

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2018 edition

Part 38

Returns of Income and Gains, Other Obligations and Returns, and Revenue Powers

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Part 38 Returns of Income and Gains, Other Obligations and Returns, and Revenue Powers

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PART 38 RETURNS OF INCOME AND GAINS, OTHER OBLIGATIONS AND RETURNS, AND REVENUE POWERS

CHAPTER 1 *Income tax: returns of income*

Overview

Chapter 1 of **Part 38** contains the provisions relating to the making of returns for income tax purposes. **Section 876** provides that a person chargeable to income tax must give notice to an inspector of this fact where he/she has not already submitted a return of income. **Sections 877 to 881** provide for the various returns of income and statements of profits which are required to be made by persons chargeable to income tax, agents, partnerships, married couples and civil partners..

Section 871 authorises the combination of any return relating to chargeable gains or capital gains tax with a return relating to income or income tax.

Reference should be made to **Chapter 3 of Part 41A** as regards the obligation to make a return of income for Self Assessment purposes.

The provisions of **section 895(6)** should be noted concerning the obligation to include in an income tax return details of foreign bank, etc accounts opened by the person making the return.

Reference should also be made to **Part 47** for details of penalties for failure to make certain returns and penalties for fraudulently or negligently making incorrect returns, etc. **Part 47** also contains provisions imposing a surcharge for the late submissions of returns (**section 1084**) and providing for the publication of names of tax defaulters (**section 1086**) (this includes persons who have been successfully prosecuted for failure to make a return).

876 Notice of liability to income tax

Where a person has not been notified by the inspector to submit, in relation to a year of assessment, either —

- a statement in writing containing that person's profits or gains chargeable to income tax, or
- a return of that person's income on the Revenue prescribed forms for that purpose,

then, that person, if chargeable to income tax for a year of assessment, must notify – not later than one year after the end of that year of assessment – their inspector that they are so chargeable.

However, it is important to note in the context of Self Assessment that sending such a notification to the inspector does not remove from the person the obligation (under **Chapter 3 of Part 41A**) to submit a tax return for Self Assessment purposes.

877 Returns by persons chargeable

Summary

This section requires a person, if requested to do so by an inspector, to submit, within a specified time limit and in relation to a specified period, a statement of that person's

profits or gains chargeable to income tax.

Chapter 3 of Part 41A should be consulted as regards the making of a return for Self Assessment purposes.

Details

On request by an inspector, any person chargeable to income tax must submit, within the time limit and for the period specified in the inspector’s notification, a signed statement containing the amount of that person’s profits and gains from all sources chargeable to tax according to the respective Schedules. (1)

The statement must contain a declaration that — (3)

- the amounts contained in the statement are correct as estimated,
- only legitimate tax deductions have been claimed, and
- all sources of income have been properly described.

The statement must not include interest or other annual payments which are chargeable to tax in the hands of another person. (4)

A person requested to file a statement of income chargeable under Schedule D or E must do so in the format requested by the inspector irrespective of whether or not that person is chargeable to income tax under those Schedules. (5)(a)

Where a person fails to submit the statement of income chargeable under Schedule D or E as so requested, the normal penalties (see **Part 47**) for failure to make certain returns, etc are supplanted in favour of a maximum penalty of €5 if that person proves that their income is not chargeable to income tax under Schedule D or E. (5)(b)

878 Persons acting for incapacitated persons and non-residents

Summary

This section provides that an inspector may require any person acting for an incapacitated person or for a non-resident person to deliver a statement of income for the person on whose behalf that person acts.

Details

A person (for the purposes of this note called an “agent”) acting on behalf of either — (1)

- an incapacitated person, or
- a non-resident person,

must, if requested to do so by an inspector, submit within the time limit specified by the inspector, a statement of the incapacitated or non-resident person’s profits or gains on which there is a charge to income tax. Such a statement must include the details required (including the prescribed declaration) to be included in a statement required in accordance with **section 877**.

This statement must be submitted to the agent’s tax district.

Where two or more agents are obliged to submit the statement of income on behalf of an incapacitated or non-resident person, then — (2)

- only one statement covering all the income need be submitted and that statement may be submitted by the agents jointly or by any one of them,
- each agent, when requested to do so by an inspector, may submit the statement on behalf of an incapacitated or non-resident person to the district or districts in which the agent is chargeable and state in which district they wish to be assessed

- on behalf of the incapacitated or non-resident person, and
- if the tax district in which the agent is assessed on behalf of the incapacitated or non-resident person is the same as the agent’s own tax district, then one assessment may issue to collect the tax due on both persons.

879 Returns of income

Summary

An inspector may by notice request an individual to deliver a return of the various sources of income and the amounts derived from each source of income in any tax year. The income to be returned is to be computed in accordance with the provisions of the Income Tax Acts.

Chapter 3 of Part 41A should be consulted as regards the making of a return for Self Assessment purposes.

Details

A “prescribed form” is the form prescribed by the Revenue Commissioners for the purposes of making a tax return for a tax year. Such form is to be, as far as possible, framed so as to elicit sufficient information as will enable an individual to make only one return of his/her income from all sources for that tax year. (1)

An inspector may request an individual to make a tax return – on the form designed by the Revenue Commissioners for this purposes – for a tax year and such return is to show — (2)

- all the sources of the individual’s income for that tax year,
- the amount of income from each source, and
- any information, accounts, statements and other details requested in the form.

The information, accounts and statements requested would include the financial information, accounts or statements from which the adjusted profits and losses were computed and would include balance sheet details where prepared.

The “other details” requested generally includes items such as personal status, mortgage interest details, details of medical insurance premiums, details of capital allowances, etc. The purpose of this is to enable a proper assessment be made.

The amount of income to be shown on a tax return is the income computed in accordance with the Income Tax Acts. In the case of income from a trade or profession the computation is based on the profits of the trade or profession for a 12 month period ending on a date within the tax year. [For the short tax year 2001, the computation is based on 74% of those profits.] (3)

A person who submits a tax return on the Revenue designed tax return form is deemed to have done so on foot of a request from an inspector. This ensures that, where a person delivers a return in the prescribed form, it will not be necessary, in any penalty proceedings, to prove that the return was made pursuant to a notice under this section. (4)

880 Partnership returns

Summary

An inspector may by notice require the precedent acting partner in a partnership to deliver a return in the prescribed form showing the sources of partnership income, the amount derived from each source, and such further particulars as the notice may require. The income to be returned is to be computed in accordance with the provisions of the

Income Tax Acts.

Chapter 3 of Part 41A should be consulted as regards the making of partnership returns in the context of Self Assessment.

Details

A “precedent partner” has the meaning set out in **Part 43**, and the word “prescribed” (1) means prescribed by the Revenue Commissioners.

This section requires the precedent partner of any partnership, if requested to do so by an inspector, within a specified time limit and in relation to any year of assessment, to return in the prescribed form — (2)

- all the partnership’s sources of income,
- the amount of income from each source, and
- any information, accounts, statements and other details requested on the prescribed form.

The information, accounts and statements requested would include the financial information, accounts or statements from which the adjusted profits and losses were computed and would include balance sheet details where prepared.

