



**T**he Finance Act, 1991 by sections 88 to 111 introduced very far reaching changes to Stamp Duty Regulations. The majority of the sections came into effect on 1 November, 1991 and members should take very careful note of the result of these sections. This memorandum is not to be regarded as comprehensive, but merely draws attention to the more important aspects of the sections, and each member should read the sections carefully.

**The more important items are as follows:-**

1. Stamp Duty is now no longer a voluntary tax. Prior to the passing of the Act, the parties to an instrument were free to decide not to stamp an instrument and there was generally no mechanism available for the Revenue Commissioners to institute legal proceedings against either party to enforce payment. This procedure is now radically changed and Stamp Duty is now compulsory. Section 94 (4) of the Act states that where an instrument chargeable with Stamp Duty is not stamped, or is insufficiently stamped, the accountable person shall be liable for the payment of the Stamp Duty, or where the instrument is insufficiently stamped, then the additional Stamp Duty and the amount of Duty and any penalties may be sued for by the Revenue Commissioners.
2. Prior to the 1991 Act if a person was not satisfied with the amount of Stamp Duty payable on a document, they were entitled to withdraw it. The 1991 Act now provides that after presenting a document for stamping it may not be withdrawn if the assessment of Stamp Duty is higher than anticipated and it is important, therefore, before lodging a document to ascertain as accurately as possible the exact amount of Stamp Duty payable on it.
3. There are now new penalties for insufficient or late stamping of any document wherever executed which is presented for stamping after 1 November, 1991, which are as follows:-
  - (a) increase of presentation penalty from £10 to £20, and
  - (b) increase of interest rate on outstanding duty from 5% per annum to 1.25% per month or part of a month, and
  - (c) penalties for late stamping of:-
    - (i) 10% of the Duty where the delay is under 6 months
    - (ii) 20% of the Duty where the delay is between 6 months and 12 months
    - (iii) 30% of the Duty where the delay is over 12 months
4. One of the most important changes is the introduction of very severe surcharges for undervaluation of property for Capital Acquisitions Tax or Stamp Duty. These charges are now draconian and very careful note should be taken of them. They are as follows:-
  - (a) where the submitted value is less than the ascertained value by greater than 10%, but under 30%, a surcharge of 50% of the Duty payable provided,

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however, that an understatement by less than £5,000 will attract no surcharge.

- (b) where the submitted value is less than the ascertained value by greater than 30%, but less than 50%, the surcharge is equal to the amount of the Duty,
- (c) where the submitted value is less than the ascertained value by an amount greater than 50%, the surcharge is double the amount of the Duty.

With particular reference to this paragraph No. 4, members would be advised to write to clients informing them of these extra surcharges, and informing them of the danger of undervalues. It is now more important than ever that a solicitor should not submit a valuation of his own, but should get an auctioneer/valuer to do the valuation. It is desirable to point out to the client that it is important for the auctioneer/valuer to do a proper valuation and not to undervalue the property. It would also be desirable to notify the auctioneer when writing for the valuation of the possible consequences of an undervaluation.

5. Section 97 of the Finance Act, 1991 now seeks to impose a duty of care between the Revenue Commissioners and solicitors. This is in addition to the duty of care that already exists between the solicitor and his client. This section appears to imply that a solicitor is now obliged to see that an instrument is properly and fully stamped, and if he is knowingly and wilfully is employed in the preparation of such an instrument, then he could be liable for fraud. This duty imposed on a solicitor appears to be outrageous, but unfortunately is now law. The effects of sub-sections 3 and 6 of this section appear to be:-

- (a) If the solicitor fails in his statutory duty of care to the Revenue he will be liable for a substantial fine, and
- (b) irrespective of that, if he has any doubt or question relating to the transaction he should bring this to the attention of the Revenue Commissioners. If he fails to do so he will be liable for a substantial fine, and this can even relate to matters of valuation etc. if the solicitor/professional does not exercise reasonable care.

Again, as stated above, this memorandum is not an exhaustive summary of all changes in Stamp Duty under the Finance Act, 1991 and it is essential that each member should familiarise himself with the provisions of the relevant sections.

Taxation Committee