Stamp Duties Consolidation Act 1999

Stamp Duty repayment provisions

This document should be read in conjunction with sections 152, 159A and 159B of the Stamp Duties Consolidation Act (SDCA) 1999.

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Table of Contents

1 Introduction

The Stamp Duties Consolidation Act (SDCA) 1999 makes provision for Stamp Duty to be repaid (fully or partly) in certain circumstances.

Where an entitlement to a repayment of Stamp Duty arises under any provision of the SDCA 1999, Revenue will repay the Stamp Duty only where the general requirements of **section 159A SDCA 1999** are also met. Where Stamp Duty is to be repaid to a person, interest on the repayment may be payable in accordance with **section 159B SDCA 1999**.

The purpose of this Tax and Duty Manual (TDM) is to provide an overview of the Stamp Duty repayment provisions as they apply from 18 December 2023[1]. Part 5 of this TDM provides an overview of the position that applied prior to 18 December 2023.

2 Repayment provisions

2.1 Repayment of overpaid Stamp Duty

Section 152 SDCA 1999 provides that where a person makes a payment of Stamp Duty in relation to a **return** or **relevant statement**, including any interest charged, surcharge imposed or penalty incurred, under any provision of the SDCA 1999, and the Stamp Duty was not due or, but for an error or mistake made by the person in the return or relevant statement, would not have been due, the person will be entitled to a repayment of the amount overpaid.

This entitlement is subject to the person applying to Revenue for the repayment and the general requirements of section 159A SDCA 1999 also being met (see below).

In the section, the term **return** refers to a Stamp Duty return made to Revenue in relation to an instrument and the term **relevant statement** refers to an account delivered to Revenue under section 5 SDCA 1999, or a statement delivered to Revenue under Part 9 SDCA 1999.

Section 5 SDCA 1999 provides that Revenue may enter into a composition agreement for the payment of Stamp Duty with any person carrying on a business (or a person acting on their behalf) and who, in the course of that business, is a party to instruments liable to Stamp Duty. Revenue may enter into such an agreement where they consider that such a person (or his or her agent) would find it inexpedient or impractical to pay Stamp Duty in respect of each individual instrument, and instead an account may be delivered to Revenue under section 5 covering the Stamp Duty owed for a specified period.

[1] The Finance (No. 2) Act 2023, which was enacted on 18 December 2023, provided for a number of amendments to the SDCA 1999 relating to the repayment of Stamp Duty.

Part 9 SDCA 1999 provides for a Stamp Duty to be levied on certain financial transactions and products, e.g., on credit card accounts and on insurance policies. The levies are charged on the delivery of a statement to Revenue. For further information on these provisions, refer to the Tax and Duty Manuals for Part 9 SDCA 1999.

Section 78G SDCA 1999 provides for the repayment of Stamp Duty overpaid in relation to a charge to Stamp Duty by virtue of section 78B SDCA 1999. Section 78B SDCA 1999 provides for Stamp Duty to be charged where an interest in securities is transferred by electronic means. For further information on these provisions, refer to the Tax and Duty Manual for Part 6 SDCA 1999.

2.2 Repayment of Stamp Duty in specific circumstances

In addition to the entitlement to have overpaid Stamp Duty repaid, the SDCA 1999 makes provision for Stamp Duty to be repaid in specific circumstances. These provisions are listed below.

