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PART 2 CHARGING AND STAMPING OF INSTRUMENTS

Overview

Stamp duty is a duty charged on certain written documents (*section 2*). These documents are referred to as “instruments” in the stamp duty code. Not every instrument is liable to stamp duty. To be liable it must be listed in *Schedule 1*. It also must be either executed in the State or, if executed outside the State, it must relate to Irish property or to something done or to be done in the State.

Schedule 1 also contains the rate of duty, which may be ad valorem or fixed, applicable to each instrument. The Minister for Finance has the power to vary the rate of duty on certain instruments by regulation (*section 3*). The amount of duty applicable to a particular instrument is often dependent on that instrument containing a particular clause or “certificate”. Insertion of an incorrect certificate is an offence (*section 17*). (Provisions relating to certificates are contained in *sections 29(6), 53(6), 81(3)(a), 81A(7)(a), 81AA(8)(a), 81B(2)(a), 82B(3)(b)(i), 83A(3), 83B(2)(a), 83C(2)(a), 91A(4), 92(1)(b), 92B(3)* and *95(2)* and in *Schedule 1* i.e. in paragraphs (1) to (4), (7) to (14A) and (15) of the “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” head of charge, in the “EXCHANGE” head of charge and, in clauses (i) to (iv) of paragraph (3)(a) and clauses (i) to (vii) of paragraph (3)(b) of the “LEASE” head of charge. **Appendix 3** and leaflet SD 10(A) contain the wording of all the various certificates.)

An instrument which is liable to stamp duty must be presented to the Revenue Commissioners within the time limits specified in *section 2*: otherwise penalties and interest for late payment will arise (*section 14*). To enable the Revenue Commissioners to determine the amount of duty chargeable on the instrument the instrument, or an accompanying statement, must contain all relevant details (*section 8*). Once the duty has been paid to the Revenue Commissioners they will impress stamps on the instrument to the value of the duty paid. Except where there is express provision to the contrary (see, for example, *sections 5* and *10*) the payment of stamp duty must be denoted by impressed stamps (*section 4*) and these stamps must appear on the face of the instrument (*section 6(1)*).

A document may be liable to more than one charge to stamp duty: if it is, then it must be separately and distinctly stamped in respect of each one of the charges (*sections 6(2)* and *7*).

The amount of stamp duty chargeable on a particular instrument may depend on the duty paid on another instrument. Where the duty chargeable on one instrument (Instrument A) is dependent on the duty paid on another (Instrument B) the Revenue Commissioners may denote on Instrument A the fact that ad valorem duty was borne on Instrument B (*section 11*).

In addition to money stamps certain instruments relating to the transfer or leasing of land require to be impressed with a Particulars Delivered stamp (*section 12*) and instruments which are duplicates of instruments chargeable to stamp duty must be impressed with a duplicate stamp (*section 13*).

Surcharges may apply where property is undervalued or overvalued for the purposes of stamp duty (*sections 15* and *16*).

If the instrument recites an amount in a foreign currency and that amount is chargeable with ad valorem duty (e.g. the purchase price for a property may be recited in US\$’s then that amount must first be converted into €s. *Section 9* sets out the rate of

exchange to be applied in such cases.

Leaflet SD 1 contains general information about stamp duties on instruments.

Readers should also be aware that section 811 of the Taxes Consolidation Act, 1997, contains general anti-avoidance provisions. The purpose of section 811 is to nullify the effects of certain transactions which have little or no commercial reality but which are carried out primarily to avoid or reduce a charge to tax (including stamp duties). In addition, section 811A of the Taxes Consolidation Act 1997 provides for a surcharge and interest to be payable where a transaction is found to be a tax avoidance transaction under section 811 and also provides for a “protective notification” to be returned to the Revenue Commissioners by a taxpayer to protect the taxpayer against the surcharge and interest.

Section 2 Charging of, liability for, and recovery of stamp duty

Summary

Stamp duty is chargeable on any instrument which is listed in *Schedule 1*—

- if that instrument is executed in the State, or
- no matter where it is executed, if it relates to Irish property or to matters or things done or to be done in the State.

Details

Charge on instruments

An instrument which is specified in *Schedule 1* and which is executed in the State is chargeable to stamp duty. If the instrument is specified in *Schedule 1* but is executed outside the State then the instrument is only chargeable to stamp duty if it relates to property situated, or matters or things done or to be done, in the State. The provision that an instrument which relates to anything done or to be done in the State is chargeable with stamp duty is capable of a very broad interpretation. The view of the Revenue Commissioners in relation to this criterion is that the instrument and/or the underlying transaction should relate to, or involve, a substantive action or obligation to be carried out or undertaken in the State. An illustration of this view would be where an instrument is executed abroad relating to foreign property where the only connection with the State is that one of the parties is an Irish resident. The Revenue Commissioners’ view is that in such a case the instrument would not be liable to duty. (1)

Example 1

A buys land in France. The transfer document is executed in the State. As the transfer document is executed in the State stamp duty is chargeable.

Example 2

B buys shares in an Irish company. The transfer document is executed in Spain. As the document relates to Irish property stamp duty is chargeable.

