

PART 10 ENFORCEMENT	2	
OVERVIEW	2	
SECTION 127	TERMS ON WHICH INSTRUMENTS NOT DULY STAMPED MAY BE RECEIVED IN EVIDENCE	2
SECTION 128	ROLLS, BOOKS, ETC., TO BE OPEN TO INSPECTION	3
SECTION 129	PENALTY FOR ENROLLING, ETC., INSTRUMENT NOT DULY STAMPED, ETC.	4
SECTION 130	ASSIGNMENT OF POLICY OF LIFE INSURANCE TO BE STAMPED BEFORE PAYMENT OF MONEY ASSURED	4
SECTION 131	CONDITIONS AND AGREEMENTS AS TO STAMP DUTY VOID	4
SECTION 132	APPLICATION OF SECTION 962 OF TAXES CONSOLIDATION ACT, 1997	4
SECTION 133	APPLICATION OF CERTAIN PROVISIONS RELATING TO PENALTIES UNDER TAXES CONSOLIDATION ACT, 1997	5
SECTION 134	EVIDENCE IN PROCEEDINGS FOR RECOVERY OF STAMP DUTY, ETC.	5
SECTION 134A	PENALTIES	6

PART 10 ENFORCEMENT

Overview

In addition to the fact that payment of stamp duties is compulsory (*section 2*) and that late payment will give rise to penalties (*section 14*) this Part contains a number of provisions which help to ensure that instruments which are chargeable to stamp duty are presented to the Revenue Commissioners for stamping.

Other legislation also contains enforcement provisions:

- sections 81(1) and 86(1) of the Companies Act, 1963, provide that a company registrar may not register a stock transfer form unless it is duly stamped and section 86(2) imposes penalties for non-compliance with that section,
- section 4 of the Stock Transfer Act, 1963, imposes penalties on persons who part with possession of transfers in blank or remove or allow them to be removed from the State,
- section 104 of the Registration of Title Act, 1964, provides that a Registrar may not register a deed of transfer unless it is duly stamped.

Section 127 Terms on which instruments not duly stamped may be received in evidence

Summary

This section provides that an unstamped instrument may not be used in evidence¹ or for any purpose except as evidence in criminal proceedings or in civil proceedings by the Revenue Commissioners to recover stamp duty. Without this latter provision the Courts could not admit an unstamped instrument as part of the evidence of underpayment of stamp duty. Under the provisions of this section a purchaser could refuse to complete if an instrument forming a link in his or her title is not correctly stamped.

Details

A judge, before whom any instrument is presented in evidence in civil proceedings, or an arbitrator or referee is obliged to investigate whether the instrument has been duly stamped. If it has not been duly stamped but the nature of the instrument is such that it may legally be stamped after execution then the instrument may be received in evidence on the payment to the appropriate court officer or the arbitrator or the referee of:

- the unpaid duty, and
- any interest and penalties (including surcharges) due on late payment.

Court officers, arbitrators and referees who receive moneys in accordance with *subsection (1)* must—

¹ Section 95(5) of the Companies Act, 1963, provides that any “person lending money on the security of a debenture re-issued under this section, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty”.

- issue a receipt,
- keep a record of the payment,
- advise the Revenue Commissioners of the payment, and
- hand over the moneys to such person as the Revenue Commissioners may appoint.

The Revenue Commissioners will stamp the instrument on production of the original instrument together with the receipt issued by the court officer, arbitrator or referee. (3)

Instruments which are chargeable to stamp duty but which have not been duly stamped may not be used in evidence or be available for any purpose except in— (4)

- criminal proceedings, or
- civil proceedings by the Revenue Commissioners to recover stamp duty.

Section 128 Rolls, books, etc., to be open to inspection

Summary

This section provides that the Revenue Commissioners may oblige any person to supply information which is relevant to establishing a stamp duty liability or the commission of fraud, negligence or omission in relation to stamp duty. The provisions include powers of access to records by authorised officers of the Revenue Commissioners.

