

Stamp Duties Consolidation Act 1999

Part 2: Charging and Stamping of Instruments

This document should be read in conjunction with Part 2 of the Stamp Duties Consolidation Act (SDCA) 1999.

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1. Introduction

The provisions of Part 2 SDCA 1999 (sections 2 to 17A) provide for the charging and stamping of instruments. This document provides general guidance on the provisions of Part 2. It should be read in conjunction with [Part 2](#) of the Revenue Notes for Guidance to the SDCA 1999.

The provisions of Part 42 of the Taxes Consolidation Act (TCA) 1997 set out how taxes and duties are to be collected and paid. Section 960D TCA 1999 provides, *inter alia*, that Stamp Duty due and payable under any provision of the SDCA 1999 is to be treated as a debt due to the Minister for Finance for the benefit of the Central Fund. Further information on the recovery provisions is available in the [Part 42 TCA 1997 - Notes for Guidance](#).

2. Section 2 – Charging of, and liability for, Stamp Duty

Section 2 SDCA 1999 provides for the charging of, and liability for, Stamp Duty.

Subsection (1) is the key charging provision in the SDCA 1999 and states that Stamp Duty is chargeable on an **instrument**¹ if it is listed in **Schedule 1** SDCA 1999 and:

- is executed in the State, or
- regardless of where it is executed, relates to:
 - Irish property, or
 - matters or things done or to be done in the State.

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.

Where the consideration for a foreign property consists of shares in an Irish company, the document will be stampable in Ireland, even if the deed of transfer is executed abroad (See *I.R.C. v Maple & Co. (Paris) Ltd* 1908 A.C. 22).

Where the only link to Ireland is the fact that one or both of the parties to the instrument is/are resident in Ireland, this will not be considered enough to bring the document into charge. For example, if an Irish person is buying an apartment in Florida from another Irish person and the deed of transfer is executed in Florida, a charge to Irish Stamp Duty will not arise.

Subsection (2) provides that the Stamp Duty charged on the instruments specified in Schedule 1 SDCA 1999 is for the benefit of the Central Fund. However, such a charge is subject to the exemptions contained in the SDCA 1999 and in any other enactment.

¹ In accordance with section 1 SDCA 1999, the term “instrument” includes every written document.

Subsection (3) provides that a chargeable instrument must be stamped before 30 days have expired from when the instrument was first executed. An instrument is considered to be 'stamped' when it either has an adhesive stamp affixed to it showing the amount of duty paid (this is now uncommon) or when it has a stamp certificate attached to it. Revenue allows 44 days in practice, provided the duty is paid within 44 days of execution.

For the purposes of the '2012 e-Stamping Regulations'², it is generally the case that a document cannot be stamped by Revenue until a return has been submitted to Revenue via the e-Stamping system. The return must be submitted by an approved person or an authorised person, acting under the authority of the accountable person.³

Paragraph (1) of Regulation 11 of the 2012 e-Stamping Regulations outlines what a 'stamp certificate' is:

- a certificate issued electronically by Revenue by means of the e-Stamping system, or
- a certificate processed electronically by Revenue through the e-Stamping system and issued by them in paper form.

Paragraph (2) of Regulation 11 of the 2012 e-Stamping Regulations states:

"Nothing in paragraph (1) shall require the Commissioners to issue a stamp certificate where the Stamp Duty chargeable on the instrument and any interest has not been paid or has been paid in part."

Subsection (4) provides that if an instrument that is chargeable has not been stamped or was insufficiently stamped, the accountable person will be liable for the payment of the duty together with any related interest and penalties. Where there is more than one accountable person, all accountable persons will be jointly and severally liable for the amount underpaid.

For further information on interest, see [section 14](#).

A surcharge will arise, *inter alia*, if the Stamp Duty return is not filed on time or if the accountable person "deliberately or carelessly delivers an incorrect return". For further information see [section 14A](#).

² [Statutory Instrument No. 234 of 2012 'Stamp Duty \(E-stamping of Instruments and Self-Assessment\) Regulations 2012, Irish Statute Book.](#)

³ See Tax and Duty Manual [Part 38-06-01: Revenue Online Service \(ROS\)](#).

When a Stamp Duty return is filed via the e-Stamping system, the appropriate head of charge is determined first. The amount of Stamp Duty due is then calculated by reference to the rate of duty applicable to the instrument. In some circumstances, an instrument may be liable to duty under more than one head of charge; in such cases, the head of charge that will yield the most duty will be selected. The accountable person is required to ensure a return is made to Revenue and that the correct amount of Stamp Duty is paid by the relevant due date.

3. Section 5 – Composition Agreements

Section 5 SDCA 1999 simplifies the administration and collection of duties. It provides that Revenue may enter into a composition agreement with a person whereby that person can opt to pay Stamp Duty in bulk at intervals (e.g., annually, bi-annually or quarterly) instead of submitting the individual documents for stamping.

A composition agreement may be entered into where:

- a person is party to substantial numbers of instruments that attract Stamp Duty, **and**
- Revenue is of the opinion that it is inexpedient or impractical for that person to pay Stamp Duty in respect of each such instrument.

