

Stamp Duties Consolidation Act 1999

Part 2: Charging and Stamping of Instruments Executed on or after 7 July 2012

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Part 2: The Charge to Stamp Duty

2.1 Section 2 of the SDCA

Charging of, and liability for stamp duty, on instruments executed on or after 7 July 2012, in accordance with self-assessment provisions introduced in Finance Act 2012.

The recovery provisions in relation to stamp duty are contained in Chapters 1A, 1B, 1C and 1D of Part 42 of the Taxes Consolidation Act 1997.

Stamp duty is chargeable if the instrument is listed in Schedule 1 of the SDCA and also

- 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.

When a Stamp Duty Return is filed under the eStamping system, the appropriate head of charge is determined first. Then the amount of duty due is calculated by reference to the rate of duty applicable to the instrument. An instrument may, in some circumstances, be liable to duty under more than one head of charge; in this case, the head of charge that will yield the most duty will be selected.

If the duty is not paid on time, interest will be charged in addition to the duty (see section 14). A surcharge will also arise if the Stamp Duty Return is not filed on time (see section 14A).

“Relates”

Questions frequently arise around the phrase “relates to any property situated in the State or any matter or thing to be done 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).

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 only link to Ireland is the fact that one or both of the parties to the instrument 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.

Under self-assessment, adjudication is no longer a feature. Accordingly references to requiring the opinion of the Revenue Commissioners are removed from subsection (3) of section 2 in relation to instruments executed on or after 7 July 2012.

2.2 Section 5 of the SDCA

Composition agreements

This section simplifies the administration and collection of duties. Those who have substantial numbers of instruments that attract stamp duty may opt to pay the duty due in bulk at intervals – usually annually, bi-annually or quarterly – instead of sending in the individual documents for stamping. In order to do this, a composition agreement, which sets out the terms of payment and the types of instruments covered, is entered into with the Revenue Commissioners under section 5 of the SDCA.

Finance Act 2008 amended section 5 to allow the Revenue Commissioners to make assessments in relation to the duty collected from financial institutions and insurance companies in respect of cheques or drafts and certain policies of insurance should the need arise.

Section 80 of Finance (No. 2) Act 2008 amended section 5 of the SDCA. Currently, in the case of cheques, the duty is paid when a financial institution issues a chequebook to a customer. The amendment to section 5 will allow the Commissioners, if requested, to enter into a composition agreement in relation to cheques on the basis that the duty will be paid at the time a cheque is presented for payment to a financial institution.

This amendment applies to composition agreements entered into on or after 1 January 2009.

2.3 Section 8 of the SDCA

Facts and circumstances to be set out in the instrument

Section 8 of the SDCA puts the onus on the taxpayer to bring to the attention of the Revenue Commissioners all the facts and circumstances affecting the liability of an instrument to stamp duty. When a Stamp Duty Return is filed under the eStamping 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 eStamping system, should Revenue wish to examine it. .

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.

(i) Penalties for non-disclosure

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 incurs a penalty under section 134A (See [Part 10](#) of this manual).

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, incurs a penalty of €3,000.

(ii) Presumption of acting deliberately under subsection (5)

Where a transfer or lease is by way of gift or deemed gift (under sections 30 or 54), an accountable person must bring this fact to the attention of the Revenue Commissioners in the Stamp Duty Return filed under the eStamping 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).

2.4 Section 8A of the SDCA

Penalties: returns

This section provides for a penalty of €3,000 where an incorrect electronic or paper return is delivered in connection with the eStamping system.

The accountable person will incur a penalty under section 134A where s/he, carelessly or deliberately, delivers or causes to be delivered an incorrect electronic or paper return under the eStamping system.

2.5 Section 8B of the SDCA

Penalties : Failure to deliver returns

Section 8B 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.

2.6 Section 8C of the SDCA

Expression of Doubt

Section 8C provides, that where an accountable person files a Stamp Duty Return and makes an expression of doubt relating to the instrument:

- an interest charge may be avoided and
- the Stamp Duty Return will not be regarded as an incorrect return

provided :

- the expression of doubt is genuine and
- both the stamp duty return and the expression of doubt are filed within 30 days after the execution of the instrument and,

if any additional stamp duty is found to be due, an amended return (which includes an assessment to be substituted for an earlier assessment) is delivered and any additional duty is paid within 30 days of the date on which Revenue notifies the accountable person of the correct application of the law in relation to the matter raised in the expression of doubt.

An expression of doubt must be genuine and be in accordance with the meaning of “letter of expression of doubt” contained in section 8C.

Section 8C(4) sets out the circumstances in which an expression of doubt **will not** be accepted as genuine.

Section 8C(5) provides that where an expression of doubt is not accepted by Revenue as genuine, they will notify the accountable person – who must then file an amended return to include an additional assessment and pay any duty and interest due.

Section 8(6) provides for the making of an appeal by an accountable person if aggrieved by Revenue’s refusal to accept an expression of doubt as being genuine.

2.7 Section 12 of the SDCA

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 PD stamp is not required where an instrument has been stamped by means of the eStamping system.

2.8 Section 14 of the SDCA

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.

[Under Self Assessment, failure to file a stamp duty return within 44 days will incur a surcharge in addition to interest – See Paragraph 2.9 (below).].

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].

Stamp duty payment dates are laid down in legislation. Late payment of duty is subject to a statutory interest charge designed to compensate the Exchequer for loss of revenue through late payment; to encourage timely payments in future and to ensure equity for the majority taxpayers who pay their taxes and duties on time. In general, therefore, interest charges incurred will not be waived by Revenue.

Where exceptional and unforeseeable circumstances prevent duty being paid on time - resulting in an interest charge being incurred - Revenue is prepared to consider requests that interest should not be charged, on a case by case basis. In any such case a claim that interest should not be charged may be made in writing - supported by documentary evidence where applicable. 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. It should be noted that waiving of interest will only be considered in exceptional and unforeseeable circumstances. It is important in this context to be clear that failure to pay duty on time due to carelessness or negligence, (including not availing of the statutory incentive provided in Finance (No 2) Act 2008 to pay stamp duty arrears) will not be regarded as exceptional and unforeseeable circumstances meriting consideration.

Deeds delivered in escrow

Definition: 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.

When it is claimed that a deed has been held as an escrow what should our approach be?

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 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, he/she 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. Where the officer is unsure, his/her supervisor should be consulted.

2.9 Section 14A of the of the SDCA

Late Filing of return

Section 14A introduces a surcharge regime for the late filing of a Stamp Duty Return, along the same lines as already in place for other taxes. The filing date is 30 days after first execution of the instrument but in practice a surcharge is not imposed where 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 /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 the Revenue Commissioners, 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 the Revenue Commissioners within the time specified in the notice.

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.

2.10 Sections 15, 16 & 17 of the SDCA

Sections 15, 16 & 17 were deleted by Paragraph 7 of Schedule 3 to the Finance Act 2012 in respect of instruments executed on or after 7 July 2012.

2.11 Section 17A of the SDCA

EStamping regulations

The eStamping 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.

Regulations (S.I. 234 of 2012) have been introduced in relation to the eStamping of instruments and self-assessment of stamp duty. Under these regulations all stampable instruments, executed on or after 7 July 2012, must be stamped by means of the filing of a self-assessed Stamp Duty Return under the eStamping system.

Further information relating to the eStamping system is available on www.revenue.ie