The amount of income from any source to be shown on a tax return is the income computed in accordance with the Income Tax Acts and is for a year ending on the 31st December or, in the case of income from a trade or profession, the income to be shown on the return is the income of an account, or where there is more than one account, accounts, made up to a date in that tax year. (3)

An account made up for a period of one year to a date falling in the period from 1 January 2002 to 5 April 2002, is deemed to be an account made up to a date within the short tax year 2001 as well as being an account made up to a date in the tax year 2002.

A person who submits a tax return on the Revenue prescribed tax return form is deemed to have done so on foot of a request from an inspector. This ensures that, where a person delivers a return in the prescribed form, it is not necessary, in any penalty proceedings, to prove that the return was made pursuant to a notice under this section. (4)

Where, on request by an inspector, the precedent partner of any partnership is required, within the time limit and in relation to the period specified in the inspector’s notice, to submit a signed statement of the amount of the profits or gains of the partnership, the statement must list all the sources of the profits or gains and the Schedules under which each source is chargeable to tax. (5)

The statement to be made by the precedent partner must carry a declaration that — (6)

- the statement properly describes the sources of income of the partnership,
- the income from each source is correct, and
- the deductions which have been claimed are only those to which there is a legal entitlement.

881 Returns by married persons/civil partners

Summary

Where in accordance with **section 877** an individual is required to make a return of income which includes income of a spouse or civil partner, the individual may within 21 days notify the inspector that the spouse or civil partner has income. Where an inspector has been so notified, the spouse or civil partner may be required by the inspector to make a return of his/her total income.

Details

Where under *section 877* an individual is required to make a return of income which (1) includes income of his/her spouse or civil partner, that individual may, within 21 days of receiving the notification from the inspector, notify such inspector that his/ her spouse or civil partner has income.

Where an inspector — (2)

- is notified by the individual that his/her spouse or civil partner has income, or
- is of the opinion that the individual's spouse or civil partner has income,

the inspector may request a statement, similar to that required by *section 877*, from the spouse or civil partner (irrespective of which spouse or civil partner is chargeable to income tax in respect of that income).

Where a couple has elected for joint assessment, the spouse or civil partner responsible (3) for submitting the tax return must show the income of both spouses or civil partners in the tax return. This applies even in a situation where that one spouse or civil partner has complied with the procedure outlined in the preceding paragraph.

CHAPTER 2

Corporation tax: returns of profits

Overview

This Chapter provides for the making of certain returns by companies for corporation tax purposes. The returns in question are —

- information to be supplied by new companies (*section 882*),
- notice of liability to corporation tax (*section 883*), and
- return of profits (*section 884*).

Reference should be made to *section 951* as regards the obligation to make a return of income for Self Assessment purposes.

Reference should also be made to *Part 47* for details of penalties for failure to make certain returns and penalties for fraudulently or negligently making incorrect returns, etc. *Part 47* also contains provisions imposing a surcharge for the late submission of returns (*section 1084*), the restriction of certain claims for relief where a return is submitted late (*section 1085*) and for the publication of names of tax defaulters, including companies which have been successfully prosecuted for failure to make a return (*section 1086*),

882 Particulars to be supplied by new companies

Summary

The section obliges companies which are either incorporated in the State or carrying on business in the State, to furnish information. The information must be returned automatically within 30 days of commencing to carry on business in the State and within 30 days of any material change in information already given under the section. In addition, if an inspector requests information under the section it must be supplied within 30 days of the request.

The information which must be supplied includes the name and address of the company, its place of business and the nature of the company's business. Where an Irish incorporated company is not tax resident in the State, it must say where it is tax resident.

A company which is not Irish incorporated and is not tax resident in Ireland but which is carrying on a trade, profession or business in the State must identify its representative in the State.

Details

Definitions

“secretary” is defined as including a treasurer, auditor or receiver of certain bodies of persons and the representative or agent of a company which is not Irish tax resident. (I)

“settlor” and “settlement” take their meanings from *section 10*, settlor meaning any person by whom a settlement was made directly or indirectly.

“tax” (defined in the context of a company being resident for “tax” purposes in a territory other than the State) means tax corresponding to income tax or corporation tax.

“ultimate beneficial owners” in relation to a company are the individuals who control the company, i.e. the individuals who control the shares, voting rights or entitlement to distributions of dividends or assets on a winding up. In a situation where the person who controls a company does so in the capacity of the trustee of a trust it is necessary to look through the trust to a settlor or beneficiary or anybody who can reasonably expect to become a beneficiary of the trust under any scheme or arrangement.

“control” is construed in accordance with *section 432*.

Time limit for supply of information

The information required from an Irish incorporated company, or a company which commences to carry on a trade in the State, must be supplied within 30 days of — (2)

- the company commencing to carry on a trade, profession or business, wherever it is carried on, (a)
- there being a material change in information already furnished under this section, and (b)
- a notice requiring information is given to the company by an inspector. (c)

Information to be furnished

Every company incorporated in the State or which commences business in the State must furnish details of — (i)

- its name, (I)
- the address of its registered office, (II)
- the address of its principal place of business, (III)
- the name and address of its secretary, (IV)
- the nature of its trade, profession or business, (VI)
- the date of commencement of the trade, profession or business, (V)
- its accounting date, and (VII)
- any other information which the Revenue Commissioners consider necessary for the purposes of the Tax Acts. (VIII)

Companies which, although incorporated in the State, are not resident in the State must also furnish details of — (ii)

- the country of residence for tax purposes, (I)

Companies which are neither incorporated nor resident, but which carry on a business, in the State must furnish details of — (iii)

- the address of the company’s principal place of business in the State, (I)

- the name of the company’s representative, and (II)
- the date of commencement of the company’s trade, profession or business in the State. (III)

Notification to Companies Office

The Revenue Commissioners are permitted to advise the registrar of companies where a company has failed to fulfil its obligation to provide information. (3)

Application of the rules

The information obligations apply —

- to companies incorporated on or after 11 February, 1999, as on and from that date, and
- to companies incorporated before that date, from 1 October, 1999.

883 Notice of liability to corporation tax

Every company which has not made a return of its profits for an accounting period must, if it is chargeable to corporation tax, give notice to the inspector that it is so chargeable within one year after the end of the accounting period.

884 Returns of profits

Summary

A company may be required by notice served on it by an inspector or other officer of the Revenue Commissioners to make a return of its profits. The return must detail the profits from each source of income, charges, annual payments, distributions, management expenses, payments received under deduction of tax and all disposals and acquisitions of assets in the accounting period. If the company fails to make this return or makes an unsatisfactory return, an authorised officer may inspect, and take copies of or extracts from, the company’s accounts, books and records.

Sections 959I and 959K should be consulted as regards the making of a return for Self Assessment purposes.

Details

“return” includes any statement, declaration or list. (1)

By the serving of a notice by an inspector or other officer of the Revenue Commissioners, a company may be required within the time specified by the notice to deliver a return of — (2)

- the profits of the company, specifying the income from each source, detailing all disposals giving rise to chargeable gains or allowable losses, and giving particulars of charges on income,
- such information, accounts, statements, reports and further particulars relevant to the tax liability of the company or to the application of the Corporation Tax Acts to the company as may be required by the notice or specified in the prescribed form in respect of the return,
- distributions received from resident companies,
- annual payments made by the company from income not brought into charge to tax, and
- loans to participators in a close company that are treated as an annual payments.