Example 3

CDE Ltd, an Irish company, buys land in Germany. The consideration for the land is the issue of shares in CDE Ltd. The transfer document is executed in Germany. The transfer document is liable to stamp duty because it relates to Irish

property (i.e. the shares). The transfer document is also liable because there is something to be done in the State (i.e. the issue of shares). Had the consideration been cash no stamp duty liability would have arisen because the provision of cash is not regarded as being “a matter or thing done or to be done in the State”.

In determining the appropriate head of charge for an instrument the Revenue Commissioners will look at the effect of the instrument rather than the description which the parties to it have given to it.

Example

A is the beneficial and legal owner of shares in XYZ Ltd. A transfers legal title to the shares to his nominee, B. B executes a declaration of trust to the effect that the shares are being held in trust for A. The declaration of trust is not liable to stamp duty.

Some months later A decides to sell the shares to C. B executes a new declaration of trust stating that he now holds the shares in trust for C. This declaration of trust attracts duty under the “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities” head of charge in *Schedule 1*.

Stamp duties are charged for the benefit of the Central Fund. The duties to be charged are specified in *Schedule 1* and must be applied unless the instrument in question is exempted or relieved from duty by the Stamp Duties Consolidation Act, 1999, or any other Act (see *Part 7* and *Appendix 5*). (2)

Where the same instrument is liable to stamp duty in the United Kingdom and the State a measure of relief from double taxation is provided by the Double Taxation (Relief) (Order No. 1), 1923, in that it, inter alia, provides that such an instrument when stamped in one of those countries is, to the extent of the duty it bears, deemed to be stamped in the other country. The Order, which also extends to composition agreements (see *section 5*), was made under the provisions of the Double Taxation (Relief) Act, 1923¹.

Example

The Stg consideration is Stg£50,000 and the UK rate of duty is 0.5%. Stg£250 is paid and the instrument is stamped accordingly. The instrument is also liable to Irish stamp duty. The Irish rate of duty is 1%. The euro/Stg exchange rate at the date of execution of the instrument (see *section 9*) is €1 = Stg£0.6681. The amount of Irish duty chargeable is as follows:

€value of Stg£ consideration	€74,839.10*
Amount of Irish duty chargeable	€748
<u>less</u> credit for value of UK duty already paid	€374
⇒ amount of duty payable in the State	€374

*(50,000 ÷ 0.6681)

Date payment is due

Stamp duty must be paid on chargeable instruments within the specified time limit i.e. within 30 days after the date of first execution of the instrument. In most cases, an instrument will be “first executed” when it has been executed by all of the parties to it necessary to make it effective in law and that should be the date that is inserted in the instrument - “execution” is defined in *section 1*. In the case of an instrument held in (3)(a)

¹ Similar legislation was enacted in Great Britain i.e. the Double Taxation (Irish Free State) Declaration, 1923, made under the Irish Free State (Consequential Provisions) Act, 1922.

escrow the time for stamping only arises when the outstanding condition has been performed and the instrument is released from escrow. The Revenue Commissioners will always require evidence of the existence of escrow which should include such details as the date the deed went into escrow, the reason it went into escrow and the date it came out of escrow (e.g. certificate of escrow).

In some cases, however, such as where the liability is not obvious, an instrument may be submitted to the Revenue Commissioners who will raise an assessment of the duty payable under **section 20**. Where the instrument is submitted within 30 days after the date of first execution there is 14 days from the date of the assessment to pay the duty. (3)

These time limits do not apply, of course, when the instrument is written on material which is already duly stamped. (3)(a)

Accountable person

Where no duty, or insufficient duty, is paid the accountable person becomes liable to pay it. If there is more than one accountable person then each accountable person becomes liable jointly and severally to pay the duty. "accountable person" is defined in **section 1**: however, **sections 31(1), 36(2), 71(a)** and **130** are also relevant as section 4(1) of the Stock Transfer Act, 1963. (4)

Recovery of duty and penalties

The duty, together with any appropriate penalty, is deemed to be a debt owed to the Minister for Finance for the benefit of the Central Fund and may be sued for. The Revenue Commissioners may also use powers of attachment (section 1002 of the Taxes Consolidation Act, 1997) or instruct the sheriff to collect the duty (**section 132**). **Section 133** extends certain provisions relating to the recovery of penalties under the Taxes Consolidation Act, 1997, to stamp duties. **Section 134** contains provisions relating to proceedings for the recovery of stamp duty and penalties. (4)

See Chapters 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997 in relation to recovery of duty (including interest and penalties on that duty) that become due and payable on or after 1 March 2009.

