

# The New e-Stamping System

## Introduction

The new electronic stamping system is scheduled to go live in late December 2009. Once operational, all documents which require to be stamped (excluding those documents which are the subject of composition arrangements) will be processed through the new system and the public offices at which the majority of documents are currently stamped will be closed.

The Revenue Commissioners have published a useful overview of the new stamping system which is available at <http://www.revenue.ie/en/tax/stamp-duty/e-stamping/index.html>, and a public interface testing facility is due to be available from late October 2009. The focus of this article is to identify some particular aspects of the new system that should be considered in detail by practitioners in terms of their risk management procedures.

## Registering for ROS

In order to be able to file stamp duty returns online using the Revenue Online Service (ROS) system, a practitioner must first register for ROS and set up a Revenue Debit Instruction (RDI) to authorise the online payment of stamp duty. Details of how to register for ROS are available on <http://www.ros.ie/PublisherServlet/info/setupnewcust>. As the process can take a number of weeks from start to finish, practitioners who are not currently registered for ROS and who wish to be able to file stamp duty returns online should commence the application process immediately.

Online payments can only be made from an account nominated by the practitioner at the time the RDI is set up (unless the identity of the account is subsequently changed by arrangement with the Revenue Commissioners). It will not be possible for a practitioner to direct the stamp duty payment to be debited from a bank account belonging to the practitioner's client.

Under the new system the person who files the stamp duty return online will simultaneously authorise the Revenue Commissioners to debit the amount of stamp duty payment from the designated account. Practitioners will therefore have to put in place procedures to verify that their practice has been put in funds to meet the stamp duty payment (including any late filing penalties if relevant) before authorising the filing of a stamp duty return. Under the current system, a practitioner would requisition a cheque for the stamp duty payment from their accounts section and, before issuing the cheque, the accounts staff would verify whether the practice had been put in funds by the client.



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### Stamp Duty Returns

Under the new system, there will be a mandatory stamp duty return to be filed in respect of every instrument which requires to be stamped. The stamp duty return can be filed online through ROS which will validate the return, calculate the duty payable and process the payment of stamp duty. The ROS system will issue the stamp certificate to the practitioner's ROS email inbox together with a receipt for the payment. There will be an alternative stamp duty return in paper format which can be sent to the Revenue Commissioners by post together with a cheque for the stamp duty. On receipt of the paper return the Revenue Commissioners will input the information from the paper return onto the ROS system. Once the stamp duty return is processed by the Revenue Commissioners the stamp certificate will be printed off by the Revenue Commissioners and posted to the practitioner.

Stamp duty returns have to be filed in respect of all instruments which attract stamp duty and instruments subject to the particulars delivered (PD) regime. The new stamp duty return will replace form ST21 (PD forms) and similar returns (e.g. Form SD4) used under the current system. Under the current system many instruments benefited from exemptions from stamp duty (e.g. smaller residential units of under 125 square metres) and the only requirement was to present the purchase deed for PD stamping. Under the new system, a stamp duty return will have to be filed in respect of such matters. Gathering information on transaction activity is clearly an important objective of the new system. Although the PD stamping system achieved this objective to some extent, the new system will undoubtedly be much more efficient in this regard.

The system will also allow a practitioner to amend an earlier return and, if relevant, pay additional duty thereon, as well as to process applications for refunds, although in the latter case the Revenue Commissioners have indicated that in order to process applications for refunds they will require sight of the original documents, at least in the initial stages of the operation of the new system.

### Time Limits for Filing Stamp Duty Returns

The time limits for filing stamp duty returns, whether online or paper, are the same as under the current system. The Revenue Commissioners have confirmed that their current practice of not applying late filing penalties until 44 days after the date of execution of an instrument will apply under the new system. However, in cases requiring adjudication, the date for submission of a stamp duty return will remain 30 days after execution of the instrument.

An incomplete stamp duty return or a stamp duty return containing invalid information

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(e.g. an invalid tax reference number) will be rejected. Under the current system, errors were frequently identified by staff in the Revenue Commissioners on presentation of documents for stamping and in such cases Revenue would frequently allow a further period of 14 days for the error to be rectified. There will be no such facility for “stopping the clock” under the new system, thereby placing a greater onus on the practitioner to ensure that they have obtained all the relevant details necessary to process the stamp duty return prior to closing the relevant transaction.

### Tax Reference Number Requirement

A stamp duty return under the new system must include the tax reference number of each party to the instrument which is being stamped. If the practitioner does not have the tax reference numbers for all parties to the relevant instrument, or has been given an incorrect tax reference number, it will not be possible for him to complete the stamp duty return and this could result in an exposure to late filing penalties if the correct tax reference number cannot be obtained before the expiry of the relevant time limit.

Under the current system, the requirement to provide tax reference numbers only applies to transfers of land which are subject to the particulars delivered (PD) stamping regime in respect of which there were no late-filing penalties. Practitioners will have to put in place procedures for obtaining tax reference numbers in all cases where a stamp duty return has to be filed. Where a party is currently unregistered (e.g. non-resident persons) the Revenue Commissioners have indicated that they will assist practitioners in assigning a number for the purpose of completing the stamp duty return.