The accounts which are to be included with a return are the accounts that are required by the notice to file the return, or as are specified in the prescribed form, of the return, (2A)

including any documents annexed to the accounts, as well as any supporting information, statements, reports, or further particulars, which contain sufficient information to enable the chargeable profits of the company to be determined.

A share for share exchange in the course of a company amalgamation or reconstruction (3) is not normally regarded as a disposal of shares giving rise to a chargeable gain or allowable loss. However, for the purposes of this section, such a disposal must be returned.

The notice may require a return of profits for any period during which the company was (4) within the charge to corporation tax, including particulars of distributions received in that period from resident companies.

Each return must include a declaration stating the return is correct and complete. (5)

The return must show the amount of income tax, if any, deducted from payments (6) received by the company.

The return may also require the inclusion of details of management expenses, capital (7) allowances and balancing charges which have been taken into account in determining the profits included in the return.

The return must give the details on the acquisition of assets acquired during the (8) accounting period that are required to be given under the capital gains tax legislation.

Where the company fails to deliver the return, or if the inspector is not satisfied with the (9)(a) & return, an authorised officer (being an inspector or other Revenue officer authorised by (b) the Revenue Commissioners in writing to exercise the powers conferred by this provision) may serve a notice or notices on the company requiring the company —

- to deliver to the inspector/authorised officer within the time specified in the notice copies of accounts (including balance sheets) of the company and a copy of the auditor's certificate in appropriate cases, and
- to make all books, accounts and documents in the possession or procurement of the company, which contain information as to profits, assets or liabilities of the company, available for inspection within a specified time.

The inspector or authorised officer may take copies, or extracts from those books, (9)(c) accounts and documents.

CHAPTER 3 *Other obligations and returns*

Overview

This Chapter imposes a number of obligations on taxpayers, such as the obligation to show tax reference numbers on receipts (*section 885*) and keep records (*section 886*). It also provides for the making by various persons of a wide range of returns of information to the Revenue (*sections 888 to 898*).

The returns required by *sections 888 to 898* (other than *sections 891A to 891D*) ostensibly require a notice to issue from an inspector before the person concerned is required to make the return. However, *section 894* shifts the onus for making these returns on to certain specified persons without the need for the issue of a notice by an inspector. *Section 894* does not supersede the provisions in the sections providing for the returns following receipt of a notice from an inspector. Where necessary an inspector

is still authorised to issue such notices.

The application in practice of *section 894* is governed by Statement of Practice SP-IT/1/92 “Returns of Certain Information – Third Party Returns” and regard should be had to its contents.

Section 895 (returns in relation to foreign accounts) and *896* (returns in relation to certain offshore products) are so designed in their own right as to require the automatic return of information rather than waiting for a request from an inspector.

Section 897 (returns of employees’ emoluments) operates only on request by an inspector.

Regard should also be had to the provisions of *Part 47* relating to penalties for false returns, etc.

885 Obligation to show tax reference number on receipts

Summary

This section does not impose an obligation to issue a receipt, invoice or other such document but where such a document issues, certain obligations follow. All receipts, invoices or other such documents relating to amounts of €7 or more must carry the issuer’s —

- tax reference number, or
- full name and address.

The section applies to professions and to trades providing a service only or a service which includes a supply of goods. The section does not apply to companies.

Details

A “business” is —

(1)

- a profession, or
- a trade consisting solely of the supply of a service, but includes such a trade part of which incorporates the supply of the goods in the course of the supply of the service (for example, service agent for machinery who supplies the parts required to carry out the servicing of the machinery).

The word “supply” in relation to goods or services has the same meaning as in the Value-Added Tax Consolidation Act 2010.

A “specified person” is defined so as to confine the application of the section to individuals and the precedent partner in a partnership. It should be noted that the terms of the section are not applied to companies which have obligations under company law to be on public record and are not in as good a position as individuals to keep their existence hidden.

A “tax reference number” is any of the following —

- the Personal Public Service Number (PPSN) stated on the certificate of tax credits and standard rate cut-off point issued to that person by an inspector (since copy certificates may be issued to an employer in respect of their employees it is necessary to provide that the quotation of a number on such an employee’s certificate does not meet the terms of the section),
- the reference number quoted on any return of income form or notice of assessment issued to a specified person by an inspector, and
- a specified person’s VAT registration number.

A specified person must quote — (2)

- his/her tax reference number (or one of them if he/she has more than one), or
- his/her full name and address (if he/she does not have a tax reference number)

on any document being an invoice, credit note, debit note, receipt, account, statement of account, voucher or estimate for €7 or more, issued in the course of business.

886 Obligation to keep certain records

Summary

Every person who —

- on his/her own behalf or on behalf of another person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable to tax under Schedule D,
- is chargeable to tax under Schedule D or F in respect of any other source of income, or
- is chargeable to capital gains tax in respect of chargeable gains,

must keep proper books and records so that correct returns of income may be made.

Details

“linking documents” are documents prepared as part of the process of making up (1) accounts and which show details of the calculations by means of which the books of the business may be connected to the professionally prepared accounts.

The definition of “records” is quite broad – it includes accounts, books of account, documents or any other data maintained manually or by electronic, photographic or other process, relating to —

- all sums of money spent and received in the course of carrying on a trade, profession or other activity and the purpose of such receipts and expenditure,
- all sales and purchases of goods and services where the carrying on of a trade, profession or other activity involves the purchase or sale of goods or services,
- the assets and liabilities of such trade, profession or other activity,
- the acquisition and disposal of assets which would be chargeable assets for capital gains tax purposes.

Every person who — (2)

- on his/her own behalf or on behalf of another person carries on a trade, profession or other activity the profits or gains of which are chargeable to tax under Schedule D,
- is chargeable to tax under Schedule D or F in respect of any other income, or
- is chargeable to capital gains in respect of chargeable gains,

is obliged to keep all records that are required to ensure a full and detailed tax return in respect of income tax, corporation tax and capital gains tax can be made. Also covered is the situation where the required records are kept on the taxpayer’s behalf. In such cases the ultimate responsibility for record-keeping remains that of the taxpayer.

Not alone must linking documents (for example, the nominal ledger) be kept, the section also requires that the records be kept on a continuous and consistent basis so that they will not, for example, be written from memory retrospectively or selectively. The expression “on a continuous and consistent basis” is also used in section 202(2) of the Companies Act, 1990.

The precedent partner in a partnership is to be the person who is responsible in relation

to record-keeping requirements.

The records are to be kept in written form, in either Irish or English or, if not in written form, in the form usually encountered in relation to computer-based accounting systems. The wording, apart from the reference to computer-type records, is taken from section 202(7) of the Companies Act, 1990. (3)

The records must be kept for a period of 6 years, or — (4)

- a greater period if the person has failed to make a return of income [in which case the time limit expires 6 years after the end of the year in which the return is made]. This is in line with Self Assessment rules and ensures that the period for retention of accounts runs from the end of the year of assessment in which the tax return is actually delivered to Revenue.
- where a transaction, act or operation is the subject of a investigation, inquiry, claim, assessment, appeal or proceedings which has already commenced, until such time as the investigation, inquiry, claim, assessment, appeal or proceedings has been concluded.

Where a person has an obligation either, on their own behalf or on behalf of another person, to maintain books or records in respect of a trade profession or other activity, this obligation subsists for periods up to 5 years from the date of cessation of the trade business or other activity.

