Stamp Duty on Instruments

Administrative Procedures and Enforcement

Document last updated September 2019

Table of Contents

Introduction

Part A of these guidelines is for staff who are undertaking Stamp Duty compliance interventions in accordance with the **Code of Practice for Revenue Audit and Other Compliance Interventions**. The guidelines explain the specific features of the e-stamping system that staff need to know about.

Part B is for debt management caseworkers in the Collector General's Office (CG's).

The time limits for making enquiries and assessments are set out in Section 159C of the Stamp Duties Consolidation Act 1999 (SDCA).

These guidelines do not cover administrative procedures of, or compliance actions undertaken by, LCD for the various Stamp Duty charges for which they have responsibility, for example, financial cards and levies. For information on these charges see Part 9 of the Stamp Duty Manual . The CG's is responsible for shares transferred electronically through the CREST system. For information on CREST see the CREST Manual and Part 6 of the Stamp Duty Manual

Part A: Stamp Duty on instruments - Administrative Procedures

1 Introduction to Stamp Duty

Stamp Duty is a tax on the written documents (called "instruments") listed in Schedule 1 of the SDCA [Note: Part 5 of the SDCA explains and supplements Schedule 1]. A charge to Stamp Duty arises if the instrument:

- is executed (signed, sealed or both) in Ireland;
- relates to property situated in Ireland regardless of where the instrument is executed;
- relates to any matter or thing done or to be done in Ireland regardless of where the instrument is executed.

If there is no instrument, there is no charge.

Instruments within the charge to Stamp Duty include deeds transferring ownership of land and buildings, leases of land and buildings, stock transfer forms transferring ownership of shares and certain contracts.

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

[…]

The “accountable person” is liable to pay the duty. The accountable persons are the purchasers or transferees or lessees named in the instrument. Where a gift is involved all parties to the instrument are accountable persons. Where there is more than one accountable person, they are all liable on a joint and several basis.

To pay Stamp Duty it is necessary to file a Stamp Duty return. Most Stamp Duty returns are filed through ROS (the relevant part of ROS is commonly referred to as “the e-stamping system”). The e-stamping system enables filers to file returns for instruments executed on or after 1 January 2002. A small number of returns are filed in hard copy (e.g. if the instrument is executed before 1 January 2002). When a return is filed in hard copy it is input into the e-stamping system by NSDO.

Filers who file through ROS pay Stamp Duty through a ROS Debit Instruction (RDI). Filers who file in hard copy pay Stamp Duty by Electronic Funds Transfer (EFT) or cheque/bank draft.

As most instruments within the charge to Stamp Duty relate to transfers or leases of land and buildings, accountable persons normally employ solicitors. In practice, these solicitors file the Stamp Duty return and pay over the duty to Revenue on behalf of their clients.

2 How an instrument is stamped

Once the Stamp Duty return is filed and the duty is paid in full together with all late filing/late payment charges*, the e-stamping system generates an electronic stamp certificate. This issues to the filer’s ROS inbox if the filer filed through ROS. The filer must print down a hard copy and attach it to the instrument.

If the filer filed in hard copy, NSDO post the stamp certificate to the filer. The filer must then attach it to the instrument.

Once attached, the instrument is stamped. It is important that the stamp certificate is attached to the instrument. For example, an instrument that is transferring ownership of a house must be lodged with the Property Registration Authority (PRA). This is so that title (legal ownership) to the house can be registered in the name of the purchaser. The PRA will not accept the instrument unless the stamp certificate is attached to it.

