

Stamp Duties Consolidation Act 1999

**(as amended by subsequent Acts up to and including
the Finance Act 2009)**

Notes for Guidance

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PART 11 MANAGEMENT PROVISIONS

Overview

This Part includes those provisions which were previously contained in the Stamp Duties Management Act, 1891. It is divided into 8 Chapters as follows:

- **Chapter 1** contains definitions and care and management provisions. It also sets out the scope of the provisions contained in this Part;
- **Chapter 2** sets out how moneys received for duty or fees payable by means of stamps but not appropriated to that duty or those fees are to be recovered;
- **Chapter 3** creates a number of offences in relation to the misuse of dies and stamps. In addition to these offences, sections 5 and 8 of the Forgery Act, 1913, create offences relating to the forgery of dies and the possession of forged stamps and dies. **Sections 10(5), 12(4), 128(2), 147(1) and 149(1)** also create offences as do sections 1078 and 1079 of the Taxes Consolidation Act, 1997;
- **Chapter 4** contains provisions relating to the sale, and licensing for sale, of stamps and the distribution of stamps. The Revenue Commissioners have not licensed any person to sell or deal in revenue stamps. Neither have they appointed any person to be a distributor of revenue stamps. The 30 cent adhesive stamp on bills of exchange and promissory notes may only be purchased from the Revenue Commissioners and stamps which are impressed by means of a die on instruments may only be impressed by the Revenue Commissioners.

This Chapter also applies to postage stamps issued by An Post. The amendment to section 20 of the Finance Act, 1911, contained in Part I of the Fourth Schedule to the Postal and Telecommunications Services Act, 1983, extends to An Post the provisions contained in this Chapter (i.e. **sections 146, 148 and 150**) relating to the licensing of persons to sell stamps. Section 69 of the 1983 Act provides that **sections 147 and 149** apply to postage stamps;

- **Chapter 5** enables the Revenue Commissioners to refund or give an allowance for stamp duty already paid in certain circumstances;
- **Chapter 6** contains a number of miscellaneous provisions;
- **Chapter 7** contains provisions relating to the time limit for repayment of stamp duty, interest on repayment and time limits for enquiries and assessments by the Revenue Commissioners; and
- **Chapter 8** contains provisions for the calculation of interest on unpaid duty.

CHAPTER 1

Interpretation, Application and Care and Management

Section 135 Interpretation (Part 11)

“duty”, “office of the Commissioners”, “officer” and “stamp” are self-explanatory.

The Revenue Commissioners have 3 units dealing with stamp duties - one in Dublin,

one in Cork and one in Galway. The details of those units are:

Office of the Revenue Commissioners,
Dublin Stamping District,
Stamping Building,
Dublin Castle,
Dublin 2.

Telephone: 1890 482 582
Fax: (01) 6748145; 6793261

Office of the Revenue Commissioners,
The Stamp Duty Office,
Cork North West District,
Revenue House,
Assumption Road,
Blackpool
Cork.

Telephone: (021) 6027050
Fax: (021) 6027109

Office of the Revenue Commissioners,
The Stamp Duty Office,
Galway County District,
Custom House,
Flood Street,
Galway.

Telephone: (091) 547700
Fax: (091) 536385, 536381

Section 136 Application (*Part 11*)

Part 11 applies to all—

- duties (see *section 135*), and
- fees which are for the time being directed to be collected or received by means of stamps.

The only fees which are now collected or received by means of stamps are Registry of Deeds fees and property arbitration award fees.

Section 137 Stamp duties under care and management of the Commissioners

This section provides that all duties chargeable by law as stamp duties are to be under the care and management of the Revenue Commissioners.

CHAPTER 2

Mode of recovering money received for duty

Section 138 Moneys received for duty and not appropriated to be recoverable in High Court

This section enables the Revenue Commissioners to enforce payment to them of any moneys collected by any person for the purposes of paying stamp duty or any fee collected by means of a stamp. If proceedings are brought to recover the moneys the Revenue Commissioners may also seek the cost of the proceedings. However, if the person shows cause as to why the costs should not be paid by him or her the court may make whatever order it deems just.

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

CHAPTER 3

Offences

Section 139 Certain offences in relation to dies and stamps provided by the Commissioners to be offences

This section creates a number of offences in relation to the fraudulent misuse of dies and stamps. The provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to these offences.

Section 140 Proceedings for detection of forged dies, etc.

Where information is given before a judge of the District Court that there is just cause for suspecting a person of committing one of the offences set out in *section 139* the judge may issue a warrant to enable any premises belonging to or occupied by the suspected person, or any premises suspected of being used by the suspected person in the commission of the offence or for hiding any machinery, etc., used in the commission of the offence, to be searched.