The liquidator is responsible for keeping records in the case of a winding up of a company by a liquidator, and the directors are responsible for keeping records in the case of a company being dissolved, where no liquidator is appointed. (4A)

An executor or administrator of a deceased person shall also retain records for the required periods. (4B)

A penalty of €3,000 applies for non-compliance with the section but this is waived where no person is chargeable to tax in respect of the particular profits for the relevant year. (5)

886A Retention and inspection of records in relation to claims by individuals

Summary

This section imposes a statutory obligation on individuals wishing to make claims to tax reliefs to keep and preserve, for a minimum of 6 years, any supporting documentation. The obligation to keep and preserve documents can be satisfied by retention of the information in them.

Where a claim is made, failure to observe the obligation to keep and retain records will incur a penalty of €1,520. However, this penalty will not apply if the taxpayer produces other evidence to confirm the information which the records if retained would show.

Revenue will be able to subject any claim to detailed examination within a 4 year period and may call for any necessary documentation (either the originals or photocopies), of which copies or extracts may be made.

Details

Where an individual wishes to make a claim for tax relief for any year, the individual is to keep and preserve all such records as are requisite to make a correct and complete claim. (1)

The records which a taxpayer is required to keep and preserve are to be retained for the (2)

longer of 6 years or the period ending on the date when any enquiry made into the claim (see below) is completed.

Failure to keep and preserve records as required by the section incurs a penalty of €1,520. However, this penalty will not apply if the taxpayer produces other evidence to confirm the information which the records if retained would show. (3) & (4)

A Revenue Officer may enquire into a claim for relief, or an amendment of such a claim, on giving due notice within the 4 year period from the end of the year in which the claim, or the amendment, is made. (5)

Where a Revenue Officer gives notice of intention to enquire into a claim, the official may, at that or a later time, request any documentation in the claimants possession or power that may reasonably be required to determine if the claim is correct. (6)

In complying with a request for documentation an individual may submit photocopies but the Revenue Officer may insist on seeing the originals. (7)

Copies or extracts may be made by the Revenue Officer of any documentation submitted in support of a claim. (8)

887 Use of electronic data processing

Summary

This section provides that, if the Revenue Commissioners agree, records required for the purposes of certain taxation statutes may be generated, stored, maintained, transmitted, reproduced or communicated by any electronic, photographic or other process which meets the requirements of the Revenue Commissioners. A copy of any document which forms part of records so preserved is, subject to the rules of court, admissible in evidence in any civil or criminal proceedings to the same extent as the records themselves.

Details

“the Acts” are the Tax Acts (the Income Tax Acts and the Corporation Tax Acts), the Capital Gains Tax Acts, the Value Added Tax Consolidation Act 2010 and the enactments amending or extending that Act, the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act and Part VI of the Finance Act 1983 (which deals with residential property tax). Also included are any instruments made under any of these enactments. (1)

“record” is a record which a person is obliged by the Acts to keep, issue or produce for inspection, as well as any other written or printed material.

Records may be generated, stored, maintained, transmitted, reproduced or communicated for tax purposes by electronic, photographic or similar process which meets certain conditions — (2)

- that the process used provides a reasonable guarantee that the integrity of the record will not be interfered with from the time it is first generated as an electronic record,
- that the process allows the record to be displayed in an intelligible format or produced in a intelligible printed format,
- that access to any such display of the record or print out of the record be readily available, and
- that the process conforms to the information technology and procedural requirements set by Revenue.

The provision is made subject to Chapter 2 of Part 9 of the VAT Consolidation Act 2010

so as to ensure that for VAT purposes the provisions of this section do not overrule the specific VAT rules in that Chapter governing VAT invoices.

The Revenue Commissioners are given authority to publish in Iris Oifigiúil the information technology and procedural requirements which must be complied with by any process used by a person to store tax records electronically. (3)

The Revenue Commissioners also have the power to vary any such requirements which they may publish. (4)

Furthermore, the Revenue are given authority, if needed, to seek details (including details as to the software used) from persons who are storing tax related records electronically. Anyone who fails to supply the details is liable to a penalty of €3,000. (5)

A person who uses a process which does not comply with the various requirements as set out in this note will be treated as if the person failed to comply with the obligations under general tax law to keep tax records. Any such person will be liable to the same penalties as the person would be liable to if the person had failed to comply with any obligation in relation to the keeping of records. Excluded from the possibility of being open to any such penalty are cases where a person may be keeping records electronically in a way which does not conform with this section but who at the same time maintains a full set of records in accordance with the person's tax obligations in a physical form. (6)

In court proceedings records (within the meaning of the section) kept by electronic, etc means will be admissible in evidence in any such proceedings to the same extent as the actual records themselves, subject to any rules of court. (7)

The Revenue Commissioners can delegate their powers under the section to nominated officers. (8)

888 Returns, etc by lessors, lessees and agents

Summary

This section imposes an obligation on lessors (including former lessors), lessees and agents to provide, when required to do so by notice in writing from an inspector, information in relation to income chargeable to tax under Case IV or V of Schedule D.

The section also provides that the inspector may require similar details from any Minister of the Government, the Health Service Executive, a local authority or other statutory board, authority or similar body which makes a payment of rent or rent subsidy.

Additionally, agents are required to provide details in relation to income which, if it had arisen in the State, would be chargeable under Case V. This, in effect, means rental income from foreign property.

Details

“lease”, “lessee”, and “rent” have the meanings set out in *section 96*. (1)

“local property tax number” and “residential property” take their meanings from the Finance (Local Property Tax) Act 2012.

“Premises” means any lands, tenements and hereditaments, wherever situated.

The purpose of the section is to allow an inspector obtain certain details regarding rent or other such payments arising from or in respect of premises for the purposes of enabling him/her determine the amount of profit or gains to be assessed under Case IV or V of Schedule D, or Case III in respect of foreign properties. For this purpose, an inspector may request information from — (2)

- any lessor or former lessor of premises,
- any lessee, occupier or former lessee or occupier, of premises,
- any person who, as agent, manages premises or is in receipt of rent or other payments arising from premises, including foreign property,
- Ministers of the Government, the Health Service Executive, local authorities, and other statutory boards and authorities.

The information which may be requested includes —

- details of the rent or other payments,
- the address of the premises concerned,
- the LPT number of the premises (subject to a Commencement Order),
- the name and address of the landlord(s),
- the tax reference number of the landlord (subject to a Commencement Order),
- where the information is requested from a Minister of the Government, the Health Service Executive, a local authority, or another statutory board or authority, the tax reference number of that landlord,
- the terms of a lease,
- the details of rent subsidies, and
- any other particulars specified in the inspector’s notification.

In this section, a reference to a “tax reference number” means —

(3)

- where the landlord is an individual, their Personal Public Service Number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005), and
- as respects any other landlord, the reference number stated on any return form of income or profits, or notice of assessment issued by Revenue to that landlord.

Where a Minister of the Government, the Health Service Executive, a local authority, or another statutory board or authority makes a payment of rent or rent subsidy to a landlord, they shall request, before the day they make the payment, either the landlord’s tax reference number or confirmation from the landlord that he/she does not have a tax reference number. The landlord must comply with this request.

A person who manages premises or receives rent or other payments on behalf of another person must request that person’s tax reference number or confirmation from the person that he/she does not have a tax reference number. The person must comply with this request. (Subject to a Commencement Order).

