

NOTES FOR GUIDANCE

STAMP DUTIES CONSOLIDATION ACT 1999

(as amended by subsequent Acts up to and including
the Finance Act 2022)

Part 10 - Enforcement



These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Stamp Duties Consolidation Act 1999 (No. 31 of 1999) as amended by subsequent Acts up to and including the Finance Act 2022.

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PART 10 ENFORCEMENT

Overview

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

Other legislation also contains enforcement provisions:

- section 94(4) of the Companies Act 2014 provides that a company shall not register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company,
- section 4 of the Stock Transfer Act 1963 imposes penalties on persons who part with possession of transfers in blank or remove or allow them to be removed from the State,
- section 104 of the Registration of Title Act 1964 provides that a Registrar may not register a deed of transfer unless it is duly stamped.
- chapters 1A, 1B, 1C, and 1D of Part 42 of the Taxes Consolidation Act 1997 contain provisions in relation to the recovery of stamp duty (including surcharge, clawback, interest and penalties) that become due and payable on or after 1 March 2009. The use of powers of attachment (section 1002 of the Taxes Consolidation Act 1997) also applies to stamp duty.

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

Summary

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

Details

A judge, before whom any instrument is presented in evidence in civil proceedings, or an arbitrator or referee is obliged to investigate whether the instrument has been duly stamped. If it has not been duly stamped but the nature of the instrument is such that it may legally be stamped after execution then the instrument may be received in evidence on the payment to the appropriate court officer or the arbitrator or the referee of: (1)

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

Court officers, arbitrators and referees who receive moneys in accordance with *subsection (1)* must— (2)

- issue a receipt,

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

The Revenue Commissioners will stamp the instrument on production of the original instrument together with the receipt issued by the court officer, arbitrator or referee. A stamp duty return in relation to the instrument is also required to be filed under the e-stamping system (3)

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

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

An instrument that has been stamped by means of the e-stamping system is deemed to be duly stamped, for the purposes of *subsection 4*, notwithstanding any objection relating to duty. (5)

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

Summary

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

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

Details

“document” is self-explanatory. (1)

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

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

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

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

Section 128A Obligation to retain records

Summary

This section makes provision for the retention of records relating to a stamp duty liability or to a relief or exemption claimed, for a period of 6 years from the date a stamp duty return is filed or the date the duty is paid, whichever date is the latter. It was updated by Finance Act 2021 (section 63) to include statements delivered under Part 9 of the Act.

Details

The definition of “records” includes books, accounts, documents or other data maintained manually or by any electronic, photographic or other process. (1)

“relevant person” means an accountable person or a person required to deliver a relevant statement under Part 9.

“return” means:

- (a) an electronic return,
- (b) a paper return, or
- (c) a statement required under Part 9.

The relevant person, to enable a correct return to be filed and a claim for relief or exemption to be substantiated, must retain, or cause to be retained on his or her behalf, the records in written form or in electronic or photographic form. (2) & (3)

The records must be retained for a period of 6 years from the later of (a) the date the stamp duty return is delivered to the commissioners or (b) the date the duty is paid. (4)

A penalty of €3,000 applies for non-compliance with the provisions of the section. (5)

Section 128B Power of inspection

Summary

This section enables an authorised officer, at a reasonable time, to enter any premises or place of business for the purposes of auditing a return and to require the production of records for inspection. It was updated by Finance Act 2021 (section 63) to include statements delivered under Part 9 of the Act.

Details

The definitions are self-explanatory. (1)

“relevant person” means an accountable person or a person required to deliver a relevant statement under Part 9

“return” means:

- (a) an electronic return
- (b) a paper return, or
- (c) a statement required under Part 9.

An authorised officer may:

- at all reasonable times enter a premises or place of business for the purposes of auditing a stamp duty return. (2)
- require the relevant person, or the person who retains the records, to produce the records and to furnish information, explanations and particulars and to give assistance for the purposes of the audit. (3)
- take extracts from or copies of records made available during the audit. (4)

An authorised officer must show proof of authorisation under this section on request. (5)

Penalties apply for failure to comply with the requirements of an authorised officer. (6) & (7)

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

This section imposes a penalty of €630 on any person who enrolls, enters or registers an instrument which is chargeable with stamp duty if that instrument has not been duly stamped. Persons who come within the scope of this section include— (1)

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

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

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

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

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

No longer effective - Finance (No. 2) Act 2008, Schedule 4.

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

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

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

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

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

No longer effective - Finance (No. 2) Act 2008, Schedule 4.

Section 134A Penalties

Summary

This section provides for a penalty of €1,265, and a further tax-gearred penalty, to be applied where a person acts deliberately or carelessly, in relation to:

- (a) the execution of an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which *section 8(2)* relates,
- (b) the entering of an incorrect transfer order in a securities settlement system,
- (c) the delivery of an incorrect return,
- (d) the failure to deliver a return,

which gives rise to an underpayment in amount of stamp duty due and payable.

The section provides for a specific level of penalty to apply depending on whether the category into which the person's duty default falls is deliberate or careless.