*Late filing/late payment charges apply if a Stamp Duty return is filed late or duty is paid late. The e-stamping system calculates the late filing/late payment charges and they are shown on the return. The e-stamping system will issue a stamp certificate when these charges are paid. Appendix 1 contains information on late filing/late payment charges. In summary:

- if the instrument is executed on or after 7 July 2012 a surcharge applies to late filing and interest applies to late payment (Section 14A of the SDCA);
- if the instrument is executed on or after 15 December 1999 (the date of the enactment of the SDCA) and before 7 July 2012, the following charges apply to late payment:
    - interest (Section 14 of the SDCA)
    - a penalty of €25 (this is referred to as a statutory fine) – this applies to instruments executed before 24 December 2008 ⍰
    - a further penalty of 10%/20%/30% of the unpaid duty in certain cases. ⍰

These penalties, which are provided for in Section 14 of the SDCA, are an additional charge for late payment and, therefore, are not covered by the **Code of Practice for Revenue Audit and Other Compliance Interventions**: for the purposes of this manual, they are referred to as “pre- self-assessment penalties”.

3 Stamp Duty and Revenue systems

Stamp Duty returns are referenced by a 10-digit Document ID number (DocID).

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

If you open an intervention on a Stamp Duty return, you should seek a copy of the instrument. If a gift or exchange is involved you should seek a copy of the valuation for the property which is transferred. If an exemption or relief has been claimed on the return you should seek documentary evidence to show that the exemption or relief was properly claimed.

You may identify an instrument which is within the charge to Stamp Duty but no return has been made. Where you do, you will need to get the accountable person to file a Stamp Duty return and pay the liability. A stamp certificate cannot issue until the liability is paid. While within the charge to Stamp Duty an exemption or relief may apply to the instrument. A Stamp Duty return does not need to be filed in order to claim certain exemptions and reliefs. For information on when a Stamp Duty return needs to be filed see Obligation to File a Stamp Duty Return

4 How to calculate the liability

You may need to calculate the liability, either to advise the accountable person of the liability or to determine the amount of duty for inclusion in a Notice of Assessment (see 6. below).

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

[…]

You should be aware that for instruments executed on or after 7 July 2012, the surcharge is added to the duty and interest is calculated on the total amount: for instruments executed before 7 July 2012, the interest and pre self-assessment penalties are calculated separately.

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

[…]

5 Accountable person agrees to pay liability

5.1 Stamp Duty return has been filed and Stamp certificate has issued

Where the stamp certificate has already issued but the duty was underpaid because the Stamp Duty return filed was incorrect the return must be amended and the correct details input: information on how to do this is in 8. below. Once the amendments are input, the e-stamping system will calculate the amount of duty, interest and surcharge/pre- self-assessment penalties due.

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

[…]

Information on payment methods is set out in 11. below.

5.2 No Stamp Duty return has been made

The accountable person, or someone on their behalf, must file a Stamp Duty return online through ROS unless a paper return is allowed.

The circumstances where a paper return is allowed are rare: they are set out in sections 2 and 3 of Chapter 4 of the Stamp Duty File and Pay Manual

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

[…]

Information on payment methods is set out in 11. below.

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

[…]

6 Accountable person does not agree to pay liability

You should issue a Notice of Assessment (see Appendix 2) to each accountable person in accordance with Section 20 of the SDCA.

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

[…]

The accountable person has 30 days from the date of the Notice of Assessment to appeal the assessment to the Tax Appeals Commission (TAC) (Section 21(2) of the SDCA). You should be aware that Section 21(3) and (4) of the SDCA provides for a number of circumstances where an appeal may not be made. One of those circumstances is where a Stamp Duty return has not been filed. If the return is filed after the 30 day period has elapsed, it is open to the accountable person to seek to make a late appeal to TAC under Section 949I(4) of the Taxes Consolidation Act 1997.

You should not issue a Notice of Assessment in the case of clawbacks (see Appendix 3) where an exemption or relief was properly claimed on the Stamp Duty return but the accountable person subsequently failed to keep to the conditions attached to the relief (usually adherence to the conditions for a period of time). Section 20 of the SDCA provides for the making of assessments in relation to the chargeability of an instrument. The making of an assessment does not arise for the clawback of an exemption or relief which was properly claimed. In such cases you should issue a Final Demand to each accountable person (see Appendix 3).

Where an exemption or relief was incorrectly claimed at the time of making a return, you should issue a Notice of Assessment.

7 Action following issue of Notice of Assessment

7.1 Where there is agreement to pay the liability

You should follow the procedures set out in 5. above.