- Section 18 – Mode of valuing property;
- Section 29 – Conveyance on sale combined with building agreement for dwellinghouse or apartment – subsections (4)(b) and (7) contain repayment provisions;
- Section 31 – Certain Contracts to be chargeable as conveyances on sale;
- Section 31A – Resting in contract – subsection (4) contains a repayment provision;
- Section 31B – Licence agreements – subsection (3) contains a repayment provision.
- Section 33 – Conveyance or transfer in contemplation of sale;
- Section 50A – Agreements for more than 35 years charged as leases;
- Section 53 – Lease combined with building agreement for dwellinghouse or apartment – subsections (4) and (7) contain repayment provisions;
- Section 80 – Reconstructions or amalgamations of companies – subsection (9) contains a repayment provision;
- Section 81AA – Transfers to young trained farmers – subsection (11) contains a repayment provision;
- Section 81C – Further farm consolidation relief;
- Section 83D – Repayment of Stamp Duty where land used for residential development;
- Section 83DA – Repayment of Stamp Duty where certain residential units leased;
- Section 83DB – Repayment of Stamp Duty on cost rental dwellings;
- Section 84 – Repayment of Stamp Duty on certain transfers of shares.
- Section 151 – Allowance for spoiled stamps.

An entitlement to a repayment of Stamp Duty under the above-mentioned provisions is subject to also meeting the general requirements of section 159A SDCA 1999.

3 General requirements to be met before Stamp Duty will be repaid

Where an entitlement to a repayment of Stamp Duty arises under any provision of the SDCA 1999, Revenue may repay the Stamp Duty only where the requirements of **section 159A SDCA 1999** are also met.

In the section, the term **repayment** refers to a repayment of Stamp Duty, including any interest charged, surcharge imposed or penalty incurred, under any provision of the SDCA 1999.

In accordance with section 159A(2) SDCA 1999, there are three conditions which must be satisfied in order for Revenue to make a repayment to a person.

The first condition is that the repayment must be provided for in the SDCA 1999. In other words, there must be an express entitlement to the repayment in the SDCA 1999. For example, if a person makes a mistake in a Stamp Duty return and pays too much Stamp Duty as a result of that mistake, they may claim a repayment of the amount overpaid under section 152 SDCA 1999.

The second condition is that a **valid claim** (see below) must have been made to Revenue for the purpose of obtaining a repayment.

The third condition is that the valid claim **must be made within 4 years** from:

- the latest date the instrument was required to be stamped under **section 2** SDCA 1999[2],
- the latest date the account under **section 5** SDCA 1999 was required to be delivered to Revenue,
- the latest date the statement under **Part 9** SDCA 1999 was required to be delivered to Revenue,
- the date the transfer order in **section 78B** SDCA 1999 was executed,
- the date that a person achieved the standard within the meaning of **section 81AA**(11)(a) SDCA 1999,
- the date of acknowledgement specified in **section 83D**(10)(c) SDCA 1999 pertaining to a relevant residential development as defined in that section,
- the date the condition specified in **section 83DA**(2)(b) SDCA 1999 is satisfied, or
- the qualifying date within the meaning of **section 83DB** SDCA 1999.

[2] Section 2 SDCA 1999 requires the instrument to be stamped before the expiration of 30 days after it is first executed.

In accordance with section 159A(3) SDCA 1999, a claim for repayment will be treated as a **valid claim** where it meets the following conditions:

- it is made in accordance with the requirements (if any) set out in the specific section under which the repayment is claimed,
- all of the information that Revenue reasonably requires in order to make a decision in relation to the claim has been submitted to them, and
- if the repayment claim is made under **section 152** SDCA 1999 (see above), then the return or the relevant statement must be amended to show the correct amount of Stamp Duty payable.

Unless all of the above-mentioned conditions are satisfied (in addition to the conditions specified in the specific provision of the SDCA 1999 under which the repayment claim was made), Revenue may not make the repayment to the person.

Where Revenue determines that any of the conditions are not satisfied in relation to a repayment claim, section 159A(4) SDCA 1999 provides that they must decide to refuse the repayment claim and notify the claimant in writing of the decision and the reason(s) for that decision.

Any person who disagrees with a decision by Revenue to refuse a claim for a repayment of Stamp Duty under section 159A(4) SDCA 1999 may, in accordance with section 159A(5) SDCA 1999, appeal the decision to the Appeal Commissioners in accordance with **section 949I of the Taxes Consolidation Act 1997** (TCA 1997) within 30 days after the date of the notification by Revenue of the decision to refuse the repayment claim. Revenue will advise the claimant of their right to appeal the decision in the notification.