Penalties, clawbacks and interest are provided for in **sections 5(4), 8(3), 10(4), 14(1)** and **(2), 15(1), 16(3), 25(2), 45A(4), 59(1), 65, 66(2), 75(3)** and **(5), 76(2)** and **(3), 79(7), 80(8), 80A(8), 81(7), 81A(11), 81AA(12), 81B(9), 81C(9), 82B(4), 83C(8), 87(3), 87A(4), 91(2)I, 91A(6), 92(2), 92A(3), 92B(4), 108A(4), 117(3), 123(7), 123A(7), 123B(7), 124(5)(b), 125(6), 126(7), 126A(10),** and **129(1)**. In addition to the specific power to remit penalties and interest payable on stamping contained in **section 14(3)** the Revenue Commissioners also have a general power to mitigate penalties under section 35 of the Inland Revenue Regulation Act, 1890, and section 1065 of the Taxes Consolidation Act, 1997 – **section 133** applies section 1065 to stamp duty.

Section 3 Variation of certain rates of duty by order

Summary

This section enables the Minister for Finance to exempt certain instruments from stamp duty or to reduce the rates of stamp duty on certain instruments – mainly instruments used by the financial services industry.

Details

The Minister for Finance may exempt from stamp duty (or reduce the rate of duty to which they are chargeable) all but the following instruments: (1), (2)

- instruments which relate to immovable property situated in the State or any rights or interest in such property,
- instruments which relate to any stock or share of a company having a register in the State,
- instruments which relate to any risk situated in the State in relation to the “INSURANCE” head of charge in *Schedule 1*, and
- bills of exchange.

However, instruments relating to debt factoring are within the scope of the Minister’s (3) powers as set out in *subsection (1)*.

The Minister may amend or revoke any order which s/he has made under the powers (4) conferred on him or her by this section.

Any orders made by the Minister must be laid before Dáil Éireann. If a resolution (5) annulling the order is passed by Dáil Éireann within the time limit specified by this subsection then the order is annulled. However, anything previously done under the order remains valid.

All orders made under this section must be subsequently ratified by the Oireachtas (6) within the specified period. Orders which are not ratified cease to have effect from the end of the specified period. However, anything previously done under the order remains valid.

Section 4 How duties are to be paid

The amount of stamp duty paid in respect of an instrument must be impressed by means of stamps on that instrument *except* where express provision is made to the contrary in the Stamp Duties Consolidation Act, 1999. Express provision is made to the contrary in—

- *section 5* which concerns stamp duty paid under composition agreements,
- *section 25(1)* which enables stamp duty on bills of exchange to be denoted by adhesive stamps (see also *section 23*), and
- *section 71(e)* which concerns the payment of stamp duty on securities title to which is transferred electronically.

The Revenue Commissioners may also stamp by the issue of a receipt (see definition of “stamp” in *section 1*) in certain circumstances.

Under the e-stamping system, when implemented by Ministerial Commencement Order, the instrument will be stamped by attaching the stamp certificate to the instrument concerned.

Section 5 Agreement as to payment of stamp duty on instruments

Summary

This section enables the Revenue Commissioners to enter into agreements to enable stamp duty to be collected by composition. Thus, rather than duty being paid and indicated by means of stamps on each individual instrument the duty is paid “in bulk” at intervals, usually annually, bi-annually or quarterly, and the instruments themselves

bear a statement to the effect that duty has been or will be paid under an agreement with the Revenue Commissioners.

This section simplifies the administration and collection of duties. Those who have substantial numbers of instruments which attract stamp duty may dispense with the costly and time-consuming practice of sending all of those instruments to the Revenue Commissioners for individual stamping. For the Revenue Commissioners the advantages lie in an enhanced collection procedure and a reduction in the volume of instruments which actually require physical stamping.

Stamp duty on bills of exchange (limited to cheques, drafts and orders drawn on or after 2 April 2007) and on insurance policies are normally paid to the Revenue Commissioners under composition agreements. The composition agreement with a financial institution in relation to bills of exchange is that the financial institution either pays the stamp duty on the basis of cheques that are issued by the financial institutions to customers or, for agreements entered into or and after 1 January 2009 on the basis of cheques being presented for payment and paid by such institutions.

The Double Taxation (Relief) (Order No. 1), 1923, referred to in the commentary on *section 2(2)*, extends to duties paid under composition agreements.

Information regarding composition agreements is contained in Statement of Practice SP-SD 3/90.

Details

The Revenue Commissioners may enter into composition agreements in respect of instruments chargeable to stamp duty under *Schedule 1* with (a) any person carrying on a business and who in the course of that business is a party to instruments liable to stamp duty or (b) that person's agent. The Revenue Commissioners may enter into such an agreement when they consider that such a person or his or her agent would find it inexpedient or impractical to pay stamp duty in respect of each instrument. (1)

The Revenue Commissioners decide the form, and the terms and conditions, of composition agreements. (2)

Where an agreement is in force between any person and the Revenue Commissioners, the individual instruments need not be presented for stamping but, by way of composition, that person will pay the aggregate amount of duty due, at the end of the period specified in the agreement, in respect of each instrument which would have had to have been individually stamped in the absence of such an agreement. (3)

Instruments to which a composition agreement relates must bear a statement to the effect that the appropriate stamp duty has been or will be paid over to the Revenue Commissioners. (3)

If the person who has entered into a composition agreement fails to deliver an account of all instruments liable to stamp duty in the specified period or does not pay the duty, penalties will be imposed as follows: (4)

- up to €125 per day while the default continues, and
- in addition, interest is payable at a rate of 0.0219 per cent per day (see *section 159D*) from the date when the default begins.