7.2 Accountable person appeals

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

[…]

7.3 No appeal and no payment made

Where a stamp certificate has issued even though that certificate may be incorrect you should issue a Final Demand to each accountable person (see Appendix 3).

In accordance with Section 21(4) of the SDCA, an accountable person has no right of appeal when a Stamp Duty return has not been filed. Enforcement options are set out in 12. below. You should also consider such cases for possible prosecution under the provisions of Section 1078 of the Taxes Consolidation Act 1997 or any relevant SDCA offence provision: offence provisions are contained in Sections 10, 12, 128, 139, 145, 147 and 149 of the SDCA.

7.4 Inability to Pay

Where a stamp certificate has issued and you have identified that an additional liability is due and the accountable person claims inability to pay, you should:

- seek documentary evidence in support of any such claim in accordance with the **Code of Practice for Revenue Audit and Other Compliance Interventions**: you should refer also to the Guidelines for Statements of Affairs which set out the procedures for requesting and working Statements of Affairs

- advise the accountable (see Appendix 4) person that:
    - they need to amend the return (see 8. below) to input the correct details
    - it will not be possible to issue an amended stamp certificate until the liability is paid in full and

- instruments that are not properly stamped may not be used in evidence in court proceedings, etc.

Where no Stamp Duty return was filed and you have identified that there is a liability and the accountable person claims inability to pay, you should advise (see Appendix 5) the accountable person that:

- they need to file a Stamp Duty return
- the instrument will remain unstamped until the duty and all agreed interest and surcharges/pre- self-assessment penalties are paid and
- in the case of land and buildings or shares, they will not be able to register their ownership of the property with the PRA or the company concerned until the stamp certificate issues.

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

Where you are satisfied that the accountable person(s) is/are unable to pay and a phased payment arrangement in accordance with the **Code of Practice for Revenue Audit and Other Compliance Interventions** is not feasible, you should:

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

- in cases where a stamp certificate has issued, advise each accountable person that an instrument that is not properly stamped may not be used in evidence in court proceedings, etc (see wording in Appendix 5)
- in cases where no stamp certificate has issued, advise each accountable person of the consequences of not paying their liability (see wording in Appendix 6).

7.5 Phased Payment Arrangements/Instalment Arrangements

Where a liability is identified you may,
in accordance with the Guidelines for Phased Payment – Instalment Arrangements
agree a phased payment arrangement/instalment arrangement provided that:

- the liability is fully quantified
- there is early, positive and honest engagement by the accountable person and
- it is likely that the arrangement will be adhered to.

If the liability is part of a settlement involving other taxes as well as Stamp Duty, you can enter into a phased payment arrangement for all liabilities.

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

[…]

8 Amending a Stamp Duty return

If the Stamp Duty return was filed online, it can be amended online by the person who filed the return ("original filer").

If someone other than the original filer is to amend the return, the accountable person(s) must provide an original letter of authorisation by post (or a scanned copy through MyEnquiries) to NSDO to allow a new, named person ("new filer"), act on their behalf.

In addition, the new filer must provide their tax reference number to NSDO (through MyEnquiries).

Once the authorisation and the tax reference number of the new filer is received, NSDO will amend the filer details on the return to enable the new filer to amend the return. When the filer details are amended, NSDO will advise the new filer who can then amend the return.

Where the original return was a paper return and the date of execution of the instrument is:

- on or after 1 January 2002 the original filer can amend the return online provided they are registered for ROS and hold a ROS digital certificate. However, if the filer is not registered for ROS and/or the holder of a ROS digital certificate then a paper return must be filed (see 5.2 above): NSDO will input the amendment to the original return on the e-stamping system;
- before 1 January 2002 the filer can view the return through ROS but cannot amend it through ROS. The filer will need to file a paper return (see 5.2 above) in order for NSDO to amend the original return.