No person, however, is obliged to provide information s/he could by law refuse to provide. Such a situation would arise in the context of the privilege that exists between a solicitor and his or her client.

Details

“document” is self-explanatory. (1)

Any person who is a party to an instrument, or who has a document in his or her control or custody, the inspection of which might lead to the establishment of the existence and extent of a charge to stamp duty or the existence of fraud, negligence or omission in relation to stamp duty, may be asked to provide information in relation to that instrument or document to the Revenue Commissioners. The information sought must be given to the Revenue Commissioners within 14 days of receiving a written request from the Revenue Commissioners. (2)

The Revenue Commissioners may verify the information and take notes or copies for reference or future evidence.

Refusal to give the information sought or to allow the Revenue Commissioners to verify the information or to take notes or copies is an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

The Revenue Commissioners cannot require a person who was barred from doing so under the law to give information. This ensures that the privilege which exists between, say, a client and a solicitor would not be called into doubt. (3)

Section 129 Penalty for enrolling, etc., instrument not duly stamped, etc.

This section imposes a penalty of €30 on any person who enrolls, enters or registers an instrument which is chargeable with stamp duty if that instrument has not been duly stamped. Persons who come within the scope of this section include— (1)

- company registrars (but see *section 71(e)*),
- Registrar in Land Registry or Registry of Deeds,
- Registrar of bills of sale,
- Registrar of patents, trade marks, etc.

This section also provides that the Registrar of bills of sale may not register a bill of sale which is chargeable to stamp duty unless it is duly stamped. (2)

Section 130 Assignment of policy of life insurance to be stamped before payment of money assured

An assignment of a policy of life insurance, if the assignment is chargeable to stamp duty, is invalid unless it is duly stamped. Anyone who pays on such a policy is liable to pay the amount of stamp duty due on the assignment together with any interest and penalty - see also *section 59*.

Section 131 Conditions and agreements as to stamp duty void

This section provides that the following are void:

- any condition of sale the purpose of which is to preclude objection to the title to the property being sold on the grounds that the proper amount of stamp duty has not been paid.

Example

A sold his house to B but B did not pay the correct amount of duty on the conveyance. Subsequently, B agreed to sell the house to C. B included a condition of sale to the effect that C could not insist on the conveyance from A to B being correctly stamped. As this condition is void the effect is that B will have to pay the full amount of duty due before he can pass good title to C.

- any agreement to assume the stamp duty liability of another person or to indemnify another person against the non-payment of stamp duty.

Example

A asks B, the registrar of a company, to register a transfer of shares which has not been duly stamped. A agrees with B that A will compensate B for the stamp duty liability if it ever comes to light. B will not be able to enforce this indemnity because it is void.

Section 132 Application of section 962 of Taxes Consolidation Act, 1997

This section extends to stamp duty the provisions of section 962 of the Taxes Consolidation Act, 1997, which relate to the recovery of outstanding tax by a sheriff or county registrar.

Under these provisions it is possible for the Revenue Commissioners to issue certificates for outstanding duty to a sheriff or county registrar for collection. Where payment is not forthcoming the sheriff is empowered to seize goods belonging to the defaulter to the value of the amount outstanding.

This section is repealed as respects any duty that becomes due and payable on or after 1 March 2009. In relation to such duty (including interest and penalties on that duty) see Chapters 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997.

Section 133 Application of certain provisions relating to penalties under Taxes Consolidation Act, 1997

This section extends to stamp duty the provisions of a number of sections of the Taxes Consolidation Act, 1997. All of the provisions in question relate to penalty proceedings. The incorporation of these provisions into stamp duty law enables the Revenue Commissioners to use these provisions for infringements of the stamp duty code on the same basis as they are used for infringements of the income tax code.

