



PENALTIES FOR LATE PAYMENT OF STAMP DUTIES

NOTICE FROM REVENUE COMMISSIONERS

The purpose of the penalties relating to late payment of stamp duties is to compensate the Exchequer for the late receipt of duty and to encourage early, voluntary compliance with the obligations under the Stamp Act. A particular aim of the surcharges for understatement of value is to encourage taxpayers and their agents to provide reasonable valuations on submitting documents for stamping. This would obviate the need for formal valuations and appeals which can be costly and time consuming for both the taxpayer and the commissioners. Provisions which are aimed at improving compliance have a direct impact on both solicitors and their clients.

In the case of solicitors, delays in paying duty can arise due to oversights in a busy office, although the solicitor has been put in funds by the client taxpayer. In order to meet this particular situation, the staff in Stamp Duty will deal with these delays and subsequent requests for mitigation according to the following guidelines:

1. Mitigation will depend upon the amount of the duty, the length of the delay and the record of the solicitor.
2. Where the duty does not exceed £5,000 and the delay in payment is no longer than six months, full interest will be charged. If, however, this is the first occasion in a calendar year in which such a delay occurred, the further penalties of 10% and 20% of duty will be mitigated in full.
3. If the delay is the second default by the solicitor in that calendar year, then the further penalties will be mitigated to 5% of the duty.
4. If the delay is more than six months but not more than twelve months, full interest will be charged but the further penalty of 20% of the duty will be mitigated to 5% in the case of a first late payment and 10% in the case of a second.
5. Any requests for mitigation which do not come within these guidelines will be dealt with under the general principals governing mitigation.

It must be emphasised that these guidelines are not legal provisions. They have been introduced only for the guidance of Stamp Duty staff and they may be departed from in any individual case depending on its unique circumstances. The operation of the guidelines will be reviewed after one year.

In addition to these guidelines, the Revenue Commissioners will continue to exercise their general discretion to mitigate interest and penalties including surcharges for undervaluation. In exercising this discretion, the Commissioners are obliged, under their care and management functions, to mitigate penalties only in cases where the delay in stamping the documents is due to circumstances beyond the control of the taxpayer and his or her advisers and solicitors, or to cases where the circumstances are such that the imposition of a penalty would be clearly unreasonable.



The decision to mitigate interest or penalties and the extent of mitigation depends upon individual circumstances. It is neither desirable nor practical to give a list of such circumstances, but the length of the delay in paying duty is a factor of considerable relevance as is, in the case of surcharges, the extent of the undervaluation. The Commissioners will also consider such factors as the past record of taxpayers or their agents, the view of the Valuation Office, where relevant, and any evidence in support of the explanation for the delay.

If a taxpayer or solicitor feels dissatisfied with the decision of a marking officer on the mitigation of a penalty, he or she may ask that the matter be discussed by a Penalties Review Committee, which has been set up in Stamp Duty. This committee is formed by all the marking officers and a supervising officer. It has been set up to ensure consistency of application of the penalty provisions and to allow for a more detailed reconsideration of contentious mitigation decisions. Any person who wishes to bring a case to the committee should set it out in writing, detailing the grounds for mitigation. If after this review, a solicitor is still dissatisfied, he or she may bring the matter to the attention of the Taxation Committee of the Law Society. The members of the committee may, depending on their view of it, discuss the case with Stamp Duty management.

Solicitors have also expressed concern about the implications for them of the negligence provisions in the Finance Act, 1991, where undervaluations of property are established. The Commissioners accept that solicitors have no special expertise in the area of property valuation. In their view, the obligation of solicitors under these provisions is to ensure that their clients are aware of the requirement to submit realistic valuations and that where a formal valuation is carried out, that it is done by a person who is competent and qualified to do so. A solicitor, unless he or she has knowledge to the contrary, is entitled to assume that any such person will carry out the valuation according to best professional practice.

Stamps Branch,
Revenue Commissioners

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