4. Section 8 – Facts and circumstances to be set out in the instrument

Section 8 SDCA 1999 puts the onus on the taxpayer to bring to Revenue's attention all the facts and circumstances affecting the liability of an instrument to Stamp Duty.

When a Stamp Duty return is filed via the e-Stamping system in relation to an instrument, the requirement that all the relevant facts and circumstances relating to the liability of the instrument to Stamp Duty must be stated in an accompanying statement does not apply, provided that the accountable person retains evidence in relation to the facts and circumstances. An accountable person must retain all evidence in relation to the chargeability of the instrument to duty for a period of 6 years from the date a stamp certificate is issued by Revenue under the e-Stamping system, should Revenue wish to examine it.

Revenue may request whatever information they require to determine the liability of the instrument to duty. In addition, Revenue may determine the form in which that information is to be given.

4.1 Penalties for non-disclosure

Under **section 8(4A)**, any person who prepares an instrument where all the relevant facts and circumstances of which the person is aware are not fully and truly set out in the instrument will incur a penalty of €3,000.

An accountable person who acts carelessly or deliberately in relation to the disclosure of information relating to the facts and circumstances affecting a Stamp Duty liability will incur a penalty under **section 134A** (See [Part 10](#) of this Tax and Duty Manual).

4.2 Presumption of acting deliberately under subsection (5)

Where a transfer or lease is by way of a gift or deemed gift (under sections 30 or 54 SDCA 1999), an accountable person must bring this fact to Revenue's attention in the Stamp Duty return filed under the e-Stamping system. If an accountable person fails to provide this information, this failure will be regarded as being deliberate, until the contrary is proven, for the purposes of **section 134A(2)(a)**.

5. Section 8A – Penalties: returns

This section provides for a penalty of €3,000 where an incorrect electronic or paper return is delivered.

The accountable person will incur a penalty under section 134A SDCA 1999 in certain circumstances. Guidance on the application of section 134A is available in the [Part 10: Enforcement](#) Tax and Duty Manual.

6. Section 8B – Penalties: Failure to deliver returns

Section 8B SDCA 1999 provides that failure by accountable persons to file an electronic return in relation to an instrument will result in each accountable person incurring a €3,000 penalty.

7. Section 8C – Expression of Doubt

Section 8C SDCA 1999 makes provision for an accountable person who has a genuine doubt about the Stamp Duty treatment of an instrument to submit an expression of doubt to Revenue. Guidance on the application of section 8C is contained in Tax and Duty Manual [Part 2: Section 8C – Expression of Doubt](#) .

8. Section 12 – Particulars delivered stamps

This section provided that particulars in respect of certain classes of instruments were required to be furnished. The instrument was to be impressed with a "Particulars Delivered" stamp on production of the particulars.

The section was amended to provide that a Particulars Delivered stamp is not required where an instrument has been stamped by means of the e-Stamping system.

9. Section 14 – Interest on stamping instruments after execution

Section 14 provides that an instrument is chargeable with interest if it is not stamped and the correct duty paid within 30 days of first execution. In practice, interest is not charged if the instrument is stamped and the duty paid within 44 days of execution.

Where any duty remains unpaid after 44 days from the date an instrument is executed, interest at a rate of 0.0219% per day will apply to the unpaid amount from the date of execution to the date full payment is received. (Where the unpaid duty does not exceed €30, interest will not be charged).

The interest charge is intended to compensate the Exchequer for loss of revenue through late payment, to encourage timely payments in future and to ensure equity for the majority of taxpayers who pay their taxes and duties on time.

Where **exceptional and unforeseeable circumstances** prevent duty being paid on time, Revenue is prepared to consider requests that interest should not be charged on a case-by-case basis. Such requests must be made in writing, supported by appropriate documentary evidence. A Stamp Duty return must be filed under the e-Stamping system and any duty due must be paid before any such claim in relation to interest will be considered. Failure to pay duty on time due to carelessness or negligence will **not** be regarded as exceptional and unforeseeable circumstances meriting consideration.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

9.1 Deeds delivered in escrow

Definition of Escrow: A document that is delivered subject to certain conditions being fulfilled.

Stamp Duty must be paid on an instrument within 30 days of the date of first execution. The execution of an instrument although usually thought of as a single act is in fact more a process involving, for most instruments, three individual actions – signing, sealing and delivering. This may seem an excessively legal point to some, but the fact remains that, in law, a deed is not effective unless it is at least sealed and delivered and it is now a long standing practice to sign it also.

Where Stamp Duty law refers to the date of first execution it is not necessarily referring to the date the instrument bears. In practice, the date of execution is taken as the time when a deed becomes an effective instrument, i.e. the date when the

deed has complied with all the legal formalities so as to make it the act and deed of all the parties. The signing and sealing of a deed is apparent from the deed itself. Delivery, on the other hand, is not.

