OHT Guide
Finance Act 2011 Capital Taxes

Finance Act 2011: Capital Taxes

The Finance Act 2011 made major changes to stamp duty for purchasers of residential property. Rates have been greatly reduced, and many useful and heavily utilised reliefs have been abolished.

The Capital Acquisitions Tax ('CAT') rates remain the same, but the thresholds have been reduced. The pay and file date has been brought forward to 30 September, and the date on which interest begins to accrue was adjusted to match. This change has major implications for solicitors advising on inheritance and gift tax. It was initially indicated that this change could be reversed in a later Finance Act in 2011, however, Revenue now indicate that this was a policy decision and that no reversal will be made. The indications are that there will be at least one, and probably two further Finance Acts this year.

Stamp Duty: Transfers of Residential Property

From 08 December 2010 the residential property stamp duty rates are as follows:

Consideration	Rate of Duty
First €1,000,000	1%
Over €1,000,000	2%

The new stamp duty rates will not apply to instruments signed before 01 July 2011, where the contract was entered into before 08 December 2010 and the effect of the changes would be to increase the stamp duty. The Revenue have issued a Guidance Note to the new rules (click here).

The following reliefs and exemptions ceased to apply from 08 December 2010:

- First time buyer relief
- Exemption for new houses under 125 sq m
- Relief on new houses over 125 sq m
- Consanguinity relief - residential property
- Residential property exemption up to €127,000
- Relief on the transfer of a site to a child

First-time buyer relief was extended to a trustee/ parent who bought a principal residence for an incapacitated individual between 01 January and 07 December 2010.

Tenants who purchase their homes from a local authority, and purchasers under the Affordable Homes Scheme will have to pay up to €100 in stamp duty under the new regime.

The rates of duty for non-residential property remain as follows:

Consideration	Rate of Duty
Up to €10,000	Exempt
€10,001 to €20,000	1%
€20,001 to €30,000	2%
€30,001 to €40,000	3%
€40,001 to €70,000	4%
€70,001 to €80,000	5%
Over €80,000	6%

Stamp Duty: Impact of Finance Act 2011

Who benefits from the stamp duty changes?

In most cases investors, and owner occupiers trading up into second hand properties, will pay less stamp duty.

Who loses from the changes?

First Time Buyers - First time buyers have lost their exemption and owner-occupiers have lost their relief, so they pay more tax under the new "low rates" regime.

Transfers to Family Members - At lower price levels (€175,000 and under) family members will no longer be eligible for consanguinity relief on residential transfers, and will pay *more stamp duty under the new regime.*

The transfer of a site to a child is no longer exempt from stamp duty. Before Budget 2011 there was stamp duty and CGT relief on the transfer of a qualifying site to a child (but no CAT relief). Post Finance Act 2011 the only “transfer of site to child” relief is CGT.

It is worth noting that consanguinity relief should still apply to the transfer of a green field site to a child as technically the site is not residential property.

Example

On 01 January 2011, Tom received a one acre site valued at €100,000 from his father, Peter. Before Budget 2011 this would have been exempt from stamp duty and CGT. In January 2011 Tom’s stamp duty was €3,000 (stamp duty of 6% reduced to 3% by consanguinity relief).

Peter’s disposal of the site to Tom remains exempt from Capital Gains Tax (S. 603A TCA 1997).

CAT: Group Thresholds

The Finance Act confirmed the reduction in CAT tax free thresholds announced in Budget 2011. It also provided that the usual January inflation adjustment will not occur in 2011 so the thresholds that apply from 08 December 2010 remain in place for 2011 (see below).

Capital Acquisitions Tax

2011 Tax Free Thresholds

Class (a)	€332,084
Class (b)	€33,208
Class (c)	€16,604

CAT: Pay & File Date

The Finance Act brought forward the pay and file date for CAT, and income tax, and the CGT filing date from 31 October to 30 September.

The Minister reversed the changes to income tax and CGT but this amendment did not affect the CAT provision. As a result the pay and file date for CAT is currently **30 September 2011**.

The change in dates is particularly important for CAT as the CAT year ends on 31 August. In extreme cases the timeline for filing a CAT return could be just over 4 weeks after a death under the new rules.

This short timeframe between an unpredictable tax trigger such as death and a hard tax deadline with penalties and a surcharge is not compatible with a self assessment system.

It is yet to be confirmed by Revenue if a ROS Pay & File extension will apply to CAT.

CAT: Surcharge for Late Filing

If a CAT return is late, then a 5% surcharge applies if the return is up to 2 months late (maximum of €12,695), and the surcharge is 10% (maximum of €63,485) if the return is filed later. In addition to the surcharge, interest will be charged on late payments (standard rate of 0.0219%).

Example

Patrick and John are brothers who are joint tenants of a house and farm valued at €1.5m. If John died on 30 August 2011, and Patrick inherited the house and land by way of survivorship Patrick’s CAT return and tax would be due on 30 September 2011.

If Patrick waits a few weeks before seeking legal advice (say he waits until 02 October 2011) his CAT payment and return will be late and he will have an exposure to surcharge, interest, and penalties, before he has had a chance to take advice.

CAT: Interest Payments

The date on which interest begins to accrue has been brought forward from 01 November to 01 October to match the change in payment date from 31 October to 30 September.

O’Hanlon Tax Limited
6 City Gate, Lower Bridge St., Dublin 8
T: 01 6040280 F: 01 6040281 E: info@ohanlontax.ie W: www.ohanlontax.ie