Any machinery, etc., found during the search may be seized. On seizure the machinery, etc., must be delivered up to the Revenue Commissioners.

Section 141 Proceedings for detection of stamps stolen or obtained fraudulently

When s/he has a reasonable suspicion that stamps were stolen or fraudulently obtained (1) a judge of the District Court may issue a warrant for the seizure of stamps concealed or deposited in his or her jurisdiction and for bringing before him or her or any other judge of the District Court within the same jurisdiction the person in whose possession or custody the stamps were found.

If the person does not satisfactorily account for the possession of the stamps, or does (2) not prove that s/he bought the stamps from the Revenue Commissioners, or a person appointed to sell and distribute stamps, or a licensed person, then the stamps are forfeited and must be delivered up to the Revenue Commissioners.

However, if within 6 months of the stamps being delivered up to the Revenue (3) Commissioners, any person proves that s/he bought them from the Revenue Commissioners or from a person appointed to sell and distribute stamps or from a licensed person and that the stamps were stolen or fraudulently obtained from him or her then the Revenue Commissioners will return the stamps to that person.

Section 142 Licensed person in possession of forged stamps to be presumed guilty until contrary is shown

If forged stamps are found in the possession of a person who was duly appointed to (1) sell and distribute stamps or licensed to sell stamps that person is presumed, until the contrary is satisfactorily proved, to have known that they were forged and to have intended to sell them. Such a person is guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

If they have cause to suspect that a person who was duly appointed to sell and (2) distribute stamps or licensed to sell stamps has forged stamps in his or her possession, the Revenue Commissioners may by warrant authorise the search, between 9 a.m. and 7 p.m., of any premises belonging to the suspected person. If entry is not allowed voluntarily then the authorised person may break in.

Any stamps found on the premises or in the custody or possession of the suspected person may be seized. (2)

If requested to do so by an authorised person members of the Gardai Síochána must assist the authorised person in the execution of the warrant. If the garda refuses that garda is liable to a penalty of €1,265. (3), (4)

Any person who refuses admittance to the premises or opposes the authorised person in the execution of the warrant is liable to a penalty of €1,265. (4)

Section 143 Mode of proceeding when stamps are seized

When stamps are seized under a warrant, the person authorised by the warrant must give a receipt for the stamps so seized and permit them to be marked if the person in whose custody or possession they were found so requests.

Section 144 Defacement of adhesive stamps

Any person who defaces an adhesive stamp is liable to a penalty of €30. The penalty will not apply, however, where the defacement was sanctioned by the Revenue Commissioners.

Section 145 Penalty for frauds in relation to duties

Any person who engages in a fraudulent act, etc., intending to defraud the State of stamp duty is guilty of an offence and the provisions of section 1078 of the Taxes Consolidation Act, 1997, apply to that offence.

CHAPTER 4

Sale of stamps

Section 146 Power to grant licences to deal in stamps

This section enables the Revenue Commissioners to license persons to sell stamps. The licence will specify the name of the licensed person and the place where that person may sell the stamps. The licensed person must give security of €1,265 to the Revenue Commissioners. Where a number of persons are carrying on business in partnership only one licence and one security is required. The security is not liable to stamp duty. (1) – (4)

The licence may be revoked at any time by the Revenue Commissioners. (4)

A notice containing the name of the licensed person together with the words “Licensed to sell stamps” must be displayed prominently on the outside of the place where the stamps are licensed to be sold. Licensed persons who fail to display the notice are liable to a penalty of €1,265. (5)

Section 147 Penalty for unauthorised dealing in stamps, etc.

A person who— (1)

- deals in stamps without being licensed to sell and distribute stamps,

- deals in stamps at a premises which is not specified in his or her licence,

is guilty of an offence and section 1078 of the Taxes Consolidation Act, 1997, applies to that offence.

A person who— (2)

- is not duly appointed to sell and distribute stamps, or
- licensed to sell stamps,

but who displays any kind of notice to the effect that s/he deals in stamps or is authorised to deal in stamps, is liable to a penalty of €1,265.