There is currently no satisfactory system available for verifying the authenticity of tax reference numbers, or for obtaining tax reference numbers in cases where they have not been supplied. It would therefore be important at an early stage in any transaction for a practitioner who is responsible for filing a stamp duty return to request the tax reference number(s) from their own client(s) and from the agent(s) acting for any other party/ies to the relevant instrument. In addition, in order to reduce the risk of being given incorrect tax reference numbers, it would be prudent for a practitioner to seek a copy of some correspondence from the Revenue Commissioners or the Department of Social and Family Affairs showing the tax reference number(s).

One particular area where the requirement to produce tax reference numbers may cause issues is where a party to an instrument is acting in a fiduciary capacity. At the time of writing of this article, the Revenue Commissioners have to clarify precisely what information the new system will require in such situations.



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### Stamp Certificate

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Evidence of stamping is frequently a pre-condition to the perfection of title by registration and in many cases a potential purchaser may request evidence of stamping in order to verify the seller's title. It should be noted that a stamp certificate has no greater evidentiary status than the hologram stamp used under the current system.

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Once the new regime is operational, what the practitioner will receive after submitting a valid stamp duty return is a stamp certificate. Where the stamp duty return has been filed online, the stamp certificate will be sent to the practitioner's ROS e-mail inbox. Where the paper stamp duty return has been used, the stamp certificate will be issued by post to the practitioner. In order for an instrument to be considered to be properly stamped, the stamp certificate must be attached to the instrument.

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The fact that the stamp certificate will be a separate document from the instrument brings with it the risk of stamp certificates being mislaid or lost. Practitioners should put in place procedures to attach stamp certificates to the relevant original instrument promptly upon receipt so as to minimise the risk of mislaying stamp certificates. A practitioner who files the stamp duty return online but subsequently mislays the certificate will be able to print off a further copy of the stamp certificate from his system.

Problems will arise where a practitioner (not being the practitioner who filed the original stamp duty return) is dealing with a document where the stamp certificate is missing. In such cases it may be possible to liaise with the practitioner who filed the stamp duty return online and request him to provide a further stamp certificate from their system. In cases where the practitioner who filed the stamp duty return cannot be contacted, is uncooperative, or did not file the stamp duty return online, it will be necessary to contact the Revenue Commissioners in order to have a duplicate certificate issued.

The stamp certificate will contain details of the names of the parties to the instrument, the date of execution, the chargeable consideration, the duty paid (including interest and penalties, where relevant), the address of the property concerned (including folio number, where relevant) or, in the case of shares, the name of the company and the number and class of shares. Each stamp certificate will contain a unique security number and a separate stamp certificate will issue in respect of each instrument. Arrangements have been put in place between the Revenue Commissioners and the Property Registration Authority to verify the security number on each deed that is produced for registration.

The fact that the stamp certificate is a separate document will also require practitioners who are investigating title to a property to verify that the stamp certificate that is (or should be) attached to an instrument relates to the parties to the instrument. The detailed

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information contained in the stamp certificate should be of assistance in this regard.

The name of the parties appearing on the stamp certificate will be the name associated with the tax reference number as held in the Revenue Commissioners' Common Registration System (CRS) even if the practitioner inputs a different name in the stamp duty return. This may give rise in practice to discrepancies between the name that appears in the stamp certificate and the name used in the instrument. A simple example would be where a person's maiden name is held in CRS and the person's married name is used in the instrument. In such a case the person's maiden name would appear in the stamp certificate. It will be possible to identify such a discrepancy in names from the summary screen, which will be displayed immediately prior to submitting a stamp duty return. If such a discrepancy is identified at a sufficiently early stage, a practitioner can suggest to their client to write to the Revenue Commissioners to have the CRS details amended. However, if the discrepancy relates to the name of a party other than the client of the practitioner who is filing the stamp duty return, it may not be practicable to get the CRS details amended so that they conform with name(s) used in the instrument. In such cases where the discrepancy is identified before execution of the instrument, it may assist in verifying the identity of the party to include in the instrument the variant or alternative name used by the relevant party.

### Liability of Practitioners

While the Stamp Acts place the obligation to file a stamp duty return on the accountable person, the actual filing of the stamp duty return will in practically all cases be carried out by a practitioner as agent of the accountable person. In doing so a practitioner is potentially exposed to penalties for inaccuracies in the stamp duty return.

Under the new system, where a stamp return does not "reflect the facts and circumstances of which the [practitioner] is aware" that are required to be disclosed in the stamp duty return affecting either the chargeability of an instrument with stamp duty or the quantum of stamp duty, the practitioner who filed the stamp duty return can be made liable to a fixed penalty of €3,000. This is potentially a penalty in respect of each stamp duty return as a separate return must be made for each instrument. This will replace the current regime in respect of fraud or negligence on the part of any "person employed or concerned in or about the preparation of any instrument" where there is a fixed penalty of €1,265 plus the amount of the difference between the duty paid and the duty which would have been paid if all the facts had been fully set forth. There is currently no guidance on how the Revenue Commissioners propose to interpret the new legislative standard of awareness which underpins the new fixed penalty but presumably it is something within the knowledge of the practitioner.