The provisions which are incorporated into the stamp duty code are:

- section 987(4) which provides that certain statements, signed by an officer of the Revenue Commissioners may be tendered in evidence in Court proceedings;
- section 1061 which provides that an authorised officer of the Revenue Commissioners may sue in a court of competent jurisdiction for recovery of a penalty;
- section 1062 which provides that where a penalty cannot be calculated because the tax on which it is based has not been finally ascertained proceedings may be initiated and adjourned until the amount of tax outstanding has been ascertained;
- section 1063 which provides that proceedings for the recovery of any fine or penalty may be begun at any time within 6 years of the date on which the fine or penalty was incurred;
- section 1064 which provides for the institution of proceedings in certain circumstances within 10 years of the date of the committing of an offence or incurring of a penalty;
- section 1065 which provides that the Revenue Commissioners may, at their discretion, mitigate any fine or penalty, either before or after judgement or stay any proceedings for the recovery of a fine or penalty. The Minister for Finance is also empowered to mitigate any fine or penalty, either before or after judgement;
- section 1066 which provides that any person who gives false evidence on oath or in any written statement, will be regarded as having committed perjury; and
- section 1068 which provides for an extension of the time allowed to an individual to comply with a request made by the Revenue Commissioners.

Section 134 Evidence in proceedings for recovery of stamp duty, etc.

In any proceedings in the Circuit Court or the District Court relating to the recovery of stamp duty or penalties this section is to be applied. This section provides that, in any such proceedings:

- an affidavit made by an officer of the Revenue Commissioners in respect of an assessment of stamp duty is presumed to be correct until proved otherwise,
- where an affidavit is uncontested the officer need not give evidence in court, and
- where an affidavit is contested the court will provide for the presence of the officer.

This section is repealed as respects any duty that becomes due and payable on or after 1 March 2009. In relation to such duty (including interest and penalties on that duty), see Chapters 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997.

Section 134A Penalties

Summary

This section provides for a penalty of €1,265 plus a tax geared further penalty where a person acts deliberately or carelessly, in relation to—

- (a) the execution of an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which *section 8(2)* relates,
- (b) the entering of an incorrect electronic instruction in the CREST system,
- (c) the delivery of an incorrect electronic or paper return under the e-stamping system **(to be commenced in late 2009 by Ministerial Commencement Order)**,

which gives rise to an underpayment in amount of stamp duty due and payable. The section provides for a specific level of penalty to apply depending on whether the category into which the person's duty default falls is deliberate or careless. The section puts the practices as regards the level of tax geared penalties sought in Revenue audits and investigations by reference to the Code of Practice for Revenue Auditors on a statutory footing. The section applies to penalties incurred on or after 24 December 2008 in relation to the offences contained in *paragraph (a)* and *(b)* above. **A penalty in respect of an offence referred to in paragraph (c) can only be incurred after the e-stamping system commences in late 2009 by way of a Ministerial Commencement Order.**

Details

“carelessly” means failure to take reasonable care; (1)

“liability to duty” means a liability to the amount of the difference specified in *subsection (7), (8) or (9)* arising from any matter in *subsection (2) or (4)*;

“instruction”, “relevant system” and “system-member” take their meaning from *section 68(2)*;

“person” means a system-member for the purposes of *subsection (2)(b)* and *(4)(b)* (i.e. the entering of an incorrect electronic instruction in the CREST system), and means an accountable person in relation to *subsections (2)(c)* and *(4)(c)* (i.e. the delivery of an

incorrect electronic or paper return under the e-stamping system);

“prompted qualifying disclosure” means a qualifying disclosure that has been made by a person to the Revenue Commissioners or to a Revenue officer in the period between—

- (a) date on which the person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to duty of that person will start, and
- (b) the date that the investigation or inquiry starts;

“qualifying disclosure” is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to duty that gives rise to a penalty, made in writing and accompanied by—

- (a) a declaration, to the best of that person’s knowledge, information and belief, made in writing that all matters contained in the disclosure are correct and complete, and
- (b) a payment of the duty and interest on late payment of that duty.

