

Stamp Duty eAlert

Stamp Duty Changes in Finance Bill 2009

1. EXCHANGE OF RESIDENTIAL PROPERTIES

The Finance Bill 2009 contains details of the stamp duty trade-in scheme announced in the Budget. Under the new scheme stamp duty can be deferred on the acquisition of a second-hand residential premises (house or apartment) taken in exchange or part-exchange for a newly built residential premises. The acquirer of the new premises does not benefit from any deferral of any stamp duty payable on those premises but it may be eligible to avail of existing stamp duty reliefs. The stamp duty is deferred until the later of when the second-hand residential premises is sold or 31 December 2010. Any equality payment must be payable in cash. The stamp duty deferral covers a residential premises plus lands of up to 0.4047 hectares of land occupied and used with the premises. The legislation requires that the second-hand premises must have been occupied but it does not require it to have been occupied by the person who is selling the premises.

Adjudication is essential in order to claim the new relief and the deeds transferring the second-hand premises and the new premises must be presented for adjudication together. The deferral applies to an instrument meeting the terms of the relief executed on or after 7 May 2009 and on or before 31 December 2010.

2. EXTENSION OF INTELLECTUAL PROPERTY EXEMPTION

The Finance Bill 2009 extends the exemption for transfers of intellectual property contained in Section 101 SDCA 1999 to include:

- trade name, trade dress, brand, brand name, service mark or publishing title;
- sales authorisations in respect of medicine and products arising from any design, formula, process or invention; and
- rights derived from research undertaken in respect of medicine and products arising from any design, formula, process or invention.

The purpose of this change is to broadly align the definition of “intellectual property” in the stamp duty code with the similar definition in the new Section 291A TCA 1997 (introduced by the Finance Bill 2009) which grants tax relief for capital expenditure on intangible assets. It should be noted that the expanded definition of intellectual property in the stamp duty code does not cover “know how” which is covered by the new Section 291A TCA 1997. The question of whether “know how” is a property interest capable of triggering a stamp duty charge on its transfer is a topic which has been the subject of considerable debate.

The extended exemption applies to instruments executed after 7 May 2009.

3. AMENDMENT OF INTEREST CHARGES

The rates of interest paid on overdue stamp duty payments is being reduced from a rate of 0.0273% to 0.0219%. These new rates apply from 1 July 2009.

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