

# Requirement for Security Bonds

## Section 960S TCA 1997

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## 1. Introduction

1.1 S. 126 Finance Act 2012 inserted Section 960S into the TCA 1997. This provided that the Collector-General may require a person carrying on a business to provide security for taxes which may become due in the future where –

- **Revenue has concerns that certain fiduciary taxes (Employer's Income Tax/PRSI/USC/LPT, VAT, RCT deducted at source), will not be paid, and/or**
- **Such taxes are not paid within 30 days of the due date.**

**Amendment:** S. 93 Finance Act 2014 amended Section 960S TCA 1997 as follows: Section 960S of the Principal Act is amended – (a) in subsection (1) by deleting the definitions of “business”, “connected person” and “management of the business”, (b) by substituting the following for subsection (2):

“(2) The Revenue Commissioners may, where it appears requisite to them to do so for the protection of the revenue, require a person carrying on a business, to give security, or further security, of such amount and in such manner and form as they may determine, for the payment of any tax which is, or may become, due from that person from the date of service on that person of a notice in writing to that effect.”, and (c) in subsections (3) and (4) by substituting “Revenue Commissioners” for “Collector-General” in each place.

Full amended version of Section 960S is contained in [Appendix 1](#).

1.2 Section 960S TCA 1997, as amended, allows the Revenue Commissioners to seek a Bond from a business where there are concerns that the tax to be paid in future may not be forthcoming. This is particularly relevant in cases where an entity or sole trader ceases to trade leaving a substantial Revenue debt and seeks to re-commence trading at a later date. The likelihood of future revenues being at risk will be established based on the business compliance history and case-working outcomes, together with any relevant information available on the case.

1.3 This legislation also gives the Revenue Commissioners the power to seek additional Bond security to secure an increased level of tax at risk. Further security may be required where the quantum of tax returns being made by the customer has increased and the amount of the original Bond would not now be sufficient to cover the tax at risk in the business.

- 1.4 A request for such a Bond has effect from the date of service on the taxable person. The request must be by way of notice in writing. The request should be accompanied by a copy of Section 960S TCA, 1997 and a blank Form of Guarantee. Where a Bond is provided to Revenue within 30 days from the service of the request for Bond security, Revenue will accept that the taxable person has complied with the requirement in the notice.

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

[...]

- 1.5 It is an offence under Section 1078(2) TCA, 1997 for the taxpayer to continue to engage in business unless:
- (a) the required security is provided **or**
  - (b) an appeal has been lodged with the Tax Appeal Commission.

## 2. Purpose

- 2.1 The purpose of this guideline is to give guidance to caseworkers and managers as to:
- Criteria for Determining Case Suitability for Bond Application
  - Procedures for Requesting Security
  - Taxpayer's Obligations
  - Right of Appeal
  - Enforcement

## 3. Types of Bonds acceptable to Revenue

- 3.1 The typical Bond to be requested by caseworkers is by way of a guarantee from a financial institution that in the event of a tax debt arising for the taxpayer, the financial institution will guarantee to make a payment to Revenue for an amount which is covered in the Bond.
- 3.2 If the taxpayer is unable to obtain a Bond as outlined in Paragraph 3.1 above, then the Revenue Commissioners' office will accept a Bank Draft for an equivalent sum.
- 3.3 The procedures for drawing down on such security in the event of non-compliance in relation to the fiduciary taxes are set out in [Paragraph 11](#) of this manual.

## 4. Criteria for Determining Case Suitability for Bond Application

4.1 Cases which show serious non-compliance and Phoenix or Commonality characteristics will generally be those to be considered for a Security Bond requirement, i.e.

- a) A previous Revenue debt  $\geq$  €50,000 **and**
- b) One or more tax returns\* and / or payments outstanding for 30 days or more.

(\* Monthly/Annual Return of Employer Income Tax/PRSI/USC/LPT, RCT30/35, VAT3).

## 5. Procedures for Requesting Security

5.1 The following procedures will assist caseworkers in

- Calculating the value of the Bond
- Obtaining management approval (Principal Officer level) for requesting a Bond
- Issuing the Notice of Requirement for a Bond, and
- Updating appropriate records.

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## 6. Taxpayer's Obligations

6.1 The taxpayer is obliged to submit the Bond, as requested, immediately. However, Revenue will accept that the taxpayer has complied with this requirement if the Bond is submitted within **30 days** of the date of the notification.

6.2 The taxpayer may contact the Authorised Officer (Principal Officer) in **writing** at any time to request further information on the requirement to provide a Bond or the sum specified in the Bond. The Authorised Officer should reply to the taxpayer outlining the reasons for the Bond or the value of the sum specified.

6.3 The legislation confers the taxpayer's right to lodge a formal Appeal against the requirement to provide security within 30 days of the original Request for a Bond – See [Paragraph 7](#) below.

6.4 It is an offence under Section 1078 of the Taxes Consolidation Act, 1997 (TCA, 1997) for a taxpayer to trade after receiving a notification unless the Bond as per [Paragraph 3](#) above has been submitted to the Revenue Commissioners **or** an Appeal against the requirement for the Bond has been lodged directly to the Tax Appeals Commission.

## 7. Appeals

Right of Appeal, the enactment of the Finance (Tax Appeals) Act 2015 which came into operation on 21<sup>st</sup> March 2016 established the Tax Appeals Commission (TAC). A fundamental change to the appeals process is the requirement that all appeals under Section 960S TCA 1997 are to be made directly to the TAC and **not** to Revenue in the first instance. The TAC will have sole responsibility for accepting or refusing appeals.

