

# Stamp Duties Consolidation Act 1999

## Part 10: Enforcement

This document should be read in conjunction with Part 10 of the Stamp Duties Consolidation Act (SDCA) 1999.

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## Introduction

Part 10 contains a number of provisions which may apply where there is a failure to comply in full with the stamp duty pay and file obligations provided for under the Stamp Duties Consolidation Act (SDCA) 1999.

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

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

The attachment provisions in section 1002 TCA 1997 also apply.

### 1. Section 127 of the SDCA

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

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

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

### 2. Section 128 of the SDCA

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

This section provides that Revenue may oblige any person, who is a party to an instrument or who has custody of documents, to supply information which is relevant to establishing a stamp duty liability or the commission of fraud, negligence or omission in relation to stamp duty.

### 3. Section 128A of the SDCA

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

Under this section:

- every accountable person (or person acting on their behalf), and
- every person required to deliver a statement under Part 9<sup>1</sup> (or person acting on

their behalf),

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

## 4. Section 128B of the SDCA

### **Power of inspection**

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

The section provides that:

- (a) an accountable person (or a person who retains records on their behalf), or
- (b) a person required to deliver a statement to Revenue under Part 9 (or a person who retains records on their behalf),

will incur a penalty of €19,045 for failure to comply with the requirements of the authorised officer and, where the failure continues, a further penalty of €2,535 for each day on which the failure continues.

## 5. Section 129 of the SDCA

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

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

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

## 6. Section 134A of the SDCA

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<sup>1</sup> Guidance on Part 9 of the SDCA 1999 (Levies) is available at <https://www.revenue.ie/en/tax-professionals/tdm/stamp-duty/stamp-duty-manual/part-09-levies/part-09.pdf>.

## Penalties

This section provides for a penalty of €1,265 plus a tax geared further penalty where a person acts deliberately or carelessly, in relation to:

- the execution of an instrument in which all the facts and circumstances affecting the liability of the instrument to duty are not disclosed in the instrument or in a statement to which section 8(2) relates;
- the entering of an incorrect transfer order in a securities settlement system;
- the delivery of an incorrect electronic return under the eStamping system, paper return under the eStamping system or statement under Part 9;
- the failure to deliver an electronic return under the eStamping system, paper return under the eStamping system or statement under Part 9, which gives rise to an underpayment in the amount of stamp duty due and payable.

The section provides for a specific level of penalty to be applied depending on whether the category into which the person's duty default falls is deliberate or careless. It is aligned with sections 1077E (for penalties applied **prior to** 1 January 2022) and 1077F TCA 1997 (for penalties applied **on or after** 1 January 2022) which provide for tax-geared penalties in relation to taxes such as income tax, corporation tax, local property tax and capital gains tax. When considering a tax-geared penalty, defaults in relation to value-added tax, capital acquisitions tax and the taxes covered by the TCA 1997 are taken into account.

Where the aggregate amount of a person's total tax and duty default (value added tax, capital acquisitions tax and the taxes covered by the TCA 1997) does not exceed €6,000 **and** the default is not in the deliberate behaviour category, the person will not be liable to a penalty under section 134A.