Section 148 Provisions as to determination of a licence

When the period for which the licence is granted comes to an end either because the licence has expired or been revoked or because the licensed person has died or become bankrupt, any stamps which that person had in his or her possession may be returned to the Revenue Commissioners within 6 months after the date the licence expired or was revoked or of the date of death or bankruptcy. (1)

The Revenue Commissioners may reimburse the person who returned the stamps, subject to the deduction of any discount, if they are satisfied that the stamps were in the possession of the person whose licence has expired or was revoked, or who died or became bankrupt at the relevant time for the purpose of sale and that they were obtained by that person from them or from some other person duly appointed to sell and distribute stamps or licensed to sell stamps. (2)

Section 149 Penalty for hawking stamps

Stamps may only be sold by a licensed person at the place specified in the licence. If the licensed person sells the stamps at a place not specified in the licence or an unlicensed person sells stamps s/he is guilty of an offence and section 1078 of the Taxes Consolidation Act, 1997, applies to that offence. (1)

In addition all the stamps are forfeited and must be delivered up to the Revenue Commissioners who may dispose of them as they think fit. (1)

Any person may arrest a person found committing an offence under this section and bring that person before a judge of the District Court having jurisdiction where the offence was committed. That judge will hear and determine the matter. (2)

Section 150 Discount

This section enables the Minister for Finance to sell stamps at a discount.

CHAPTER 5

Allowance for spoiled or misused stamps

Section 151 Allowance for spoiled stamps

This section enables the Revenue Commissioners to repay duty where a stamp, or stamped material, has been spoiled. The relief only applies in certain specified cases. While this section provides that the claim for a refund must be made within 6 years—

- after the stamp is spoiled,
- or in the case of an executed instrument—
 - after the date of the instrument, or
 - if undated, after the date of the first or only execution,

the 6 year time limit has been changed (see *section 159A*) to 4 years from the date the instrument was stamped by the Revenue Commissioners for a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*.

In the case of an executed instrument—

- no action must have commenced in which the instrument could have been given in evidence, and
- the instrument must not have already been used for the purpose of registering title, and
- the instrument must be given up to be cancelled.

To apply for a refund the original stamped instrument together with a completed form ST RFND 1 should be submitted to the Revenue Commissioners.

In addition to this section *sections 18, 29(4)(b) and (7), 31(4), 33(2), 36(2), 53(4)(b) and (7), 77, 80(9), 81(5), 81A(9), 81AA(11), 81C(5), 84, 92B(8)(aa), 117(2)(b)(ii), 148(2), 152, 154 and 159A* contain refund provisions.

Section 152 Allowance for misused stamps

Where—

- an instrument has been inadvertently stamped with too much duty, or
- an instrument not liable to duty has been inadvertently stamped,

the Revenue Commissioners may refund the excess duty. While this section provides that the refund claim must be made within 6 years after the date of the instrument or, if the instrument is not dated, within 6 years after it was executed by the person who first or alone executed it, the 6 year time limit has been changed (see *section 159A*) to 4 years from the date the instrument was stamped by the Revenue Commissioners for a valid claim for refund other than a valid claim made on or before 31 December 2004 in respect of a refund claim arising on or before 25 March 2003 (i.e. the date of passing of the Finance Act 2003). Interest may arise on the refund – see *section 159B*.

To apply for a refund the original stamped instrument together with a completed form ST RFND 1 should be submitted to the Revenue Commissioners.

Section 153 Allowance, how to be made

Allowance for spoiled or misused stamps (*sections 151 and 152*) may be made in

stamps or in money at the discretion of the Revenue Commissioners.

Section 154 Stamps not wanted may be repurchased by the Commissioners

Unwanted stamps may be repurchased by the Revenue Commissioners if the Revenue Commissioners are satisfied they were properly acquired in the first place. Such stamps must be delivered up to be cancelled and the person claiming the repayment must prove to the satisfaction of the Revenue Commissioners that the stamps were purchased from them or from a person appointed to sell and distribute stamps or from a licensed person. The stamps must have been purchased within the period of 6 years before the application for a refund is made.

Section 155 Allowance for lost instruments

In certain circumstances the Revenue Commissioners will stamp a replacement instrument free of charge if the original instrument has been lost. To enable the Revenue Commissioners to determine whether this relief should apply the following should be submitted to them—

- a statutory declaration by a person or persons fully cognisant of the facts (i.e. those engaged in the actual sending, delivery, etc., of the lost instrument), covering the following points:
 - date of stamping the original instrument,
 - evidence of stamping the original instrument, and
 - evidence of the loss of the original instrument;
- the original or copy correspondence (if any) with the Revenue Commissioners on the stamping of the original instrument;
- the original or copy correspondence (if any) with the postal service or courier firm on the subject;
- a copy of the lost instrument, preferably of the stamped instrument;
- a copy (front and back) of the cashed cheque, bank draft or payable order relating to the payment of stamp duty in respect of the lost instrument;
- a substitute instrument (unstamped); and
- an undertaking that the lost instrument, if found, will be surrendered to the Revenue Commissioners.