The Tax Appeals Commission (TAC) is the body responsible for receiving appeals. The contact details of the TAC are:

Postal Address:	2nd Floor, Fitzwilliam Court, Leeson Close, Dublin, DO2 YW24.
Secure email address:	info@taxappealsireland.ie
Website:	www.taxappeals.ie
Telephone:	+353 (0)1 662 4530

Guidance on the appeals process is available in the Tax and Duty Appeals Manual.

It is important to note that the burden of proof in making such an appeal rests on the Appellant, who must demonstrate that Revenue was incorrect to refuse their repayment claim. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners,* Charleton, J. stated the following:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."[3]

Finally, any person who claims a repayment of Stamp Duty should ensure that they retain appropriate records in support of their claim.

Example

Sarah purchased land in Co. Kilkenny for €100,000 on 26 October 2019. The deed of transfer in relation to the purchase was executed on 16 November 2019. On behalf of Sarah, her solicitor filed a Stamp Duty return in relation to the deed of transfer and paid €7,500 Stamp Duty in relation to same on 5 December 2019. Due to issues with the land, Sarah instructed her solicitor not to register the transfer with the Land Registry.

On 22 February 2024, Sarah realised that she had not enquired with her solicitor as to whether she was entitled to a refund of the Stamp Duty paid in relation to the deed of transfer back in 2019. She asked her solicitor to request from Revenue a repayment of the €7,500 Stamp Duty paid. Her solicitor amended the original Stamp Duty return using the original Document ID on 27 February 2024, using a land value of €0, which generated a repayment figure of €7,500.

Under section 159A SDCA 1999, Revenue was obliged to decide to refuse Sarah's claim for repayment because the claim was made more than 4 years after 16 December 2023 (being 4 years from the latest date by which the instrument was required to be stamped). For Revenue to repay the Stamp Duty, the claim must have been made before 16 December 2023.

4 Interest payable on certain repayments of Stamp Duty

Where Stamp Duty is to be repaid to a person, interest on the repayment may be payable in accordance with **section 159B SDCA 1999.**

Section 159B(2) SDCA 1999 provides for interest to be paid to a person who is entitled to **a repayment** of Stamp Duty in accordance with any provision of the SDCA 1999 **and** has made a **valid claim** (see section 159A(3)) in respect of the repayment to Revenue in either of the following circumstances:

1. The repayment is due to a mistaken assumption in the operation of Stamp Duty on the part of Revenue.
2. Where (1) does not apply, the repayment has not been made to the person within 93 days of that person making the valid claim in respect of the repayment to Revenue**.**

[3] **Menolly Homes Ltd v. Appeal Commissioners** [2010] IEHC 49, Charleton J., paragraph 22.

In situation (1) above, interest will be calculated at the rate of 0.011% for each day or part of a day from the date that the Stamp Duty was paid until the date the repayment is made.

In situation (2) above, the amount of interest will be calculated at the rate of 0.011% for each day or part of a day from the date the valid claim was made to Revenue until the date the repayment is made.

For the purposes of the section, the term **repayment** has the same meaning it has in section 159A SDCA 1999 and refers to a repayment of Stamp Duty, including any interest charged, surcharge imposed or penalty incurred, under any provision of the SDCA 1999. The amount of interest payable will be calculated on each of these amounts to be repaid, where relevant.

Interest will not be payable where:

- the contrary intention appears in the legislation. For example, **section 83DB(10)(c))** SDCA 1999 expressly provides that a repayment of Stamp Duty under that section will not carry interest (section 159B(2)),
- section 960H(4) TCA 1997 applies. Section 960H TCA 1997 authorises Revenue to offset a repayment of tax and interest due to a person against any outstanding tax liability of the person before making the repayment (section 159B(2)), or
- if it were to amount to a payment of €10 or less (section 159B(3)).