The section applies to penalties incurred on or after 24 December 2008 in relation to the offences contained in *paragraph (a)*, on or after 1 January 2023 in relation to the offences contained in *paragraph (b)*, on or after 30 December 2009 in relation to the offences contained in *paragraph (c)* and on or after 7 July 2012 in relation to the offences contained in *paragraph (d)*. Finance Act 2021 (section 63) extended the application of paragraphs (c) and (d) to include a statement under Part 9 of the Act.

Details

Definitions used in this section include: (1)

“carelessly” means failure to take reasonable care;

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

“participant”, “securities settlement system” and “transfer order” take their meaning from *section 78A* of the Act;

“person” means a participant for the purposes of *subsection (2)(b) and (4)(b)* (i.e. the entering of an incorrect transfer order in a securities settlement system), and means an accountable person or relevant person in relation to *subsections (2)(c) and (4)(c)* (i.e. the delivery of an incorrect electronic or paper return under the e-stamping system, or a statement under Part 9) and *subsection 2(d)* (i.e. the non-delivery of an electronic or paper return under the e-stamping system or a statement under Part 9);

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

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

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

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

In addition—

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

“relevant person” means a person required to deliver a relevant statement.

“relevant statement” is a statement required to be delivered under section 123B, 123C, 123D, 124, 124A, 124B, 125, 125A or 125C (Part 9).

“return” means:

- (a) an electronic return,
- (b) a paper return, or
- (c) a relevant statement.

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

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

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

Where any person **deliberately**— (2)

- (a) executes an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which section 8(2) relates, (a)
- (b) enters an incorrect transfer order in a securities settlement system (b)
- (c) delivers an incorrect electronic or paper return under the e-stamping system, or statement under Part 9. (c)
- (d) fails to deliver an electronic or paper return under the e-stamping system, or statement under Part 9. (d)

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

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

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

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

Where any person **carelessly** but not deliberately— (4)

- (a) executes an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which *section 8(2)* relates, (a)
- (b) enters an incorrect transfer order in a securities settlement system, (b)
- (c) delivers an incorrect electronic or paper return under the e-stamping system, or statement under Part 9. (c)
- (d) fails to deliver an electronic or paper return under the e-stamping system, or statement under Part 9 (d)

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

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

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

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

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

- does not make a qualifying disclosure, the penalty will be reduced to an amount equal to 30% of the underpaid duty,
- makes a prompted qualifying disclosure (for example, after receiving an audit letter from the Revenue Commissioners), the penalty will be reduced to an amount equal to 20% of the underpaid duty,
- makes an unprompted qualifying disclosure (that is before the person has been contacted by the Revenue Commissioners, in circumstances where the person has no reason to believe that Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 5% of the underpaid duty.

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

- does not make a qualifying disclosure, the penalty will be reduced to an amount equal to 15% of the underpaid duty,
- makes a prompted qualifying disclosure (for example, after receiving an audit letter from the Revenue Commissioners), the penalty will be reduced to an amount equal to 10% of the underpaid duty,

- makes an unprompted qualifying disclosure (that is before the person has been contacted by the Revenue Commissioners, in circumstances where the person has no reason to believe that Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 3% of the underpaid duty.

The maximum further penalty, that can apply where the circumstances outlined in **paragraph (d) of subsection (4)** occurs, is an amount equal to the amount of underpaid duty reduced to 40% of the duty where the person who incurred the penalty has not co-operated with the Revenue Commissioners. (5A)(a)

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

- does not make a qualifying disclosure, the penalty will be reduced to an amount equal to 30% of the underpaid duty, (5A)(b)(i)
- makes a prompted qualifying disclosure (for example, after receiving an audit letter from the Revenue Commissioners), the penalty will be reduced to an amount equal to 20% of the underpaid duty, (5A)(b)(ii)
- makes an unprompted qualifying disclosure (that is before the person has been contacted by the Revenue Commissioners, in circumstances where the person has no reason to believe that Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 5% of the underpaid duty. (5A)(b)(iii)

Where any person neither deliberately nor carelessly— (6)

- executes an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which **section 8(2)** relates,
- enters an incorrect transfer order in a securities settlement system,
- delivers an incorrect electronic or paper return under the e-stamping system, or statement under Part 9,
- fails to deliver an electronic or paper return under the e-stamping system, or statement under Part 9,

and it subsequently comes to the person's notice that the instrument, electronic instruction, or electronic or paper return was incorrect or not delivered, then the person must remedy the error without unreasonable delay and failing that, the incorrect instrument, transfer order or return, or the failure to deliver the return, will be treated as having been deliberately made.

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

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

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

The amount of the **further** penalty arising under *subsections (3)(d) and (5A)*, before any percentage reduction is applied to the penalty, is the amount of the duty that would have been payable if a return had been delivered. (9A)

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

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

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

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

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

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

This subsection disapplies the six-year time limit set out in section 1063 of the Taxes Consolidation Act 1997 for the recovery of fines and penalties contained in this section. (14)

Where the aggregate amount of a person's total tax and duty default (Value Added Tax, Excise, Capital Acquisitions Tax and the taxes covered by the Taxes Consolidation Act 1997) does not exceed €6,000 and the default is not in the deliberate behaviour category, the person shall not be liable to a penalty under this section. (15)