CHAPTER 6

Miscellaneous

Section 156 Discontinuance of dies

If the Revenue Commissioners—

- discontinue the use of any die and give public notice of that fact in Iris Oifigiúil, or
- discontinue the use of any die and replace the discontinued die with a new die and give public notice in Iris Oifigiúil,

the new die will come into effect on the date specified in the public notice.

An instrument which is dated and stamped with the discontinued die after the date specified in the public notice is deemed not to be duly stamped.

The discontinued die will not be a lawful die from the date specified in the public notice.

Section 157 Declarations, affidavits and oaths, how to be made

This section sets out the persons before whom statutory declarations, affidavits and oaths may be made for the purposes of this Act or any other Act for the time being in force relating to duties. The persons are the Revenue Commissioners or any person authorised by them, commissioners for oaths, peace commissioners or notaries public. The powers of commissioners for oaths is extended to solicitors who hold a practising certificate by section 72 of the Solicitors (Amendment) Act, 1994.

Section 158 Mode of granting licences

The Revenue Commissioners may authorise any person to issue on their behalf a licence or certificate under this Part or under any other Act for the time being in force in relation to duties.

Section 159 Recovery of penalties, etc.

This section sets out how penalties imposed by this Part are to be recovered. Penalties are imposed by *sections 142(4), 144(1), 146(5) and 147(2)*.

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

CHAPTER 7

Time limit for repayment of stamp duty, interest on repayment and time limits for enquiries and assessments

Section 159A Time limits for claiming a repayment of stamp duty

This section restricts the repayment of stamp duty to a valid claim (within the meaning given in *section 159B* (see below)) made within 4 years of the date of stamping of an instrument by the Revenue Commissioners, the date a statement of liability (e.g. in the case of levies and companies capital duty) was delivered to the Revenue Commissioners, the date the young trained farmer becomes the holder of the required educational qualification (see *section 81AA(11)*) or the date an operator-instruction (i.e. electronic transfer of shares in CREST) under *section 69* was made. If there is a shorter time limit in any provision of the stamp duty code (e.g. 3 years in *section 29*

and 53), that time limit will continue to apply.

The 4 year time limit will not apply to a repayment claim in respect of stamp duty arising on or before 25 March 2003 provided a valid claim is made to the Revenue Commissioners on or before 31 December 2004.

This section came into operation on 31 October 2003 by virtue of S.I. No. 514 of 2003 entitled "Finance Act 2003 (Commencement of Section 142) Order 2003".

Section 159B Interest on repayments of stamp duty

Summary

This section provides that interest on a repayment will only be paid where the repayment has not been made by the Revenue Commissioners within the period of 93 days (for repayments made before 2 April 2007 it was 183 days) of receiving a valid claim for repayment and then only from the expiration of that period to the date of repayment. An exception to this general rule is that interest will be paid from the date of payment giving rise to the repayment where the Revenue Commissioners have made an error in the operation of stamp duty. The section also provides that the rate of interest on such repayments is at the rate of 0.011 per cent per day or part of a day.

This section came into operation by virtue of S.I. No. 514 of 2003 entitled "Finance Act 2003 (Commencement of Section 142) Order 2003" in respect of repayments made on or after 1 November 2003 other than repayments made in respect of claims for repayment made before 1 November 2003 by virtue of *section 29(4)(b)* and (7), *section 53(4)(b)* and (7) or *section 117(2)(b)* which will be repaid at the rate of interest applicable under those particular sections.

Details

"relevant date" means—

(1)

- (i) the date which is 93 days after the date on which a valid claim in respect of the repayment is made to the Revenue Commissioners, or
- (ii) where the repayment is due to a mistaken assumption in the operation of stamp duty on the part of the Revenue Commissioners, the date which is the date of the payment of stamp duty, interest, a surcharge or penalty, as the case may be, which has given rise to that repayment.

"relevant document" means an instrument stamped by the Revenue Commissioners, a statement of liability delivered to the Revenue Commissioners under any provision of the Stamp Duties Consolidation Act 1999, or an operator-instruction entered in a relevant system under *section 69*.

"repayment" means a repayment of stamp duty including a repayment of any interest charged, surcharge imposed or penalty incurred, under any provision of the Stamp Duties Consolidation Act 1999.