In accordance with section 159B(4) SDCA 1999, income tax will not be deductible on any payment of interest under the section and such interest will not be included in the income of a person for the purposes of the Tax Acts**.**

5 Position prior to 18 December 2023

Sections 152, **159A** and **159B SDCA 1999** were amended by the Finance (No.2) Act 2023, which was enacted on 18 December 2023. The application of these provisions prior to this date is summarised below.

5.1 Section 152 SDCA 1999: Allowance for misused stamps

This section provided for a situation in which any person had *"inadvertently used, for an instrument liable to duty, a stamp of greater value than was necessary"* or *had "inadvertently used a stamp for an instrument that was not liable for any duty".*

In such circumstances, the person could make an application to Revenue within 4 years of the date the instrument was stamped, and request that the stamp be cancelled or allowed as spoiled.

Effectively, this meant that if a person made an error in relation to the value of a stamp used, the person could make an application to Revenue within 4 years and request a repayment of the relevant amount of Stamp Duty. This 4-year time limit was introduced in Finance Act 2012 for instruments executed on or after 7 July 2012.

5.2 Section 159A SDCA 1999: Time limits for claiming a repayment

This section provided for a 4-year time limit in which a person could make a **valid claim** for a repayment of Stamp Duty. This time limit took effect from 31 October 2003. The 4-year time limit applied from:

- the date the instrument was stamped,
- the date the statement of liability was delivered to Revenue,
- the date the transfer order referred to in section 78B SDCA 1999 was entered, or
- the date the person achieved the standard in the case of Stamp Duty relief for young trained farmers under section 81AA SDCA 1999.

The term **valid claim** took its meaning from section 159B SDCA 1999 (see below), which section provided for interest to be paid on a repayment of Stamp Duty in certain circumstances.

Subsection (1A) was inserted into section 159A by Finance Act 2018 and allowed for any person aggrieved by a Revenue decision to refuse a claim for repayment to appeal to the Appeal Commissioners in accordance with section 949I TCA 1997. The time limit for doing so was 30 days after the date of the notification of the decision to that person.

5.3 Section 159B SDCA 1999: Interest on repayments of Stamp Duty

Section 159B(3) SDCA 1999 provided for interest to be paid to a person who was entitled to **a repayment** of Stamp Duty in respect of a **relevant document**[4] and had made a **valid claim** in respect of the repayment to Revenue in either of the following circumstances:

1. The repayment was due to a mistaken assumption in the operation of Stamp Duty on the part of Revenue.
2. Where (1) did not apply, the repayment had not been made to the person within 93 days of that person making the valid claim in respect of the repayment to Revenue**.**

In situation (1) above, interest was calculated at the rate of 0.011% for each day or part of a day from the date that the Stamp Duty was paid until the date the repayment was made.

In situation (2) above, the amount of interest was calculated at the rate of 0.011% for each day or part of a day from the date the valid claim was made to Revenue until the date the repayment is made.

[4] The term **relevant document** referred to an instrument, a statement of liability or a transfer order entered in a securities settlement system under section 78B SDCA 1999.

Section 159B(4) SDCA 1999 provided that a **valid claim** was one which had been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made and that all of the information that was reasonably required by Revenue to assess the claim had been provided to Revenue.

The term **repayment** was defined to include any interest, surcharge or penalty imposed which had been paid by a person in addition to the Stamp Duty paid.

Interest was not payable where section 960H(4) TCA 1997 applied (section159B(3)) or if it were to amount to a payment of €10 or less (section 159B(5)).

Section 159B(6) SDCA 1999 provided that Revenue would not repay any Stamp Duty or pay any interest unless it was expressly provided for in the SDCA 1999 or in section 941 of the TCA 1997.

Section 159B(7) provided that income tax would not be deductible on any payment of interest under the section, and the interest would not be included in the calculation of any income for the purposes of the Tax Acts.