In addition—

- all qualifying disclosures (prompted and unprompted) in the deliberate behaviour category of duty default (*subsection (3)*) must state the amounts of all liabilities to tax and interest, in respect of all tax-heads and periods, where liabilities arise, as a result of deliberate behaviour, that were previously undisclosed, and
- all qualifying disclosures (prompted and unprompted) in the ‘careless behaviour’ category of duty default (*subsection (5)*) must state the amounts of all liabilities to duty and interest, where liabilities arise, as a result of careless behaviour, that were previously undisclosed;

“Revenue officer” means an officer of the Revenue Commissioners;

“unprompted qualifying disclosure” means a qualifying disclosure by a person that the Revenue Commissioners are satisfied has been voluntarily furnished to them—

- (a) before any investigation or inquiry had been started by them or by a Revenue officer into any matter occasioning a liability to duty of that person, or
- (b) where the person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to duty will start, before that notification.

Where **deliberately**— (2)

- (a) a person executes an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which section 8(2) relates, (a)
- (b) a system-member enters an incorrect electronic instruction in the CREST system (b)
- (c) an accountable person delivers of an incorrect electronic or paper return under the e-stamping system (to be commenced in late 2009 by Ministerial Commencement Order), (c)

that person will be liable to a penalty of €1,265 and a **further** penalty.

In each case the maximum **further** penalty, that can apply where the circumstances outlined in **subsection (2)** occur, is an amount equal to the amount of underpaid duty (100% of the underpayment) where the person who incurred the penalty **has not co-operated** with the Revenue Commissioners. (3)(a),(b)&(c)

Where the person **co-operates** with the Revenue Commissioners and—

- does not make a qualifying disclosure, the penalty will be reduced to an amount equal to 75% of the underpaid duty, (3)(i)
- makes a prompted qualifying disclosure (for example, after receiving an audit letter from the Revenue Commissioners), the penalty will be reduced to an amount equal to 50% of the underpaid duty, (3)(ii)
- makes an unprompted qualifying disclosure (that is before the person has been contacted by the Revenue Commissioners, in circumstances where the person has no reason to believe that Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 10% of the underpaid duty. (3)(iii)

Where **carelessly** but not deliberately—

- (a) a person executes an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which **section 8(2)** relates, (a)
- (b) a system-member enters an incorrect electronic instruction in the CREST system, (b)
- (c) an accountable person delivers of an incorrect electronic or paper return under the e-stamping system (**to be commenced in late 2009 by Ministerial Commencement Order**), (c)

that person will be liable to a penalty of €1,265 and a **further** penalty.

In each case the maximum **further** penalty, that can apply where the circumstances outlined in **subsection (4)** occur, is an amount equal to the amount of underpaid duty reduced to— (5)(a)

- (a) 40% where the penalty **exceeds 15% of the full duty payable** on the instrument, electronic instruction, or electronic or paper return, as the case may be, and
- (b) 20% where the penalty **does not exceed 15% of the full duty payable** on the instrument, electronic instruction or electronic or paper return, as the case may be,

where the person who incurred the penalty **has not co-operated** with the Revenue Commissioners.

Where the penalty **exceeds 15% of the full duty payable** on the instrument, electronic instruction, or electronic or paper return, as the case may be, and the person **co-operates** with the Revenue Commissioners and— (5)(b)(I)

- does not make a qualifying disclosure, the penalty will be reduced to an amount

equal to 30% of the underpaid duty,

- makes a prompted qualifying disclosure (for example, after receiving an audit letter from the Revenue Commissioners), the penalty will be reduced to an amount equal to 20% of the underpaid duty,
- makes an unprompted qualifying disclosure (that is before the person has been contacted by the Revenue Commissioners, in circumstances where the person has no reason to believe that Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 5% of the underpaid duty.