If, on making their information return to an inspector, a Minister of the Government, the Health Service Executive, a local authority, or another statutory board or authority has requested but not received the landlord’s tax reference number, they must, unless they can otherwise provide it, state that they cannot provide the landlord’s tax reference number.

889 Returns of fees, commissions, etc. paid by certain persons

Summary

This section imposes an obligation on persons carrying on a trade or business to provide, when required to do so by notice in writing from an inspector —

- a return of all payments relating to services rendered by persons ordinarily resident in the State who are not employed in the trade or business, or
- a return of all periodical or lump sum payments made to persons ordinarily resident in the State in respect of copyright.

The section imposes a similar obligation on bodies of persons carrying on an activity which is not a trade or business.

Details

“tax reference number” has the meaning set out in *section 885*. (1)

References to payments for services include payments in respect of commissions of any kind and in respect of expenses incurred in the rendering of services.

The section also applies to payments in non-cash form (for example, exchange of goods, etc.).

Persons carrying on a trade or business must, when required to do so by an inspector, provide details of certain payments. The payments concerned are — (2)

- payments made in the course of the trade or business for services rendered by persons (excluding employees) who are ordinarily resident in the State,
- payments in connection with the formation, acquisition, development or disposal of the trade or business for services rendered by persons (excluding employees) who are ordinarily resident in the State,
- periodical or lump sum payments in respect of any copyright made to persons (excluding employees) who are ordinarily resident in the State.

Bodies of persons (including Ministers of the Government and statutory bodies) must, when required to do so by an inspector, also provide details of certain payments. The payments in this instance are — (3)

- payments made in the course of carrying on the activity for services rendered by persons (excluding employees) who are ordinarily resident in the State,
- periodical or lump sum payments in respect of any copyright made to persons (excluding employees) who are ordinarily resident in the State.

Where the trade, business or other activity is carried on by an unincorporated body of persons, the person responsible for providing the information to the inspector is the person who is, or performs the duties of, secretary. (4)

The return of information has to include — (5)

- the name, tax reference, business name and business or home address of the person who received payment,
- the amount of the payment,
- details of the services or rights in respect of which the payment was made, and
- the period over which the services were rendered.

The return under this section also includes payments made by the person or body of persons in the course of the trade, business or activity on behalf of another person. (6)

Excluded from the scope of the section are — (7)

- details of payments from which tax is deductible,
- details of payments to any one person which do not exceed €635 (in practice, this €635 limit is adjusted to €3,810 [see Statement of Practice SP-IT/1/92]),
- details of payments made in a year of assessment which ended more than 3 years before the notice was served by the inspector.

The penalty for failure to submit a correct return on time is €3,000. (8)

In proceedings for the recovery of penalties, a certificate from an officer of the Revenue Commissioners certifying that a return under this section has not been received is evidence until the contrary is proven. (10)

890 Returns by persons in receipt of income belonging to others

Summary

An inspector may require any person who is in receipt of money or value or profits or gains belonging to another person who is chargeable to tax (or would be chargeable to tax if resident in the State and not an incapacitated person) to make a return of the details of such money, value, profits or gains.

Details

Every person who is, in whatever capacity, in receipt of money, value, profits or gains belonging to another person who is chargeable to tax (or would be chargeable to tax on such income if resident in the State and not incapacitated) must, when requested to do so by an inspector, make a return of such income. (1)

The return must be on a prescribed form and contain — (2)

- a statement of all such money, value, profits or gains,
- the name and address of every person to whom such money, value, profits or gains belong,
- a declaration on whether the person to whom the money, value, profits or gains belong is over 18, a married woman, in a civil partnership, resident in the State or an incapacitated person.

The person requested to make the return must also give the name and address of any person with whom he/she is jointly in receipt of money, value, profits or gains belonging to another person.

Amounts under €635 belonging to any one person need not be returned (in practice, this €635 limit is adjusted to €3,810 [see Statement of Practice SP-IT/1/92]). (a)

891 Returns of interest paid or credited without deduction of tax

Summary

This section gives Revenue the power to obtain from banks and other concerns (including the Post Office Savings Bank) which pay or credit interest without deduction of income tax, information as to the recipients of such interest and the amounts paid or credited to them where such amounts in the return period exceed €65.

Details

Every person carrying on a trade (particularly banking) or business who, as part of that trade or business, receives and retains money and pays or credits interest on that money without deduction of tax must, when requested to do by an inspector, make a return of the interest so paid or credited. The inspector may also seek a return from any part of a trade or business. (1)

The return, which must be made within the time limit specified in the inspector's notification, must contain —

- the name and address of each person to whom interest was paid or credited, and
- the amount of such interest.

The section does not apply to credit unions except in relation to any interest paid or credited in respect of interest to which *subsection (1A) or (1B) of section 256* applies (i.e. DIRT exempt deposits for individuals aged 65 years or over and those who are permanently incapacitated where their income falls below certain limits. This was provided for in the Finance Act 2007). (1A)

Interest not exceeding €65 (in practice this amount is adjusted to €635 [Statement of (2)

Practice SP-IT/1/92]) to any one person in a year need not be returned and the inspector cannot seek details relating to a tax year ending more than 3 years before the date on which the inspector issues his/her request.

While the section allows an inspector to request information from any part of a trade or business, it also allows an inspector to request information from a branch or branches of a trade or business and any notice served on a manager or other person in charge of the branch(es) has the same effect as if it was served on the person carrying on the trade or business. Information given by a branch of a trade or business need not be returned with the information given by the person carrying on that trade or business. (3)

This section applies to the Post Office Savings Bank. (4)

The foregoing applies only to money received or retained in the State. (5)

A depositor may by notice in writing request a bank or other financial institution not to include interest paid or credited in a return of the Revenue Commissioners on the grounds that the person beneficially entitled to the interest was, at the time it was paid or credited, not resident in the State. (6)

If the bank or other financial institution is not satisfied that the person is non-resident, it may request an affidavit stating his/her name, address and the country in which he/she was resident at the time the interest was paid or credited.

If the person making the affidavit was not entitled to the interest when it was paid or credited, the affidavit must also state the name and address of the person who was so entitled and the country in which he/she was resident when the interest was paid or credited.

If the bank or other financial institution is satisfied that the person seeking not to have the interest paid or credited included in a return of the Revenue Commissioners was non-resident at the time the interest was paid or credited and that person declares that the person beneficially entitled to the interest at the time it was paid or credited is resident in the State, he/she must give the name and address of the beneficial owner.

Any person who pays interest is obliged to keep, for 6 years, details (and accompanying affidavits) of notices from depositors requesting that the interest not be returned to Revenue. The deposit holder must also give, when requested by Revenue, copies of such documents. (7)

891A Returns of interest paid to non-residents

Summary

This section links with the exemption from withholding tax on certain interest payments provided for in *section 246*. The exemption applies to certain interest payments to non-residents and this section requires the following details to be provided automatically to the Revenue Commissioners by the person paying the interest —

- the name and address of the recipient,
- the amount of interest paid in the chargeable period, and
- the country of residence of the recipient.

This information must be returned by the payer on or before the normal date for the submission of returns for the chargeable period in which the payment takes place.

Details

Definitions

“chargeable period” is defined in *section 321(2)* and effectively means — (1)

- (a) for a company, an accounting period, and
- (b) for any other person, a year of assessment.