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### 7.1 Appeals Provision

Section 960S TCA 1997 provides that where a Notice for Security Bond Requirement is served on a person in accordance with subsection (3), the person, on giving notice to the Tax Appeals Commission within the period of 30 days from the date of the service of the notice, may appeal the requirement to provide any security under subsection (2) to the Tax Appeals Commissioner (TAC).

As outlined in Paragraph 6 - the taxpayer has 30 days from the date of the service of the Notice for Security Bond Requirement, to lodge an Appeal directly to the Tax Appeals Commission (TAC). The onus is on the taxpayer to ensure the Appeal is received within the specified 30 days as there is no provision for a late Appeal.

If an Appeal is lodged, no enforcement action for failure to comply with the Notice for Security Bond Requirement is to be undertaken. However, the caseworker can demand and enforce any tax debts in the normal fashion while the Appeal is considered.

### 7.2 Role of Revenue Legislation Services (RLS) Division

The role of RLS relates mainly (but not entirely) to policy, drafting and interpretation of tax, duty and excise legislation. In Appeal cases, the relevant RLS Division will, as necessary support the C-Gs in the presentation of such Appeals. Where support or assistance is required, it is likely to be more effective if sought at an early stage – to allow for advice regarding how the case should be approached before it is heard by the Tax Appeals Commission.

To ensure that the full facts are presented and that they can be fully considered by the relevant RLS Division or other area, all requests for advice or assistance should be made in writing, be researched as fully as possible and include the C-G's Office opinion on the issue in dispute.

### 7.3 Office of the Ombudsman

The Office of the Ombudsman may not examine a complaint in a matter that is the subject of an 'open Appeal' to be heard before the Tax Appeals Commission. In practice, where a complaint is lodged with the Ombudsman in relation to an issue that is also the subject of an 'open Appeal', the fact that the issue is the subject of an 'open Appeal' should be brought to the attention of Revenue's Ombudsman Liaison Office when responding to that liaison officer. The liaison officer will then bring the matter to the attention of the Ombudsman.

## 8. Enforcement

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## 9. Recording existence of Financial Institution Guarantee/Bank Draft

9.1 Where a 'Bond Guarantee' from a financial institution or a Bank Draft for an equivalent sum is provided directly to Revenue by the taxpayer -

- (1) The original Guarantee/Bank Draft must be forwarded to the C-G's Payment Accounting Unit immediately for safekeeping
- (2) A copy of the Guarantee/Bank Draft must also be retained by the original requesting unit.

## 10. Lifetime of Bond

10.1 The lifetime of a Bond is not limited in legislation and consequently there is no expiry date on the form.

10.2 If a business ceases to trade and provided that all returns and payments are up-to-date, the Bond can be returned to the taxpayer.

10.3 In the event that the business which provided the Bond subsequently requests that the Bond be returned to them while they continue to trade, e.g. on hardship grounds, the business should be advised that trading without the Bond is in breach of Section 960S(4) TCA, 1997 and is an offence. In general, a Bond should not be returned to a business that intends to continue trading.

10.4 However, if it is decided that a Bond is no longer required, the customer should be notified accordingly, and the Bond should be returned.

## 11. Offset of Security Bond to Arrears of Tax

- 11.1 If a taxpayer falls into arrears of any fiduciary tax, the Bond can be drawn down against the outstanding tax. A **Final Demand** letter must have issued in respect of those taxes and the demand period must have elapsed before the Bond can be drawn down.

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[...]



## Appendix 1: Legislation

### Section 960S Taxes Consolidation Act, 1997

#### “960S.—

(1) In this section- ‘tax’ means-

- (a) income tax deductible in accordance with Chapter 4 of Part 42 and any regulations made under that Chapter,
- (b) tax deductible in accordance with Chapter 2 of Part 18 and any regulations made under that Chapter,
- (c) Universal Social Charge chargeable in accordance with Part 18D, or
- (d) Value Added Tax chargeable in accordance with the Value-Added Tax Acts, or
- (e) Local Property Tax (LPT) deductible in accordance with the Finance (LPT) Act 2012.

(2) The Revenue Commissioners may, where it appears requisite to them to do so for the protection of the revenue, require a person carrying on a business, to give security, or further security, of such amount and in such manner and form as they may determine, for the payment of any tax which is, or may become, due from that person from the date of service on that person of a notice in writing to that effect.

(3) Where a requirement under subsection (2) arises, the Revenue Commissioners shall cause a notice in writing to that effect to be served on the person.

(4) Where a person is served with a notice in accordance with subsection (3), it shall be an offence for that person to engage in business until such security, or further security, is provided to the Revenue Commissioners.

(5) A person aggrieved by a notice served on that person in accordance with subsection (3), may appeal the notice to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of that notice. **(The ‘Notice of Appeal’ form, which is available on the Tax Appeals Commission’s website [www.taxappeals.ie](http://www.taxappeals.ie) contains the address to which an appeal is to be sent)**

(6) Where a person gives a notice of appeal in accordance with subsection (5), subsection (4) shall not apply until the Tax Appeals Commission determine the matter.

### Section 1078 Taxes Consolidation Act 1997

**Section 1078(2) of the Principal Act is amended by inserting the following after paragraph (f):**

**“(fa) fails to comply with the requirement in section 960S(4),”**

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[...]