

Facts and circumstances affecting duty to be set forth in instruments, etc. SA1891 s5 8.— (1) Except as provided for in this section, all the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument.

(2) Where it is not practicable to set out all the facts and circumstances, to which subsection (1) refers, in an instrument, additional facts and circumstances which—

- (a) affect the liability of such instrument to duty,
- (b) affect the amount of the duty with which such instrument is chargeable, or
- (c) may be required from time to time by the Commissioners,

are to be fully and truly set forth in a statement which shall be delivered to the Commissioners together with such instrument and the form of any such statement may from time to time be prescribed by the Commissioners.

(3) Any person who—

- (a) fraudulently or negligently executes any instrument, or
- (b) being employed or concerned in or about the preparation of any instrument, fraudulently or negligently prepares any such instrument,

in which 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, are not fully and truly set forth in the instrument or in any statement to which subsection (2) relates, shall incur a penalty of—

- (i) £1,000, and
- (ii) the amount, or in the case of fraud, twice the amount, of the difference between—

(I) the amount of duty payable in respect of the instrument based on the facts and circumstances set forth and delivered, and

(II) the amount of duty which would have been the amount so payable if the instrument and any accompanying statement had fully and truly set forth all the facts and circumstances referred to in subsections (1) and (2).

(4) Where any instrument was executed neither fraudulently nor negligently by a person and it comes to such person's notice, or it would have come to such person's notice, if such person had taken reasonable care, that such instrument or any statement to which subsection (2) relates does not fully and truly set

forth all those facts and circumstances then, unless the Commissioners are informed of the error without unreasonable delay, such matter shall be treated, for the purposes of subsection (3), as having been negligently done by such person.

(5) Where an instrument operates, or is deemed to operate, as a voluntary disposition inter vivos under section 30 or 54 such fact shall be brought to the attention of the Commissioners in the statement delivered under subsection (2) and such statement shall contain a statement of the value of the property, or in the case of a lease the minimum amount or value referred to in section 54, and where the requirements of this subsection are not complied with any person who executes such instrument shall for the purposes of subsection (3) be presumed, until the contrary is proven, to have acted negligently.

(6) Where such person as may be liable to a penalty under subsection (3) is in doubt as to the application of law to, or the treatment for tax purposes of, any matter to be contained in an instrument, or in a statement to which subsection (2) relates, to be delivered by such person to the Commissioners, such person may deliver the instrument and, where applicable, the statement to the best of such person's belief as to the application of law to, or the treatment for the purposes of stamp duty of, that matter but such person shall draw the attention in writing of the Commissioners to the matter in question in the instrument or statement, as appropriate, by specifying the doubt and, if such person so does, he or she shall be treated as making a full and true disclosure with regard to that matter.

(7) Subsection (6) shall not apply where the Commissioners are not satisfied that the doubt specified under that subsection was genuine and are of the opinion that the person who specified the doubt was acting with a view to the evasion or avoidance of tax and in such a case the person shall be deemed not to have made a full and true disclosure with respect to the matter in question.