The Revenue Commissioners may make assessments in relation to duty due on foot of composition agreements should the need arise. (5)

Section 6 How instruments are to be written and stamped

Summary

Stamp(s) must appear on the face of the instrument.

If 2 or more instruments are written on the one piece of paper then each one of those instruments must be separately and distinctly stamped.

Details

An instrument is to be drawn up in such a manner so as to enable the stamp to appear (1) on the face of the instrument. The stamp should not be capable of being used for or applied to any other instrument written on the same piece of material

Where more than one instrument is written on the same piece of material, each (2) instrument is to be separately and distinctly stamped with the duty with which it is chargeable.

Section 7 Instruments to be separately charged with duty in certain cases

This section provides that if an instrument relates to several distinct matters it must be (a) separately and distinctly charged in respect of each matter.

While “matters” is not defined examples of matters to which this paragraph would apply are:

- matters which fall under more than one head of charge:

Example 1

A sells one acre and lets a further 6 acres of his land to B. The conveyance and the lease are effected in a single document. That document contains 2 distinct matters – a conveyance on sale and a lease – and must be stamped accordingly.

Example 2

A sells an office block which he owns to B. B agrees to lease the office block back to A. A single document is drawn up to effect the sale and leaseback. That document contains 2 distinct matters – a conveyance on sale and a lease – and must be stamped accordingly.

- matters which are separate transactions:

Example

A owns a distribution business. He wants to retire so he agrees to sell the business to B. He grants a lease of the premises from which the business is carried on to B. In the same instrument he also grants a lease of 2 lorries to B. The lease relates to 2 distinct types of property – movable (i.e. the 2 lorries) and immovable (i.e. the premises). As leases of these 2 types of property are treated differently by the stamp duty code the instrument relates to 2 distinct matters and is chargeable accordingly i.e. the lease of the 2 lorries is not within the charge to stamp duty while the lease of the premises is.

If the matters are not truly distinct, but merely ancillary, this paragraph will not apply. A helpful test to apply is to ask whether each “matter” would stand on its own 2 feet

(e.g. are the interests of the parties separate and independent). If it would then it is probably a distinct matter and must be stamped accordingly.

Where an instrument is made for any consideration in respect of which it is chargeable with ad valorem stamp duty and also for any further or other valuable consideration then each one of the considerations is to be separately and distinctly charged as if separate instruments were involved. (b)

Example

A grants a lease over her licensed premises to B for a consideration of €50,000 (premium) plus rent of €200 p.a. The premium and the rent are separately chargeable to duty.

Where there is a transfer or lease of mixed property (e.g. living quarters over a pub) that transfer or lease will be treated as if it were a transfer or lease of 2 separate properties – the residential element (i.e. the living quarters) attracting the rate of stamp duty appropriate to residential property and the non-residential element (i.e. the pub) attracting the rate appropriate to non-residential property.

This section does not apply where express provision to the contrary has been made – see *sections 42(3), 43, 52(1) and (2), 57(3) and (4) and 62.*

Section 8 Facts and circumstances affecting duty to be set forth in instruments, etc.

Summary

This section puts the onus on a person to bring to the attention of the Revenue Commissioners all the facts and circumstances affecting the liability of an instrument to stamp duty.

Details

Facts and circumstances to be disclosed

All relevant facts and circumstances relating to the liability of the instrument to stamp duty must be stated in the instrument itself. (1)

However, it is acknowledged that it will not always be practicable for the instrument to contain all relevant facts and circumstances. In such cases it is permissible to set out any facts or circumstances, not set out in the instrument, in an accompanying statement². This statement must be delivered to the Revenue Commissioners at the same time as the instrument is being presented for stamping. The Revenue Commissioners may request whatever information they require to determine the liability of the instrument to duty. In addition, the Revenue Commissioners may determine the form in which that information is to be given. (2)

In the e-stamping system (**which will be commenced by a Ministerial Commencement Order prior to the implementation of e-stamping**) the requirement for a statement under this section will continue to apply in a case where the Revenue Commissioners are required to express their opinion in relation to the chargeability of an instrument to duty in accordance with *section 20* (commonly

² Instruments should be drafted on the basis of normal drafting conventions and practices. Any information which is not covered by those conventions and practices but which is relevant to the liability of the instrument to stamp duty should be set out in the accompanying statement.

known as “adjudication”) or where Regulations made under *section 17A* contain such a requirement. In addition, evidence in relation to the chargeability of an instrument to duty must be retained by an accountable person for audit purposes for 6 years from the date of stamping of the instrument under the e-stamping system should the Revenue Commissioners wish to examine it.

