

# Stamp Duties Consolidation Act 1999

## Part 10: Enforcement

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### 10.1 Collection and Recovery of Stamp Duty

The provisions in Chapters 1A, 1B, 1C and 1D of Part 42 of the Taxes Consolidation Act 1997 apply in relation to the collection and recovery of stamp duty. These provisions include:

- Offset between taxes (section 960H TCA 1997)
- Recovery of tax by way of civil proceedings (section 960I TCA 1997)
- Recovery by sheriff or county register (section 960L TCA 1997)
- Bankruptcy proceedings (section 960M TCA 1997).

The attachment provisions in section 1002 of the Taxes Consolidation Act 1997 also apply in relation to stamp duty.

### 10.2 Section 127 of the SDCA

#### **Terms on which instruments not duly stamped may be received in evidence**

This section provides that an unstamped instrument may not be used in evidence or for any purpose except as evidence in criminal proceedings by the Revenue Commissioners to recover stamp duty.

An instrument that has been stamped by means of the eStamping system is deemed to have been duly stamped notwithstanding any objection relating to the duty.

### 10.3 Section 128 of the SDCA

#### **Rolls, books, etc., to be open to inspection**

This section provides that Revenue may oblige any person, who is a party to an instrument or who has custody of documents, 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.

### 10.4 Section 128A of the SDCA

#### **Obligation to retain records**

Under this section, an accountable person is obliged to retain records relating to a liability to stamp duty and to any relief or exemption claimed, for a period of 6 years. A person who fails to comply with this section will incur a penalty of €3,000.

### 10.5 Section 128B of the SDCA

#### **Power of inspection**

Under this section, an authorised officer is entitled to enter any premises or place of business for the purpose of auditing a Stamp Duty Return. The authorised officer may also require the production of records or other documents and may take copies of the records or documents.

An accountable person, or a person who retains records on behalf of the accountable person, will incur a penalty of €19,045 for failure to comply with the requirements of the authorised officer and, where the failure continues, a further penalty of €2,535 for each day on which the failure continues.

### 10.6 Section 129 of the SDCA

#### **Penalty for enrolling inadequately stamped forms**

Every company is obliged by law to keep a Share Register, which lists the names of all shareholders and the numbers and classes of the shares held. The Share Register is maintained by the Company Secretary. The Company Secretary may not register a change of shareholder on foot of an inadequately stamped share/stock transfer form. Under section 129 of the SDCA, the company secretary may be fined €630 for each such registration.

Because of this legal imposition on the company secretary, registration can be refused and the new shareholder may be instructed to have the share/stock transfer form stamped by means of the eStamping system.

## 10.7 Section 134A of the SDCA

### Penalties

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—

- 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,
- the entering of an incorrect electronic instruction in the CREST system,
- the delivery of an incorrect electronic or paper return under the eStamping system,
- the failure to deliver an electronic or paper return under the eStamping system, which gives rise to an underpayment in the 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.