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

[…]

9 Exemptions and reliefs

Certain exemptions and reliefs are granted on the basis that the person to whom the property is conveyed, transferred or leased, as the case may be, will meet the requirements laid down in the relevant legislation for a specified period, usually 2 years or 5 years, after the date of execution of the instrument. If the requirements are not met for the specified period, then the exemption or relief is subject to clawback and interest is chargeable. The exemptions and reliefs which are subject to clawback are listed in Appendix 6.

Where you have identified a clawback situation you will need to get the filer of the Stamp Duty return to notify the clawback to Revenue. More information on how to notify a clawback is contained in Appendix 3. Once the clawback details are input, the e-stamping system will calculate the amount of duty and interest due. The liability can be paid through ROS as part of the notification process.

In non-clawback situations, where you have determined that an exemption or relief claimed is not due, you should ask for the Stamp Duty return to be amended (see 8. above) and the exemption or relief removed from the return. Once the amendments have been input, the e-stamping system will calculate the amount of duty, interest and surcharge/pre- self-assessment penalties due and the liability can be paid through ROS as part of the amendment process.

10 Accounting for composite payments

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

[…]

11 Accounting for payments relating only to Stamp Duty

11.1 Payment comprises duty, interest and surcharge/pre- self-assessment penalties

When the payment comprises only duty, interest and surcharge/pre- self-assessment penalties, payment should be made through the filer's RDI. A separate RDI is needed for Stamp Duty. The filer will have set up their RDI in order to pay Stamp Duty when they registered for ROS: in most cases the filer of the Stamp Duty return is the accountable person's solicitor or accountant. When setting up the RDI, the solicitor or accountant must nominate their "Firm's Client Account".

Where it is not possible to pay by RDI, Stamp Duty should be paid by EFT to the Revenue Commissioners account:

Name: Office of the Revenue Commissioners – Stamps EFT – Public Bank Account
Danske Bank
International House
3 Harbourmaster Place
IFSC
Dublin 1

IBAN: IE55DABA95159910003557
BIC: DABAIE2D

When paying by EFT:

- the person making the payment must quote the DocID in the narrative box /reference field of their payment instruction to their bank. If they do not have the DocID, they should include in the narrative box/reference field the words "Stamp Duty" or "SD" and their tax reference number

- they must write to the National Stamp Duty Office, Office of the Revenue Commissioners, Cross Block, Dublin Castle (or contact NSDO through MyEnquiries) to advise NSDO of the amount of the payment made so that NSDO can match the payment to the instrument. When they contact NSDO, they must:

    - quote the 10-digit DocID number or

    - if they do not have that number, provide the tax reference number they included in the narrative box/reference field.

11.2 Payment includes tax geared penalties/other fixed penalties

Tax-geared penalties/other fixed penalties cannot be paid online through the e-stamping system. Therefore, where an agreed settlement includes a tax-geared penalty/other fixed penalty, the whole of the settlement - duty, interest, surcharge/pre- self-assessment penalties and tax-geared penalty/other fixed penalty - may be paid by EFT. Alternatively, the duty, interest, surcharge/pre- self-assessment penalties may be paid by RDI and the tax-geared penalty/other fixed penalty may be paid by EFT.

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

[…]

11.3 Payment not made on agreed date

Where:

- you agree a settlement which contains an amount for interest and surcharge/pre- self-assessment penalties up to a particular date and
- the duty, interest and surcharge/pre- self-assessment penalties is not paid on that date

the e-stamping system will, when the duty, interest and surcharge/pre- self-assessment penalties is actually paid, show the interest (and surcharge/pre self-assessment penalties) accrued up to the date of payment. This will be a greater amount than was included in your settlement. The stamp certificate will not be generated because the e-stamping system has calculated that more interest (and surcharge/pre- self-assessment penalties) is due.

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

[…]

12 Enforcement Action

Where:

- an additional liability (where a stamp certificate has issued) or liability (where no Stamp Duty return was filed) is identified
- a Notice of Assessment has issued in respect of this additional liability/liability and
- no appeal has been made (within the 30-day appeal period) or an appeal was made and the Appeal Commissioners found in favour of Revenue

  you should consider proceeding to enforcement action where it has not been possible to secure payment of the amount due. You should pursue enforcement manually through referral to the CG's STTU Unit for onward referral to the External Solicitor or Sheriff.

