purchased or built on his/her own behalf a house (in Ireland or abroad) and
- where the property purchased is occupied by the purchaser, or a person on his behalf, as his/her only or principal place of residence and
- where no rent, other than rent under the rent-a-room-scheme, is derived from the property for five years after the date of the current purchase.

What is the rent-a-room scheme?

Under this scheme there is no clawback of the first time buyer relief where rent is received by the person in occupation of the house, on or after 6 April 2001, for the letting of furnished accommodation in part of the house.

When does a clawback arise?

A clawback arises if rent is obtained from the letting of the house, other than under the rent-a-room scheme. The clawback amounts to the difference between the higher stamp duty rates and the duty paid and it becomes payable on the date that rent is first received from the property.

What is the position where a first time buyer purchases a new house where the floor area is under 125 square metres?

The purchase of a new house by a first time buyer, where the floor area is under 125 square metres, is exempt from stamp duty only where a Floor Area Compliance Certificate has been issued in respect of the house by the Minister for the Environment, Heritage and Local Government. If there is no Floor Area Compliance Certificate the full rates of stamp duty apply as first time buyer relief is not available for such a purchase.

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1. On 24th June, 2005 Revenue issued a press release clarifying this matter, the general terms of which were as follows:-

Notwithstanding this treatment, to take account of particular situations, Revenue is prepared to accept that a child, who is a first-time buyer, will not be precluded from claiming first time buyer relief where a parent acts as a co-mortgagor in the following circumstances:

- *The transfer of the house is taken in the name of the child.*
- *It is the intention of both the child and the parent that the parent is not to take a beneficial interest in the house.*
- *The parent has been joined into the mortgage solely at the request of the lending institution for the purpose of providing additional security for the monies being advanced for the purchase.*
- *It is not intended that the parent will be contributing to the repayment of the mortgage in the normal course.*

Where the four conditions set out above are satisfied, Revenue will treat the parent as effectively acting in the role of guarantor for the loan. Consistent with the above approach, Revenue will also be prepared to treat persons other than parents of the first-time buyer, who satisfy similar conditions to those set out above, as effectively acting in the role of guarantor for the loan. Their involvement in that capacity will not be treated by Revenue as precluding a claim to first-time buyer relief. In such

What is the position where the purchase monies are not provided entirely by the first time buyer?

To qualify for the relief the entirety of the purchase monies, including any borrowings, must be provided by the first time buyer. Any person, who provides part of the purchase monies or who is a party to any borrowings relating to such purchase, is also regarded as a buyer of the house and the relief will not be available unless that other person is also a first time buyer.

The basis for this treatment is that, in such circumstances, the house is held for the person providing the monies used in the purchase of the house by way of a resulting trust presumed in favour of that person. This treatment applies whether or not all the parties providing the purchase monies, or all the parties to any borrowings, are actually named in the deed of transfer.¹

What is the position in the case of a gift of part of the purchase monies?

Where a first time buyer receives an unconditional gift of monies which are used to purchase a house, he/she will not be precluded from claiming first time buyer relief.

What is the position where a person, being a first time buyer, purchases a house using the proceeds of the sale of a house owned by their spouse or partner who is not a first time buyer?

Where a person who is a first time buyer uses the proceeds of the sale of the house they previously occupied which was owned solely by their spouse or partner to buy a house solely in their own name, first time buyer relief would not be available as the spouse or partner (not being a first time buyer) would be providing the purchase monies for the house.

Can I qualify as a first time buyer if I have previously purchased a house abroad but not in Ireland?

No. A person who has previously purchased a house, either in Ireland or abroad, is not entitled to claim first time buyer relief.

What is the position where there is more than one purchaser and all of the purchasers are not first time buyers?

The first time buyer relief is not available and stamp duty is chargeable at the full rate on the entire purchase price. In order to obtain the relief all of the purchasers must qualify as first time buyers.

Can I avail of first time buyer relief if I previously received a gift of a house?

The relief can be claimed where the gift of the house was received prior to 22 June 2000



(or prior to 27 June 2000 in the case of **part** of a house). A gift received after the above date(s) is regarded as a prior purchase and would preclude a person from claiming the relief.

Can I avail of first time buyer relief if I have previously inherited a house?

Yes. An inheritance is not regarded as a previous purchase and the first time buyer relief can be claimed provided all other conditions of the relief are satisfied.

Can the first time buyer relief apply to a gift of a house?

Yes. A gift of a house is treated in the same manner as a purchase and the first time buyer relief can be claimed provided all other conditions of the relief are satisfied.

What is the position where a person, who had obtained first time buyer relief on the joint purchase of a house with another first time buyer, subsequently acquires the other joint owners interest in the house?

A person who obtained first time buyer relief on the purchase of an interest in a house would not be precluded from obtaining first time buyer relief on a subsequent purchase of another interest in the **same** house provided that person has not purchased another house or part of another house in the intervening period.

Are there any special situations where a person who is not a first time buyer can avail of first time buyer relief?

Yes. There are two particular situations where a person is deemed to be a first time buyer.

(a) The *trustees* of a trust (to which section 189A of the Taxes Consolidation Act 1997 applies), whose trust funds are raised by *public* subscriptions for the benefit of permanently incapacitated persons, in respect of the first house(s) bought after the establishment of the trust, for occupation by the beneficiary or if more than one, each of the beneficiaries.

(b) A *spouse* to a marriage the subject of a decree of *judicial separation*, a *deed of separation*, a decree of *divorce* or a decree of *nullity* in the case of the first acquisition of a house by the spouse following the separation or divorce provided that the spouse had, in relation to the former marital home,

- left that home;
- not retained an interest in that home;

whose separated/former spouse continues to occupy that home, which home was occupied by both spouses prior to the separation or dissolution of the marriage.

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circumstances the conditions are as follows:-

- *The transfer of the house is taken in the name of the first-time buyer.*
- *It is the intention of both the first-time buyer and the other person that the other person is not to take a beneficial interest in the house.*
- *The other person has been joined into the mortgage solely at the request of the lending institution for the purpose of providing additional security for the monies being advanced for the purchase.*
- *It is not intended that the other person will be contributing to the repayment of the mortgage in the normal course.*

Revenue indicated that it did not propose to seek a claw back of stamp duty where transfers had taken place before the press release which complied with either set of conditions outlined above and that there was no need for tax payers or their advisers to consult Revenue unless the circumstances surrounding the purchase were different to those outlined above. Revenue stated that the relief from stamp duty is intended to benefit only genuine first-time buyers and Revenue will continue to use its audit programme to ensure that there is no abuse of the relief.

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