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Under the new system, there is no facility in non adjudication cases to submit information in addition to what is requested in the prescribed fields in the stamp duty return.

However, the fixed penalty applies only where the practitioner fails to provide information that is within his knowledge, and which is required to be disclosed in the stamp duty return. The new system will contain an “expression of doubt” facility which, as heretofore, will cover doubts regarding the application of law or tax treatment but not matters of fact.

Practitioners need to determine what information will be necessary in order to prepare a stamp duty return. In this regard the ROS system will allow practitioners to do an offline computation of the stamp duty liability, and to enter the relevant details in offline mode. Practitioners should use this facility at an early stage in order to identify the information that will be required in order to complete a stamp duty return and to determine the amount of the stamp duty payment.

All practitioners involved in filing stamp duty returns will have to give careful consideration to creating an audit trail in order to be able to satisfy requests for documentation on foot of assurance checks or audits, or indeed to be able to verify the accuracy of the information inputted into the stamp duty return if a question subsequently arises over the accuracy of the information provided. The outputs from a successfully completed stamp duty return filed online via ROS comprise a copy of all information inputted by the practitioner into the stamp duty return, the stamp certificate and a receipt for the stamp duty payment. These will be received by the practitioner in his or her ROS email inbox and should be printed out and placed on file. Prudent practice should also be for practitioners to keep documentary evidence of the facts/instructions given by a client and of advices given by the practitioner as to the liability to stamp duty and, where relevant, the availability of any relief or exemption and any applicable conditions to obtain or maintain such relief or exemption.

It should be remembered, however, that the new system is merely facilitating the making of a return in respect of an instrument that has already been executed. Accordingly, if a finance act or a transaction certificate must under the current system be included in a deed or an instrument in order to claim a particular stamp duty relief or exemption or a particular rate of duty, then that will continue to be the case once the new system is operational. Although, in most cases under the new system, instruments will not be examined by the Revenue Commissioners before the issue of a stamp certificate, the Revenue Commissioners will be carrying out post-stamping assurance checks and the inclusion of an incorrect certificate or the absence of a necessary certificate could result in a liability for the practitioner.

One of the most likely exposure areas for practitioners will be the failure to obtain valid tax reference numbers for all parties to an instrument before execution of the instrument.

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This may result in a delay in being able to file a stamp duty return, thereby incurring late filing penalties or even a complete inability to file a stamp duty return. There is no flexibility in the new system to allow a stamp duty return to be processed either online or in paper form where valid tax reference numbers are not provided.

### Assurance Checks and Audits

It should be noted that except in certain limited cases (such as adjudication cases, expression of doubt cases, penalty mitigation applications and refund applications) the original instrument will not be produced to the Revenue Commissioners in the course of the new stamping process. The Revenue Commissioners are aware that under the current system that there are errors in up to 25% of documents presented for stamping, and in many cases under the current system these errors are picked up by Revenue Commissioners' staff before stamping. While it is expected that the design features of the online stamp duty return will reduce the occurrence of many of the types of error encountered under the current system it is inevitable that errors will continue to occur. The Revenue Commissioners have indicated that they will be placing greater reliance on post-stamping assurance checks and audits.

There is a statutory obligation on the accountable person to retain evidence relating to the chargeability of an instrument to stamp duty for a period of six years from the date of stamping. Although this obligation has not been imposed directly on the practitioner, a client who is the subject of audit will expect that the practitioner who handled the transaction will hold all relevant information.

In the course of such checks or audits, the Revenue Commissioners may require the original instrument and supporting documentation to be produced. The Revenue Commissioners will issue some guidance on document retention requirements in the context of stamp duty return but it is likely to be quite general. This is an area which practitioners will have to give considerable thought to and may require significant changes in practitioner behaviour. For example, in the majority of property conveyances solicitors do not retain the original title deeds (which pass either to the solicitor for the purchaser or to the lending institution) and do not retain copies. As the new stamping system will, as explained above, involve making a stamp duty return in respect of many commonly claimed exemptions, practitioners will need to ensure that their documentation retention procedures cover such cases.

### Summary

The implementation of the new system poses a number of new challenges for practitioners who provide stamp duty advice and/or compliance services and for many



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practitioners it will require significant changes in their procedures particularly in the area of document retention. It will be very important that practitioners ensure that they have obtained all relevant information (especially tax reference numbers) for the completion of the stamp duty return well before the expiry of the time limits for filing the stamp duty return. While it may take some time and effort for practitioners to become comfortable with using the online version of the stamp duty return, it should produce cost savings for practitioners as compared with the paper stamp duty return or indeed the current system.

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## For more information please contact



**Emmet Scully**

T +353 1 637 1538  
E [escully@lkshields.ie](mailto:escully@lkshields.ie)

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### **LK SHIELDS SOLICITORS**

39/40 Upper Mount Street, Dublin 2, Ireland

T +353 1 661 0866 | F +353 1 661 0883 | E [info@lkshields.ie](mailto:info@lkshields.ie) | W [www.lkshields.ie](http://www.lkshields.ie)