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

[…]

Alternatively, where your intervention concerns a case where no Stamp Duty return was filed you may write to each accountable person(s) advising them of the liability due and that no stamp certificate will issue until payment is made (see Appendix 6).

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

[…]

Prior to the commencement of any enforcement action, you should issue a Final Demand to each accountable person (see Appendix 4). You should ensure that the schedule attached to each Final Demand only includes the name and tax reference number of the person to whom the Final Demand is addressed. You should allow 14 days for reply.

If, following this 14-day period, no payment is received you should refer the case to the CG's.

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

[…]

Part B: Stamp Duty on instruments - Enforcement

13 Enforcement Role of the Collector General's Office

Enforcement will be managed by the Collector Generals' Office, Listowel, Co Kerry.

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

[…]

Appendix 1

Late filing and late payment charges

Where the return is:

- filed late (i.e. more than 44 days after the date of execution of the instrument – Stamp Duty law provides for a period of 30 days to timely file a return: in practice, we allow a further 14 days before late filing and late payment charges are applied), or

- filed on time but filed in such a way that the amount of duty due was underpaid (for example, the price paid was stated to be €50,000 instead of €100,000) and/or late payment/late filing charges applied (for example, the date of the instrument was stated to be 1 July 2016 whereas in fact it was 1 March 2014),

the e-stamping system will, once the return has been filed or amended, as appropriate, generate:

- the amount of duty due

- the amount of any late filing/late payment charges: these take the form of:

    - interest for late payment

    - for instruments executed before 7 July 2012, pre- self-assessment penalties

    - for instruments executed on or after 7 July 2012, a surcharge for late filing.

The following Tables illustrate the main differences between the surcharge and interest regime applicable to instruments executed on or after 7 July 2012 and the penalty and interest regime applicable to instruments executed before 7 July 2012.

Table 1: Surcharge and interest regime for instruments executed on or after 7 July 2012 (Section 14A of the SDCA)

Surcharge and interest regime for instruments executed on or after 7 July 2012		
Scenario	**Surcharge**	**Daily Interest**
Return filed and Stamp Duty paid in full within 44 days	Nil	Nil
Return filed within 44 days but Stamp Duty remains unpaid after 44 days	Nil	0.0219% per day or part of a day where the unpaid duty exceeds €30.
Return filed after 44 days and/or Stamp Duty remains unpaid but filed/paid within 92 days	5% of the amount of the duty Note: The surcharge is capped at €12,695	0.0219% per day or part of a day where the unpaid duty exceeds €30.

Surcharge and interest regime for instruments executed on or after 7 July 2012		
Scenario	**Surcharge**	**Daily Interest**
Return remains unfiled and unpaid after 92 days	10% of the amount of the duty Note: The surcharge is capped at €63,485	0.0219% per day or part of a day where the unpaid duty exceeds €30.

Table 2: Pre self-assessment penalties and interest regime for instruments executed before 7 July 2012 (Section 14 of the SDCA)*

Penalties and interest regime for instruments executed before 7 July 2012		
Scenario	**Penalty**	**Daily Interest**
Return filed and Stamp Duty paid in full within 44 days	Nil	Nil
Return filed after 44 days and/or Stamp Duty unpaid but filed/paid within six months	10% of the unpaid duty	Interest is currently charged at 0.0219% per day or part of a day where the unpaid duty exceeds €30. For the period 1 April 2005 to 30 June 2009 the daily rate is 0.0273%.
Return filed and/or Stamp Duty remains unpaid later than six months but within 12 months	20% of the unpaid duty	Interest is currently charged at 0.0219% per day or part of a day where the unpaid duty exceeds €30. For the period 1 April 2005 to 30 June 2009 the daily rate is 0.0273%.
Return filed and/or Stamp Duty remains unpaid after 12 months	30% of the unpaid duty	Interest is currently charged at 0.0219% per day or part of a day where the unpaid duty exceeds €30. For the period 1 April 2005 to 30 June 2009 the daily rate is 0.0273%.