Penalties for non-disclosure

Penalties incurred **before 24 December 2008** are payable in cases where all the relevant facts and circumstances are not fully and truly set out either in the instrument or in an accompanying statement and fraud or negligence³ is involved. The persons liable to pay such penalties are the parties to the instrument or the persons who prepared them. In a case of fraud or negligence, the penalty is €1,265 plus the amount of duty underpaid. This amount is in addition to the requirement to pay the balance of the duty owed on the instrument. For penalties incurred **on or after 24 December 2008**, where the penalty is incurred by the parties to the instrument see *section 134A(2)(a)* and where the penalty is incurred by the parties who prepared the instrument see *subsection (4A)* below. (3)

Presumption of negligence

Negligence is presumed in —

- situations where it comes to the notice of the parties, or would have come to their notice if they had taken reasonable care, that incorrect information had been provided unless the Revenue Commissioners have been informed of the error without unreasonable delay; (4)
- cases involving voluntary dispositions inter vivos in certain circumstances; Where a transfer or lease of property is made by way of a full or partial gift, stamp duty is chargeable by reference to the market value of the property (*sections 30* and *54*). However, it is not always apparent to the Revenue Commissioners from the instrument presented for stamping that the transfer is by way of gift e.g. where some consideration is paid. All parties to an instrument are obliged to ensure that the Revenue Commissioners are aware by means of an accompanying statement that the transfer is by way of gift and the market value must also be set out in that statement. If the parties to the instrument fail to provide this information they are regarded as having acted negligently until the contrary is proven. This failure will be regarded as being deliberate for the purposes of *section 134A(2)(a)* where it occurs on or after 24 December 2008. (5)

In relation to the preparation of instruments, any person, who **on or after 24 December 2008**, being employed or concerned in the preparation of any instrument, prepares such instrument where all the relevant facts and circumstances, of which the person is aware, are not fully and truly set out either in the instrument or in an accompanying statement, will incur a penalty of €3,000. (4A)

Disclosure of doubt

Persons who are unsure as to whether certain facts are relevant may express to the Revenue Commissioners their uncertainty and, provided the uncertainty expressed is genuine and not a tactic to evade or avoid stamp duty, a penalty may be avoided. (6), (7)

³ The concept of negligence is potentially very wide-ranging and ultimately in any given case the courts will decide the matter on the facts. In deciding whether actions constitute negligence the Revenue Commissioners will consider how a court might view those actions.

Section 8A Penalties: returns

This section (**to be commenced by Ministerial Commencement Order before the implementation of e-stamping**) provides for a penalty of €3,000 where an incorrect electronic or paper return relating to an instrument, is filed with the Revenue Commissioners in circumstances where the person is aware that the facts filed are incorrect.

Section 9 Mode of calculating ad valorem duty in certain cases

It may happen that the amount on which stamp duty is chargeable is expressed in a foreign currency e.g. the consideration for a foreign property may be expressed in the currency of the country in which the property is located. This section sets out how that foreign currency amount is to be converted into €s. It provides that where the consideration is in a foreign currency the rate of exchange to be used to convert that currency into its € equivalent is the rate applicable at the date of execution of the instrument.

Example

A buys shares in B Ltd for US\$50,500. The transfer is executed on 28 January, 2004. A wants to pay his stamp duty liability in €s. The duty is calculated as follows:

Euro/US exchange rate on 28/01/04	€1 = US\$1.2550
Consideration in US\$	US\$50,500
Euro equivalent of US\$ consideration	€40,239.04 (50,500 ÷ 1.2550)
Duty payable	€402 (i.e. 1% rounded down to the nearest €).

Section 10 Adhesive stamps

Summary

This section provides—

- that where stamp duty is to be denoted by means of an adhesive stamp the adhesive stamp must be issued by the Revenue Commissioners. The only duty permitted to be denoted by an adhesive stamp is the duty on a bill of exchange (*section 25(1)*);
- that where an adhesive stamp is used to denote the payment of duty the adhesive stamp must be cancelled, for example, by writing across it, thereby rendering it incapable of being used on any other instrument. A penalty of €30 is incurred if the adhesive stamp is not cancelled;
- for penalties in the event that anyone fraudulently interferes with an adhesive stamp, for example, by removing the stamp from the instrument.

Details

Only adhesive stamps issued by the Revenue Commissioners may be used to denote any stamp duty permitted by law to be denoted by an adhesive stamp. (1)

An instrument on which duty may be denoted by means of an adhesive stamp will be deemed not to be duly stamped unless the adhesive stamp is cancelled. The adhesive stamp must be cancelled by the signatory (*section 25(1)*). An adhesive stamp is normally cancelled by the signatory writing his or her name or initials, or the name or initials of his or her firm, across it and adding the date on which it was so written. The cancellation must be such that the adhesive stamp cannot be used for any other instrument. (2)

Where more than one stamp is used each stamp so used must be cancelled in the manner laid down in *subsection (2)*. (3)

If an adhesive stamp is not cancelled by the person obliged to do so that person will be liable to pay a penalty of €30. (4)

A person who fraudulently removes the adhesive stamp or causes it to be removed from an instrument or affixes an adhesive stamp so removed to another instrument intending that the stamp be used again is, in addition to any other fine or penalty to which that person may be liable, guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence. (5)(a)

Any person who— (5)(b)

- sells or offers for sale, or utters, an adhesive stamp fraudulently removed from an instrument, or
- utters any instrument to which to his or her knowledge an adhesive stamp has been affixed having been fraudulently removed from another instrument, is, in addition to any other fine or penalty to which that person may be liable, guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

Section 11 Denoting stamps

This section covers situations where the duty chargeable on one instrument (Instrument A) depends on the duty paid on another instrument (Instrument B). In such cases the Revenue Commissioners will, on request and on production of both instruments, denote Instrument A with the fact that duty was paid on Instrument B.