“relevant interest” refers to interest exempted from withholding tax by virtue of *section 246(3)(h)* only.

“relevant person” means a company or a collective investment undertaking.

“specified return date for the chargeable period” has the same meaning as in *section 894(1)* and refers to the appropriate date for the submission of returns in respect of that chargeable period.

Return

Any relevant person who makes a payment of interest (relevant interest) which has been exempted from withholding tax by virtue of *section 246(3)(h)* must submit a return of information to the Revenue Commissioners. This return must be made on or before the specified return date for the chargeable period and must contain — (2)(a)

- the name and address of the recipient
- the amount of interest paid to that person in that chargeable period, and
- the country of residence of the recipient.

The provisions of *section 891* are disapplied in relation to these payments. *Section 891* itself imposes an obligation to return certain information regarding interest paid without deduction of withholding tax. It may not however apply to every circumstance in which the exemption provided for in *section 246(3)(h)* applies. Given that this section imposes the obligation to make the return of information in all such circumstances, there is no necessity for *section 891* to apply. (2)(b)

The penalty provisions in *sections 1052* and *1054* apply to each and every failure to submit the information return referred to in *subsection (2)(a)*. *Section 1052* imposes financial penalties for a failure to make an appropriate return and provides for a means of recovery of such penalties. *Section 1054* provides for additional penalties where the failure to comply with such obligations continues. (2)(c)

891B Returns of certain payments made by certain persons

Summary

This section is an enabling provision. It authorises the Revenue Commissioners to make regulations, with the consent of the Minister for Finance, to require financial institutions such as banks and assurance companies to make automatic annual returns to Revenue of the names and addresses of customers to whom they have made payments of interest and other profit type payments. The provision also applies to payments made by Government bodies.

Details

Definitions and Construction

The first two definitions identify the persons who may be required by regulations to make returns of payments made by them. These are assurance companies (including foreign companies) and financial institutions (the definition of financial institution (1)

covers banks, building societies, An Post, credit unions, etc).

“PPS Number” is an individual’s Personal Public Service Number.

“relevant payment” will be defined in regulations made under the section as they are made in respect of different types of institutions and different types of payment.

“relevant person” are all those persons and bodies that are potentially subject to the requirement to report the payments they make to other persons. This includes assurance companies, banks and other financial institutions, and Governmental bodies.

“specified person” is a relevant person to whom specific regulations made under the section actually affects. Provision is made for the specified person to be any relevant person or some group or class of a relevant person. It was possible to introduce automatic reporting for all persons at the same time and this provision was designed to facilitate the phasing in of the reporting requirement if necessary.

“State savings products” are savings products offered by the NTMA and include Post Office Savings Bank accounts, prize bonds, savings certificates and bonds, etc.

“tax” is defined as any tax provided for under the Tax Acts or the Capital Gains Tax Acts. This is designed to ensure that the various withholding and exit taxes that apply to investment products are caught by the reference in addition to income tax, corporation tax and capital gains tax.

“tax reference number”, in the case of an individual, is his or her Personal Public Sector Number and, in any other case, either the tax reference number contained on any assessment or return sent to the person or the person’s VAT registration number.

A number of construction provisions for both the section and any regulations made under the section are set out as follows: (2)

- Any amount credited rather than actually paid or any amount set off against any other amount are regarded as a payment.
- The amount of any payment is to be taken as the gross amount before any deduction of any tax.
- References in the section to regulations are to be construed as references to regulations made under *subsection (3)*.

Requirement to automatic report payments

The Revenue Commissioners are authorised to make regulations, having obtained the consent of the Minister for Finance, to provide for persons specified in the regulations to make a return to the Revenue Commissioners of the persons to whom they have made relevant payments and to include in such returns the person’s tax reference number. (3)

The matters which may be included in the regulations are (it is to be noted that the provision is permissive rather than mandatory): (4)

- Notifying person’s that they are required by the regulations to make returns.
- Setting the date for which a particular return is to be made (it may be necessary or desirable to fix different dates in respect of different types of specified persons).
- Requiring the returns to be sent to a particular Revenue office.
- Defining the payments to be covered by the regulations.
- Defining the persons or classes of persons in receipt of payments who are to be included in returns made under a particular set of regulations. This is intended to allow for some flexibility in relation to the type of persons who will be required to be reported.
- Setting out the rules to be applied by the reporting person in determining the identity (i.e. name) and place of residence or establishment of a person to be

reported.

- Setting out the details in respect of a payment (e.g. the amount of the payment or possibly some identification of the asset in respect of which the payment is made, e.g., bank account number or policy number) which are to be included in a return.
- Requiring persons subject to the reporting requirement to obtain tax reference numbers from persons with whom they are entering into a customer relationship which is likely to result in a payment subject to reporting. This requirement will be subject to such relations starting after a date to be set out in the regulations.
- Requiring customers to provide a tax reference number to specified persons where a specified person requests such a number.
- Defining records for the purposes of the regulations.
- Laying down rules governing the manner of keeping records and setting out time limits for the keeping of records.
- Requiring the production of records, etc, the provision of information, etc to authorised Revenue officers and requiring persons to give assistance to such officers and authorising such officers to make extracts or require copies of documents.
- Providing for such supplemental and incidental measures needed to allow persons subject to the regulations to fulfil their obligations and for the general administration and implementation of the regulations, including the delegation of authority and the authorisation of officers for specific purposes.

Regulations made under this section are to be laid before Dáil Éireann and to be annulled if a resolution to this effect is passed by Dáil Éireann. (5)

Audit

A power of entry to the premises of persons who are subject to the reporting requirement is provided to a Revenue officer authorised for the purpose by regulations. Entry is to be for the purposes of determining whether information included in a return is correct or whether information not included in a return was correctly not included. Such officers may also examine the procedures put in place by the person for the purposes of complying with the reporting obligation. (6)

Penalties

The penalties applicable under **section 898O** (that is, the penalties applied for failure to make a return, etc under the EU Savings Directive) to a failure to make a return under that section or to the making of an incomplete or incorrect return under that section are applied for the purposes of this section. This is a penalty on the person required to make the return not on an employee. The penalty is a civil penalty and is fixed at €19,045 and applies where the person without a reasonable excuse fails to make a return with a further €2,535 for each day the person continues to fail to make the return. (7)

A penalty is also provided for a person who fails to comply with a requirement of this section or of regulations made under the section. Any person who so fails will be liable to a civil penalty of €1,265.

Provision to avoid double reporting

The returning of information under more than one provision is avoided. (8) & (9)

Override of restriction on disclosure of information – Post Office Savings Bank Act 1861

Section 4 of the Post Office Savings Bank Act 1861 (which restricts the disclosure of information relating to deposits) will not apply to the disclosure of information required to be included in a tax return made under the regulations made under this section. (10)

891C Returns of certain information by investment undertakings

Summary

This section is an enabling provision. It provides for regulations to be made, with the consent of the Minister for Finance, for the automatic annual reporting to Revenue by investment undertakings of the values of the investments of certain unit holders.

Details

Definitions and Construction

While there is a substantial overlap between this section and *section 891B* in relation to the definition of certain terms, as this section is concerned with the reporting of values rather than payments, there are some important differences. (1)

“Investment Undertaking” takes its meaning from *section 739B(1)* but excludes a common contractual fund within the meaning of *section 739I* and an investment limited partnership within the meaning of *section 739J*.