No interest is payable in respect of a repayment claim made under any other provision of the Stamp Duties Consolidation Act 1999 unless the interest qualifies to be paid under this section. (2)

A repayment of stamp duty made in respect of a valid claim will carry interest payable at the rate of 0.011 per cent per day or part of a day for the period commencing on the relevant date (as defined in *subsection (1)*) and ending on the date that the repayment is made. This rate may be amended by Ministerial Order which must be laid before (3), (8)

Dáil Éireann.

A claim for repayment shall be treated as a valid claim where the provisions of the Stamp Duties Consolidation Act 1999, governing the repayment claim, has been satisfied and any information required by the Revenue Commissioners in support of the claim has been furnished to them. (4)

Interest is not payable under this section where the amount is €10 or less. (5)

No interest is payable under this section in respect of a repayment or part of a repayment of stamp duty arising under any provision of any other enactment. (6)

Income tax is not deductible from any payment of interest and interest is not reckoned in computing income for the purposes of the Tax Acts. (7)

The Revenue Commissioners have power to make regulations in relation to the operation of the section. (9)

Section 159C Time limits for making enquiries etc. and assessments by the Commissioners

Summary

This section restricts the period within which the Revenue Commissioners may make enquiries or raise assessments in relation to underpayments of stamp duty to a period of 4 years from the date the instrument was stamped by the Revenue Commissioners, the date the statement of liability (e.g. in the case of levies and companies capital duty) was delivered to the Revenue Commissioners or the date the instruction of the type referred to in *section 76* (CREST provisions) was made. This restriction does not apply where the underpayment arises from fraud or neglect. The 4 year time limit came into operation on 1 January 2005 by virtue of S.I. No. 514 of 2003 entitled “Finance Act 2003 (Commencement of Section 142) Order 2003”.

Details

“neglect” means— (1)

- in the case of an instrument or specified statement, a failure to disclose in the instrument, or as the case may be, in the specified statement, all the facts and circumstances affecting the liability to duty of such instrument or specified statement,
- in the case of an instrument to which *section 8(2)* applies, as between both the instrument and the statement referred to in that section, a failure to disclose all the facts and circumstances affecting the liability to duty of such instrument, or
- in the case of an instrument of the type referred to in *section 76*, a failure to enter a correct instruction in a relevant system within the meaning of *section 68*.

“relevant instrument” means an instrument stamped by the Revenue Commissioners, a specified statement delivered to the Revenue Commissioners or an instruction of the type referred to in *section 76* (CREST provisions).

“relevant period” means the period of 4 years commencing on the date the instrument was stamped by the Revenue Commissioners, the date the statement was delivered to the Revenue Commissioners, or the date the instruction was made.

“specified statement” means -

- an account delivered to the Revenue Commissioners under *section 5* (in respect of composition duty),
- a statement that is required to be delivered to the registrar under *section 117(1)(b)* (in respect of companies capital duty), or
- a statement that is required to be delivered to the Revenue Commissioners under *Part 9* (in respect of levies (e.g. financial cards and the 2% insurance levy)).

Any enquiries or other action made or taken by the Revenue Commissioners to satisfy themselves as to the correctness of a stamp duty charge on a relevant instrument (as defined above) may not be initiated after the expiry of the relevant period (as defined above). (2)

An assessment made by the Revenue Commissioners in connection with or in relation to any relevant instrument (as defined above) may not be made after the expiry of the relevant period (as defined above). (3)

The 4 year time limit imposed by this section on the Revenue Commissioners to make enquiries, take action and raise assessments will not apply where the Revenue Commissioners have reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to any relevant instrument. (4)

CHAPTER 8

Calculation of interest on unpaid duty and other amounts

Section 159D Calculation of interest on unpaid duty and other amounts

Summary

This section provides for the rate of interest applicable on unpaid duty and other amounts, due to be paid whether before, on or after 1 April 2005, *for periods of delay arising on or after 1 April 2005*. The interest is to be calculated in accordance with the formula below based on the periods of delay set out in column 1 of the Table below.

Where the duty remains unpaid for a period of time which falls into the two periods set out in column 1 of the Table, then the interest is calculated separately for each such period and then aggregated to give the total amount of interest payable for the full period of delay.

Details

“period of delay” and “specified provision” are self-explanatory. (1)

The amount of interest chargeable is determined by the following formula— (2)

$$A \times D \times P$$

- A is the duty or other amount due and payable under a provision of this Act which remains unpaid,
- D is the number of days (including part of a day) forming the period of delay, and
- P is the appropriate percentage in column (2) of the Table below opposite the period of delay in column (1).

Table	
(Period)	(Percentage)
(1)	(2)
From 1 April 2005 to 30 June 2009	0.0273%
From 1 July 2009 to the date of payment	0.0219%