There is no special method of delivering a deed so as to give it legal effect. Delivery may be made in words or by actions. It is not even necessary that the deed should be handed over to the person intended to benefit from it (e.g. the purchaser in the case of a sale). What is required is that the person whose deed the instrument is expressed to be, by words or actions, expressly or by implication, acknowledges his intention to be immediately and unconditionally bound by it. In practice, once a deed is sealed it is presumed also that it has been delivered and is, therefore, legally effective. However, this presumption can be overthrown if it can be shown that the deed was only delivered as an escrow.

The delivery in escrow of a deed means simply that the delivery is incomplete and is conditional on the fulfilling of some condition. Therefore, the parties to the deed cannot be bound by it until that condition is fulfilled. Common conditions are the payment of the balance of purchase monies or the discharge of a mortgage on the property. As with the delivery of a deed itself, there is no special form to the delivery of a deed in escrow. The important point of the delivery is that the party making the delivery should expressly or implicitly declare to be bound by the deed, not immediately, but only in the case of and upon performance of some condition stated or ascertained at the time of delivering the escrow. Further, the deed may be delivered in escrow to anyone – except that if it is delivered to the person who is to benefit from it, it cannot be an escrow.

To summarise: To be effective a deed must be signed, sealed and delivered. Delivery of the deed must be unconditional. If there is a condition attaching to the delivery that must be performed before the party making the delivery will be bound by the provisions in it, the deed is delivered as an escrow.

The interaction between Stamp Duty and delivery of a deed as an escrow arises from the meaning given to execution in practice. Execution occurs when the deed becomes effective. If it is delivered as an escrow, it is not effective and is therefore not executed until the condition under which it was delivered is fulfilled. Accordingly, in cases of escrow the date of the deed will not give guidance as to whether it is being stamped within the time for stamping.

9.1.1 Revenue's approach to deeds held in escrow

In the context of the interest for late payment of Stamp Duty and the surcharge for late filing of a Stamp Duty return, it is recommended that Revenue officers should look for firm evidence of the facts of the escrow. In general, certificates of escrow dated at the date of the delivery of the deed in escrow (and not at the date of fulfilment of the condition) should be acceptable. The certificate should set out the parties to the deed, who has held it in escrow and the condition upon which it was held. If the officer is unhappy with the certificate, they should look for further clarification. In seeking clarification, the objective is to ascertain if in fact the deed was delivered conditionally and that it was not acted upon until the condition was fulfilled. If the parties took action which indicated that they considered themselves bound by the deed upon signing and the sealing the escrow claim should be rejected – such action would for example be, in the case of the sale of a house, if the purchaser had actually moved into it before the alleged condition was fulfilled.

In circumstances where an adequate certificate is not available, officers are entitled to be very cautious before accepting that the deed was not delivered on the date it bears. In general, no claim that the deed was held in escrow should be allowed in such circumstances. However, because of the lack of legal formalities in the delivery of a deed, escrow cases should be considered on their merits. If the officer is satisfied that the deed was delivered conditionally and that the condition was such as could reasonably delay completion of the transfer, the claim should be allowed.

10. Section 14A – Late Filing of return

Section 14A provides for a surcharge to apply for the late filing of a Stamp Duty return. The filing date is 30 days after first execution of the instrument but in practice a surcharge is not imposed where a return is filed within 44 days of first execution of the instrument. The surcharge applies where a correct return is not filed on time or where an incorrect return is deliberately or carelessly filed on time by an accountable person – unless the error in the return is remedied by the due date for filing.

Where an accountable person causes an incorrect return to be filed, on or before the due date for filing, but does so neither deliberately nor carelessly, the surcharge will apply – unless, on it coming to the accountable person's notice (or where the accountable person has died, his or her personal representative), that the return is incorrect, the error in the return is remedied by the delivery of a correct return without unreasonable delay.

Where a return is filed on time but Revenue, by notice in writing to the accountable person, require a statement or evidence or further statement or evidence, as may be required by them, the return will not be regarded as a correct return unless the statement or evidence or further statement or evidence (as relevant) is delivered to Revenue within the time specified in the notice.

10.1 Amount of Surcharge

Where a surcharge applies, the following are the amounts:

Where a correct return is filed within 2 months after the due date	5% of the duty – subject to a maximum of €12,695
Where a correct return is filed 2 months or more after the due date	10% of the duty – subject to a maximum of €63,485

Any surcharge incurred under this section increases the amount of Stamp Duty chargeable on the underlying instrument.

11. Section 17A – e-Stamping regulations

The e-Stamping system, for stamping instruments and paying Stamp Duty, commenced on 30 December 2009. For instruments executed on or after 7 July 2012, a self-assessed Stamp Duty return must be filed electronically through the Revenue-on-line service (ROS), together with the appropriate Stamp Duty liability, in order to have an instrument stamped. The system will generate a stamp certificate and an instrument is stamped once the stamp certificate is attached to the instrument.

In accordance with the regulations contained in the e-Stamping Regulations, all stampable instruments executed on or after 7 July 2012 must be stamped under the e-Stamping system.

Further information relating to the e-Stamping system is available on the [Revenue website](#) and further information on how to file a Stamp Duty return and pay Stamp Duty is available in the [File and Pay Tax and Duty Manuals](#).