The stamp duty chargeable on one instrument is dependent on the duty paid on another in the following instances:

- ***Duplicates or Counterparts***

An instrument which is a duplicate or counterpart of an instrument chargeable to stamp duty is chargeable with a fixed duty of up to €12.50 under the “DUPLICATE or COUNTERPART of any instrument chargeable with any duty” head of charge in *Schedule 1* and because that fixed duty stamp is dependent on the original instrument being duly stamped, the duplicate or counterpart instrument will be impressed with a stamp denoting that the original has been duly stamped on production of the duly stamped original.

A counterpart of a lease which has not been executed by or on behalf of the lessor does not require a denoting stamp (*section 13*).

- ***Conveyances or transfers made in pursuance of a section 31 contract***
- ***Transfers of leasehold interests made in pursuance of a section 36 contract***

- *Leases made in conformity with a section 50 agreement for lease*

The existence of a denoting stamp on an instrument is not a *guarantee* that the proper amount of stamp duty has been paid on the other instrument. The only stamp which “guarantees” that the proper amount has been paid is the adjudication stamp – see *section 20* (but see also *section 12*).

Section 12 Particulars delivered stamps

Summary

Certain instruments must be stamped with a “Particulars Delivered” stamp. The Revenue Commissioners will impress this stamp on production of a completed “Particulars Delivered” form (i.e. the ST 21).

Details

The definitions of “fee simple”, “interest”, “land” and “lease” contained in section 41 (1) of the Finance (1909-10) Act, 1910, apply to this section. The definition of those terms, as set out in the 1910 Act, are as follows:

- “fee simple” means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession;
- “interest” in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance⁴ or any fixed charge⁵ or any purely incorporeal hereditament or any leasehold interest under a lease for a term of years not exceeding fourteen years or any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts;
- “land” does not include any incorporeal hereditament issuing or granted out of the land;
- “lease” includes an under-lease and an agreement for a lease or under-lease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption; The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined.

⁴ “incumbrance” includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by the [Finance (1909-10) Act, 1910] - see footnote 5.

⁵ “fixed charge” means any rentcharge as defined by the [Finance (1909-10) Act, 1910], and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act [], or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land. “rentcharge” means tithe or tithe rentcharge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land.

References to “transferee” and “lessee” include the personal representatives of such transferee or lessee. (1)

Regulations

The Revenue Commissioners may make regulations regarding— (2)

- the class or category of transfer or lease (whether the transfer or lease is on sale or by way of voluntary disposition inter vivos) for which they require particulars provided that in the case of a lease the term must exceed 14 years, and
- the particulars to be delivered in the case of each class or category of transfer or lease. Such particulars may include:
 - the form in which the particulars are to be delivered;
 - the time limits within which the particulars are to be delivered;
 - the manner in which the land is to be described or classified;
 - the furnishing of tax reference numbers of the parties to the instrument.

The Regulations which currently apply were made in 1995 i.e. Stamp Duty (Particulars to be Delivered) Regulations, 1995 (but see **section 160(4)** and **Schedule 4**). The 1995 Regulations have been amended by the Stamp Duty (Particulars to be Delivered)(Amendment) Regulations 2003 (S.I. No 542 of 2003).

Onus on transferee/lessee

It is the duty of the transferee or lessee to present the particulars. (2)

Instruments not duly stamped

A transfer or lease (not being a duplicate or counterpart or a transfer or lease) which is governed by regulations made pursuant to **subsection (2)** may not be given in evidence (**section 127**) in most court proceedings even if it has been adjudicated (**section 20**), unless it is stamped with a stamp denoting that all the particulars requested by the Revenue Commissioners have been delivered. The stamp currently in use bears the letters “PD”. (3)

Penalties

A transferee or lessee who fails to present the relevant particulars is guilty of an offence and section 1078 of the Taxes Consolidation Act 1997 applies to that offence. (4)

E-stamping system

On implementation of the e-stamping system by Ministerial Commencement Order, particulars delivered within the meaning of **subsection (2)** will not be required in the case of an instrument stamped by means of the e-stamping system following a return being filed. (5)

Section 13 Duplicates and counterparts

This section provides that the counterpart of an instrument which is chargeable to stamp duty will not be deemed to be duly stamped unless—

- it is stamped as an original instrument, or
- it is stamped with a stamp denoting that the original is duly stamped – see *section 11*.

The counterpart of a lease, if it has not been executed by or on behalf of the lessor or grantor, does not require a denoting stamp.

Section 14 Penalty on stamping instruments after execution

Summary

This section provides for penalties and interest for the late payment of stamp duty.