Where the penalty **does not exceed 15% of the full duty payable** on the instrument, **(5)(b)(II)** electronic instruction, or electronic or paper return, as the case may be, and the person **co-operates** with the Revenue Commissioners and—

- does not make a qualifying disclosure, the penalty will be reduced to an amount equal to 15% of the underpaid duty,
- makes a prompted qualifying disclosure (for example, after receiving an audit letter from the Revenue Commissioners), the penalty will be reduced to an amount equal to 10% of the underpaid duty,
- makes an unprompted qualifying disclosure (that is before the person has been contacted by the Revenue Commissioners, in circumstances where the person has no reason to believe that Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 3% of the underpaid duty.

Where neither deliberately nor carelessly,— **(6)**

- (a) a person executes an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which **section 8(2)** relates,
- (b) a system-member enters an incorrect electronic instruction in the CREST system,
- (c) an accountable person delivers of an incorrect electronic or paper return under the e-stamping system **(to be commenced in late 2009 by Ministerial Commencement Order)**,

and it subsequently comes to the person's notice that the instrument, electronic instruction, or electronic or paper return was incorrect, then the person must remedy the error without unreasonable delay and failing that, the incorrect instrument, instruction or return will be treated as having been deliberately made.

The amount of the **further** penalty arising under **subsection (3)(a), (5)(a)(i) or (5)(b)(i)**, **(7)** before any percentage reduction is applied to the penalty, is the amount of the difference between the duty payable on the instrument based on the facts and circumstances set forth and delivered and the amount of the duty that would have been payable if the instrument and any accompanying statement had fully and truly set forth all the facts and circumstances affecting the liability of the instrument to duty.

The amount of the **further** penalty arising under **subsection (3)(b), (5)(a)(ii) or (5)(b)(ii)** **(8)** before any percentage reduction is applied to the penalty, is the amount of the difference between the duty paid (if any) and the duty that would have been payable had the instruction been entered correctly.

The amount of the **further** penalty arising under *subsection (3)(c), (5)(a)(iii) or (5)(b)(iii)*, before any percentage reduction is applied to the penalty, is the amount of the difference between the duty payable in respect of the instrument based on the facts and circumstances disclosed on the return and the amount of duty that would have been payable had all the facts and circumstances affecting the liability of such instrument to duty or the amount of the duty with which such instrument is chargeable, that are required to be disclosed on such return had been disclosed to the Revenue Commissioners. (9)

Where a second qualifying disclosure is made by a person within 5 years of that person's first qualifying disclosure in relation to any of the occurrences referred to in *subsection (2)* and the person **co-operates** with the Revenue Commissioners and makes — (10)(a)

- (a) a prompted qualifying disclosure, the penalty is reduced to an amount equal to 75% of the underpaid duty,
- (b) an unprompted qualifying disclosure, the penalty is reduced to 55% of the underpaid duty.

Where a second qualifying disclosure is made by a person within 5 years of that person's first qualifying disclosure in relation to any of the occurrences referred to in *subsection (4)* and the person **co-operates** with the Revenue Commissioners, where the duty underpaid exceeds **15% of the full duty payable** on the instrument, electronic instruction, or electronic or paper return, as the case may be, and the person made — (10)(b)

- (a) a prompted qualifying disclosure, the penalty is reduced to 30% of the underpaid duty, and
- (b) an unprompted qualifying disclosure, the penalty is reduced to 20% of the underpaid duty.

Where a third or subsequent qualifying disclosure is made within five years of that person's second qualifying disclosure, there will be no reduction in the **further** penalty referred to in *subsection (3)* or no further reduction in the reduced penalty of 40% referred to in *subsection (5)(a)* in relation to the qualifying disclosure (whether prompted or unprompted). (11)

Matters referred to in the definition of a prompted or unprompted qualifying disclosure do not include matters occasioning a liability to duty relating to, a person that is one of a class of persons being investigated by Revenue or a statutory body, a person who is within the scope of an enquiry being carried out wholly or partly in public, or a person who is linked, or about to be linked, publicly with such matters. (12)