“Unit” and “Unit holder” take their meaning from *section 739B(1)*.

References in the section to regulations are to be construed as references to regulations made under *subsection (3)*. (2)

Subsection (3) provides for the making of regulations to require investment undertakings to return information to the Revenue Commissioners on certain unit holders from a date not earlier than 1 January 2012, including the tax reference numbers of the unit holders from a date to be specified in the regulations. (3)

This subsection excludes from the requirement to report, any information that is liable to be included in a return under the provisions of the European Savings Directive. (4)

The provisions of *section 891B(4)* apply in relation to what the regulations may include with some modifications: (5)(a)

- *Subparagraph (i)* of *subsection (5)(a)* provides for the notification requirement in *section 891B(4)* to apply to an “investment undertaking” rather than a “specified person”. (i)
- *Subparagraph (ii)* amends the definition in *891B(4)(d)* of what is to be specified to be included in a return under regulations so as the definition refers to the values of units. (ii)
- *Subparagraph (iii)* amends the definition in *subsection (4)(e)* of *section 891B* by referring to unitholders or classes of unit holders rather than persons or classes of persons. (iii)
- *Subparagraph (iv)* provides for the identity and residence of unit holders to be included in a return rather than of persons in receipt of payments as provided for in *subsection (4)(f)* of *section 891B*. (iv)
- *Subparagraph (v)* provides for the specification of the details of units to be made in the regulations rather than in relation to payments as in *section 891B(4)(h)*. (v)
- *Subparagraphs (vi)* and *(vii)* provide for the provision of tax reference numbers in relation to unit holders from a date to be specified in the regulations. *Section 891B(4)(h)* references to “specified persons”, “customers” are replaced by “investment undertaking” and “unitholders” respectively. (vi) & (vii)

Subsection (5)(b) applies the provisions of *subsections (6)* and *(7)* of *section 891B* with the modification where the context permits, of references to “person”, “relevant person” or “specified person” being replaced by “investment undertaking”. (5)(b)

Subsection (6) is similar to **section 891B(5)** and provides that regulations made under this section are to be laid before Dáil Éireann and to be annulled if a resolution to this effect is passed by Dáil Éireann. **(6)**

891D Return of payment transactions by payment settlers

Summary

This section allows the Revenue Commissioners to make regulations to require merchant acquirers and other payment settlement entities to make returns of transactions.

Details

Definitions

Definitions are given for the purposes of this section which are self explanatory. **(1)**

Regulations

The Revenue Commissioners may make regulations to cover returns under this section. **(2)**
The earliest year in respect of which a return may be required is 2010 and there is provision for including tax reference numbers on the return.

The information that can be included in a return that is required includes: **(3)**

- (a) the due date for making the return,
- (b) specifying how the return will be made,
- (c) the type of reportable transactions to be included in the return (Note: It is envisaged that separate Regulations may be made for payment cards and electronic payment organisations),
- (d) requiring merchant acquirers to seek business taxpayers tax reference numbers,
- (e) requiring business taxpayers to provide their tax reference numbers to merchant acquirers,
- (f) specifying the information to be included in the return, to include-
 - (i) the account/reference number of the client,
 - (ii) the type of business / service of the business,
 - (iii) information on the terminals,
 - (iv) the bank account information.

There is an obligation on the payment settler to obtain tax reference numbers from business taxpayers, and where the tax reference number is a PPS number, that number may not be used for any purpose other than inclusion in a return in accordance with this section. **(4)**

Audit

Audit of a return by a merchant acquirer will be carried out on a similar basis to that applying to other third party returns. **(5)**

Penalties

Penalties apply- **(6)**

- (a) for failing to deliver a return or delivering an incorrect return, and
- (b) for restricting an authorised officer or failing to comply with the Regulations.

891E Implementation of the Agreement to Improve Tax Compliance and Provide for Reporting and Exchange of Information concerning Tax Matters

Summary

The Foreign Accounts Tax Compliance Act (FATCA) forms part of the US Hiring Incentives to Restore Employment Act of 2010. The overall aim of this legislation is to combat tax evasion by improving exchange of information between tax authorities in relation to US citizens and residents who hold assets off-shore. FATCA obliges all US paying agents to withhold tax of 30% from payments of US source income that are made to any non-U.S. financial institution unless that institution has entered into an agreement with the US Internal Revenue Service ('IRS') to directly report certain information on their US account holders.

The Minister for Finance, on behalf of the Government, signed an Intergovernmental Agreement (IGA) with the United States on 21 December 2012. The Agreement provides for the automatic reporting and exchange of information on an annual basis in relation to accounts held in Irish financial institutions by U.S. persons, and the reciprocal exchange of information regarding U.S. financial accounts held by Irish residents.

Section 31 of the Finance Act 2013 inserted *section 891E* into the Taxes Consolidation Act 1997. This section enables the Revenue Commissioners to make detailed regulations to implement the IGA.

Details

Subsection (1) provides that the section applies for the purpose of implementing the Agreement to Improve Tax Compliance and Provide for Reporting and Exchange of Information concerning Tax Matters (United States of America) Order 2013 (S.I. No 33 of 2013). **(1)**

Definitions

"*Agreement*" is defined as the Agreement Between the Government of Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA done at Dublin on 21 December 2012; **(2)**

"*competent authority*" means the Secretary of the Treasury in the United States of America or his or her delegate;

"*register*" means to register with such body of persons, agency or authority as is specified in regulations under this section;

"*registered financial institution*" means a financial institution that has registered in accordance with the regulations;

"*tax reference number*" means a U. S. Tax Identification Number (TIN).

Subsection (3) provides that, unless otherwise provided for in *section 891E* or in the regulations made under *section 891E*, or unless the context otherwise requires, a word or expression used in the section or in the regulations (or in both) that is also used in the Agreement has the same meaning as in the Agreement. **(3)**

Regulations

Subsection (4) provides that the Revenue Commissioners with the consent of the Minister for Finance, may make regulations— **(4)**

(a) requiring financial institutions to register in circumstances specified in the **(4)(a)**