Section 1089 of the Taxes Consolidation Act, 1997, provides that interest payable under this section is payable without deduction of income tax and not allowable in computing any income, profits or losses for any of the purposes of the Income Tax Acts and the Corporation Tax Acts.

Details

Late payment

Except where otherwise provided in this Act, where the correct amount of stamp duty (1) is not paid within the time limits laid down in *section 2* the Revenue Commissioners will only stamp the instrument on payment of the appropriate penalties and interest. In practice, the Revenue Commissioners allow 44 days to elapse from the date of first execution of the instrument before penalties and interest will be levied. When levied they apply from the date of first execution of the instrument. The penalties are:

- €25 (abolished for instruments executed on or after 24 December 2008), and
- in addition, where the unpaid duty exceeds €30, interest is charged at the rate of 0.0219 per cent per day (0.0273 per cent per day prior to 1 July 2009) (see *section 159D*).

Example

A assigned a policy of insurance to B on 1 January, 2008. The stamp duty due i.e. €600 was not paid until 26 April, 2008. The penalty and interest is calculated as follows:

Fixed penalty	€25.00	
116 days interest	€18.56	(i.e. 0.0273% per day for 116 days)
Total due	€43.56 ⁶	

Additional penalties in the case of particular instruments

Additional penalties are imposed on a particular range of instruments (i.e. (a) (2) conveyances or transfers on sale of any property other than policies of insurance or policies of life insurance; (b) duplicates; (c) leases; and (d) instruments which operate or are deemed to operate as voluntary dispositions inter vivos) for late payment of stamp duty. These instruments yield most of the duties collected under the stamp duty charging provisions. The additional penalties are:

⁶ Except in the case where the only penalty due is the fixed penalty of €25 (*subsection (1)*) it is the practice of the Revenue Commissioners to round down the amount due to the nearest €10.

- 10% of the unpaid duty if the instrument is presented for stamping more than 44 days but not more than 6 months late;
- 20% of the unpaid duty if the instrument is presented for stamping between 6 and 12 months late;
- 30% of the unpaid duty if the instrument is presented for stamping more than 12 months late.

Example

A and B purchased a house and executed the deed of transfer on 1 March 2008. The stamp duty due (i.e. €15,000) was not paid until 14 May, 2008. The penalties and interest are calculated as follows:

Fixed penalty	€ 25.00	
74 days interest	€ 302.66	(i.e. 0.0219% per day for 74 days)
Additional penalty	<u>€1,500.00</u>	(i.e. 10% of the unpaid duty)
Total penalties due	€1,827.66	

A penalty (other than interest) is not payable in respect of the late stamping of an instrument executed before 24 December 2008 provided that the instrument is presented for stamping to the Revenue Commissioners before the expiration of the period of 56 days commencing on 24 December 2008 and the stamp duty chargeable and any interest is paid by 17 February 2009. (2A)

Power to mitigate penalties and interest

The Revenue Commissioners may mitigate penalties and interest payable on stamping (i.e. penalties and interest imposed by this section and by **sections 15 and 16**). In applying the discretion provided for in this subsection the Revenue Commissioners take account of all relevant circumstances giving rise to delay and will not apply a penalty (and interest), or the full penalty (and interest), where to do so would be unjust and unreasonable. As already mentioned the Revenue Commissioners allow an additional 14 days before a penalty and interest is imposed. (3)

Claims for mitigation should be made in writing and be supported by documentary evidence where applicable. The instrument should be presented and any duty due should be paid at the same time as the claim for mitigation is made. Any person dissatisfied with a decision taken by a Revenue officer in relation to penalties and interest may have the matter re-examined by another Revenue officer who has had no previous involvement in the case under the internal review procedure (see Statement of Practice SP-GEN/2/99 (Revised January 2005)).

Denoting of penalty/ interest on instruments

Any penalties and interest paid are to be indicated on the instrument by means of a stamp. In the e-stamping system when commenced by Ministerial Commencement Order penalties and interest paid will be shown on the stamp certificate. (4)

Enforcement of penalties and interest

Penalties and interest are collected and enforced in the same way as stamp duty is (see **section 2**). See **Chapters 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997 in relation to the recovery of duty (including interest and penalties on that duty) that becomes due and payable or and after 1 March 2009.** (5)

Section 15 Surcharges for undervaluation in case of voluntary dispositions inter vivos

Summary

This section imposes surcharges where the value of property has been understated.

Details

Liability to pay surcharge

Where a person submits a value for property, which is being transferred or leased by way of gift (*sections 30 and 54*), and that value is less than the value determined by the Revenue Commissioners, the person will be subject to penalties by way of surcharge. The person has the right to appeal, under *section 21*, against the value placed on the property by the Revenue Commissioners. (1)

Amount of surcharge

The surcharges are as follows:

- 25% of the duty chargeable where the understatement of value is between 15% and 30%. However, an understatement of less than €6,350 will not attract a surcharge; (1), (2)
- 50% of the duty chargeable where the understatement of value is between 30% and 50%;
- the amount of the duty chargeable where the understatement of value is greater than 50%.