* In addition to the penalty and interest any instrument executed before 24 December 2008 which is filed outside the 44-day limit also incurs a penalty of €25 (i.e. the statutory fine).

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

[…]

Appendix 3

Certain exemptions and reliefs may be clawed back

The following exemptions or reliefs in Part 7 of the SDCA contain clawback provisions – you should issue Final Demands, rather than Notices of Assessment, in these cases:

- Section 79(7) – Conveyances or transfers between certain bodies corporate
- Section 80(8) – Reconstructions or amalgamations of companies
- Section 80A(8) – Demutualisation of assurance companies
- Sections 81(7), 81A(11), 81AA(12) – Young trained farmer relief
- Section 81B(9) – Farm consolidation relief
- Section 81C(9)* – Further farm consolidation relief
- Section 81D(5) - Relief for certain leases of farmland
- Section 82B(4) and (5) – Approved sports bodies
- Section 83C(8) – Exchange of houses
- Section 87 – Stock borrowing
- Section 87A – Stock repo
- Section 91(2)(c), 91A(6), 92(2) – New dwellinghouses and apartments
- Section 92A(3) – Residential property owner occupier relief
- Section 92B(4) – Residential property first time buyer relief
- Section 108A(4) – National Development Finance Agency.

*This relief, which was reintroduced by the Finance Act 2017, applies to instruments executed on or after 1 January 2018 and before 31 December 2020: previously the relief applied to instruments executed on or after 1 July 2007 and before 30 June 2011.

In addition:

- there are two clawback provisions in Part 5 of the SDCA:
    - Section 45A(4) – Aggregation of Transactions
    - Section 83D(12) – Residential property refund scheme: information on how to notify a clawback will be published at a later date

- in certain circumstances consanguinity relief (see Schedule 1 of the SDCA) may be withdrawn. Where these circumstances apply, the accountable person must amend the return previously filed: they do not deliver a clawback notification.

When a clawback event arises, it is the responsibility of the accountable person to notify Revenue that such an event has occurred and to pay the duty (and any interest that has accrued at the rate set out in section 159D of the SDCA) that would have been payable had the exemption or relief not been granted in the first place.

In the case of instrumaents executed:

(a) on or after 7 July 2012, Revenue must be notified:

   (i) where the Stamp Duty return in respect of the instrument was an online return, by the delivery of a clawback notification through the e-stamping system, or

   (ii) where the Stamp Duty return in respect of the instrument was a paper return, by the delivery of:

      - a completed Form SDCF (Stamp Duty Clawback Form – this is a paper form) or

      - a clawback notification through the e-stamping system.

(b) before 7 July 2012, Revenue must be notified:

   (i) where the instrument was stamped by means of the e-stamping system, by the delivery of a clawback notification through the e-stamping system

   (ii) where the instrument was stamped on or after 30 December 2009 and in respect of which an exemption from the requirement to file an online return had been granted by Revenue, by the delivery of a completed Form SDCF

   (iii) where the instrument was stamped by means of an impressed stamp (i.e. before September 2000) or by means of a hologram (i.e. between September 2000 and 29 December 2009), by the delivery to Revenue of both a completed Form SDCF and the appropriate paper return, that is:

      - an SDR1 (Stamp Duty Return for Conveyance/Transfer/Long Term Lease (greater than 100 years) of a Single Property)

      - an SDR1A (Stamp Duty Return for Exchange and Conveyance/Transfer/Lease of Multiple Properties on a Single Instrument)

- an SDR2 (Stamp Duty Return for Conveyance or Transfer of any Stocks or Marketable Securities), or
- SDR3 (Stamp Duty Return for Short Term Lease (less than or equal to 100 years), Conveyance Not Liable, Mortgage, Policy of Insurance, CRO Form B6, Share Warrant and Fixed Duty).

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

[…]