Calculation of surcharge by Revenue Commissioners

Where a person refuses to state a value the Revenue Commissioners will calculate the degree of understatement for surcharge purposes by reference to the consideration (other than rent) stated in the conveyance or transfer or lease. (3)

Example

A conveys her shop to B. The consideration recited in the deed is €50,000. The market value is €85,000. The fact that the instrument is operating as a voluntary disposition inter vivos is not disclosed to the Revenue Commissioners (i.e. either a €50,000 valuation is submitted or no valuation at all is submitted). The Revenue Commissioners are concerned about the value recited in the deed and decide to refer it to the Valuation Office which eventually agrees the value of €85,000 with B. The following amounts are payable:

- stamp duty on the market value of €85,000 (i.e. €5,100), and
- a surcharge of €2,550 calculated as follows:

Ascertained value	€85,000
Submitted value	€50,000
Undervaluation	€35,000
Surcharge	€ 2,550*

*The surcharge is 50% of the duty as the undervaluation is over 41% i.e. ((€35,000 ÷ €85,000) x 100)).

Enforcement

Whereas surcharges are collected and enforced as if they were part of the duty, being a penalty, they may be mitigated by the Revenue Commissioners under *section 14(3)*. (4)

See Chapters 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997 in relation to the recovery of duty (including interest and penalties on that duty) that becomes due and payable on or after 1 March 2009.

Section 16 Surcharges to apply when apportionment is not just and reasonable

Summary

There are a number of situations in which it is necessary to apportion the consideration paid for a transfer/lease of property which includes residential property.

This section provides for surcharges where liability to stamp duty is reduced either because the residential property element of the consideration is undervalued or it is overvalued. Surcharges will only apply in the event of undervaluations or overvaluations greater than 10%.

Details

Definition

“residential consideration” is self-explanatory. (1)

Estimates of value to be submitted

Whenever an apportionment is necessary (e.g. under *sections 45(2)* and *52(5)*) both the vendor/lessor and the purchaser/lessee must submit to the Revenue Commissioners separate estimates of the value to be attributed to the residential element together with the amount or value of the aggregate consideration. Where the requirements of this section are not complied with any person who executes the instrument which effects the sale is deemed, until the contrary is proved, to have acted negligently for the purposes of *section 8(3)* (or deliberately in the case where the penalty is incurred on or after 24 December 2008 under *section 134A(2)(a)*). (2)

Further information regarding apportionment details together with a suggested format for submission of those details are contained in **Appendix 2**.

Amount of surcharge

A surcharge will be payable in the event of an undervaluation or overvaluation greater than 10% by the purchaser/lessee. Where the undervaluation or overvaluation is between 10% and 30% the surcharge is 50% of the loss of duty involved. Where the undervaluation or overvaluation is greater than 30% the surcharge is 100% of the loss of duty involved. The purchaser/lessee is entitled to recover up to one-half of the surcharge from the vendor/lessor depending on the degree of underestimation or overestimation (if any) made by the vendor/lessor. The purchaser/lessee has the right to appeal, under *section 21*, against the value placed on the property by the Revenue Commissioners. (3), (4)

Example

In August 2008 A sold her licensed premises with rented residential accommodation overhead to B for €1,900,000. B submitted a value of €400,000 for the residential portion of the property. The value as ascertained by the Revenue Commissioners was €300,000. The duty and surcharges are calculated as follows:

Duty payable in accordance with ascertained value

Non-residential portion	€1,600,000 x 9% = €144,000
Residential portion	€300,000 - €25,000 x 7% = €12,250
Total amount of duty due	€156,250

Duty payable in accordance with submitted value

Non-residential portion	€1,500,000 x 9% = €135,000
Residential portion	€400,000 - €25,000 x 7% = €19,250
Total amount of duty due	€154,250

Surcharge

Loss of duty	€2,000 (€156,250 - €154,250)
Overvaluation of residential portion	€100,000 (€400,000 - €300,000) or 33.33% ((€100,000 ÷ €300,000) x 100)
Surcharge	€2,000 (100% of the loss of duty as the over valuation is 33.33% (>30%).)

Enforcement

Whereas surcharges are collected and enforced as if they were part of the duty, being a (5) penalty, they may be mitigated by the Revenue Commissioners under *section 14(3)*. See Chapter 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997 in relation to the recovery of duty (including interest and penalties on that duty) that becomes due and payable on or after 1 March 2009.

Section 17 Furnishing of an incorrect certificate

Knowingly furnishing an incorrect certificate for the purpose of *Schedule 1* is deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act, 1997, and is, consequently, a revenue offence.

Section 17A E-stamping regulations

This section gives power to the Revenue Commissioners to make regulations in relation to the:

- commencement of the e-stamping system,
- type of instruments that will have to be e-stamped,
- delivery of certain information in relation to the instrument,
- making of the electronic or paper return and the manner in which the information is to be entered in the e-stamping system,
- method of payment,

- information to be set out on the stamp certificate,
- authorisations to use the e-stamping system,
- measures to protect the integrity of the e-stamping system.

This section will be commenced by Ministerial Commencement Order prior to the implementation of the e-stamping system.