- regulations,
- (b) as regards the return by a registered financial institution of information on accounts held, managed or administered by the financial institution, (4)(b)
 - (c) relating to the return by a registered financial institution of payments made to a non-participating financial institution. (4)(c)
- Subsection (5)** states that the regulations may include provisions— (5)
- (a) specifying the time limits within which the financial institutions must register (5)(a)
 - (b) requiring registered financial institutions to make a return of information in relation to U.S reportable accounts, (5)(b)
 - (c) setting out the circumstances in which a financial institution will not be required to make a return, (5)(c)
 - (d) setting out the circumstances in which financial institutions will be treated as non-participating financial institutions, (5)(d)
 - (e) setting out the date by which financial institutions will have to make the returns required under the regulations, (5)(e)
 - (f) prescribing the format of the return, (5)(f)
 - (g) specifying the accounts that are not treated as financial accounts, (5)(g)
 - (h) specifying the accounts that are U.S. reportable accounts, (5)(h)
 - (i) specifying the information to be included in a return, (5)(i)
 - (j) specifying the currency in which the financial institutions is required to report as well as the rules for conversion of amounts denominated in a different currency, (5)(j)
 - (k) requiring financial institutions to identify the financial accounts held by U.S. persons who fall within categories to be specified in the regulations, (5)(k)
 - (l) specifying the records and documents to be examined and obtained by the financial institution to enable the institution to identify the financial accounts referred to in *paragraph (k)*, (5)(l)
 - (m) specifying additional requirements in relation to the identification and documentation of high value accounts, (5)(m)
 - (n) specifying the records and documents used to identify the holder of a U.S. reportable account that must be retained by the financial institution, (5)(n)
 - (o) specifying the financial accounts in respect of which the financial institution is not required to identify the account holder, (5)(o)
 - (p) setting the circumstances in which a financial institution is required to aggregate all financial accounts held by the same individual or entity for the purpose of reporting those accounts, (5)(p)
 - (q) specifying the actions to be taken by a registered financial institution where there is a change in circumstances in regard to the account holder, (5)(q)
 - (r) setting out the conditions under which a financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the regulations, (5)(r)
 - (s) setting out the circumstances in which an account held by an NFFE (Non-Financial Foreign Entity) will be a U. S. reportable account, (5)(s)
 - (t) setting out the circumstances in which a registered financial institution may make a nil return, (5)(t)
 - (u) specifying the information to be reported by the registered financial institution in relation to payments to non-participating financial institutions, (5)(u)
 - (v) imposing an obligation on, and setting out the circumstances and time in which, a financial institution is obliged to obtain, and a customer is obliged to provide, a tax reference number, (5)(v)
 - (w) defining “books” and “records for the purposes of the regulations, (5)(w)
 - (x) determining the manner of keeping records and setting the period for retention of (5)(x)

- records so kept,
- (y) enabling the authorisation of Revenue officers, for the purpose of such officers (5)(y)
- (i) requiring—
- (I). the production of books, records or other documents, (5)(v)(i)
- (II). the provision of information, explanations and particulars
- (III). persons to give all such assistance as may reasonably required and as is specified in regulations
- in relation to financial accounts within such time as may be specified in the regulations
- (ii) enabling the officers to make extracts from or copies of books, records or other documents or requiring that copies of such books, records and documents be made available, (5)(v)(ii)
- (z) specifying such supplemental and incidental matters as appears to the Revenue Commissioners to be necessary— (5)(z)
- (I). to enable any person to fulfill their obligations under the regulations
- (II). for the general administrations and implementation of the regulations.
- Subsection (6)** provides that every regulation made under the section must be laid before the Dáil as soon as may be after it is made and if a resolution annulling the regulation is passed by the Dáil within the next 21 days on which the Dáil has sat after the regulation has been laid before it, the regulation shall be so annulled but without prejudice to the validity of anything previously done thereunder. (6)
- Subsection (7)** provides that a Revenue officer authorised under the regulations may enter any premises or place of business of a financial institution for the purposes of (7)
- (a) determining whether information (7)(a)
- (i) included in a return was correct
- (ii) not included in a return was correctly not included
- (b) examining the procedures put in place by the financial institution for the purposes of complying with its obligations under the regulations. (7)(b)
- Subsection (8)** provides that a person who does not comply with (8)
- (a) the requirements of a Revenue officer in the exercise of the officer’s powers or duties under **section 891E** or the regulations (8)(a)
- (b) with any requirements of the regulations (8)(b)
- will be liable to a penalty of €1,265.
- Subsection (9)** provides that section 4 of the Post Office Savings Bank Act 1861 will not apply to the disclosure of information required to be included in a return made under the regulations. (9)
- Subsection (10)** enables the Revenue Commissioners to exchange the information received from registered financial institutions with the U.S. competent authority within 9 months of the end of the tax year to which the information relates. (10)
- Subsection (11)** is an anti avoidance provision that provides that where arrangements are entered into by any person and the main purpose or one of the main purposes of the arrangements is the avoidance of any of the obligations imposed by **section 891E** or the regulations, then the section and the regulations shall apply as if those arrangements had not been entered into. (11)

891F Returns of certain information by financial institutions

Summary

In October 2014 Ireland signed a Multilateral Competent Authority Agreement and

committed to becoming on the of the Early Adopter jurisdictions in the implementation of the OECD Standard for the Automatic Exchange of Financial Account Information. financial institutions will have to start collecting information about non resident customers in 2016, and this information will be exchanged with partner jurisdictions beginning in 2017.

Section 28 of the Finance Act 2014 inserted *section 891F* into the Taxes Consolidation Act 1997. to enable the Revenue Commissioners to make regulations obliging financial institutions to report financial account details in respect of non-resident persons which they can then exchange with relevant participating jurisdictions. The exchange of data is provided for by Ireland’s ratification on the Convention on Mutual Administrative Assistance in Taxation which is given legislative effect by Section 826 of the TCA.

Details

Subsection (1) sets out the purpose of the Section.

Subsection (2) defines the “standard” as the OECD Standard for the Automatic Exchange of Financial Account Information and provides that other defined terms viz account holder, financial account, high value account, lower value account, reportable account, reporting financial institution and TIN (Tax Identification Number) have the meanings given to them in the standard. The use of the meanings given in the standard is designed to ensure that the standard operates in a consistent manner with other participating jurisdictions.

Subsection (3) allows the Revenue Commissioners to make regulations under this section.

Subsection (4) states that the regulations may include provisions—

- (a) setting out the date by which financial institutions will have to make the returns required under the regulations,
- (b) prescribing the format of the return,
- (c) specifying the information to be included in the return,
- (d) specifying-
 - (i) the currency in which the financial institutions is required to report,
 - (ii) the rules for conversion of amounts denominated in a different currency,
- (e) specifying the requirement of the financial institutions to identify reportable accounts,
- (f) specifying the records and documents to be examined and obtained by the financial institution to enable the institution to identify reportable accounts,
- (g) specifying the records to be retained in relation to reportable accounts
- (h) specifying the additional requirements in relation to high value accounts and lower value accounts,
- (i) setting the circumstances in which a financial institution is required to aggregate all financial accounts held by the same individual or entity for the purpose of reporting those accounts,
- (j) specifying the actions to be taken by a registered financial institution where there is a change in circumstances in regard to the account holder,
- (k) setting out the conditions under which a financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the regulations,
- (l) setting out the circumstances in which a registered financial institution may make a nil return,
- (m) imposing an obligation on, and setting out the circumstances and time in which, a financial institution is obliged to obtain, and a customer is obliged to provide, a tax reference number,
- (n) defining “books” and “records for the purposes of the regulations,

- (o) determining the manner of keeping records and setting the period for retention of records so kept,
- (p) enabling the authorisation of Revenue officers, for the purpose of such officers
 - (i) requiring
 - (I) the production of books, records or other documents,
 - (II) the provision of information, explanations and particulars, and
 - (III) persons to give all such assistance as may reasonably be required and as is specified in regulations,
- in relation to financial accounts within such time as may be specified in the regulations, and
- (ii) enabling the officers to make extracts from or copies of books, records or other documents or requiring that copies of such books, records and documents be made available, and
- (q) specifying such supplemental and incidental matters as appears to the Revenue Commissioners to be necessary
 - (i) to enable any person to fulfil their obligations under the regulations, or
 - (ii) for the general administrations and implementation of the regulations, including
 - (I) delegating authority to a Revenue officer to allow them to discharge any functions authorised by this section, and
 - (II) authorisation of Revenue officers by the Revenue Commissioners to exercise any powers or functions conferred by this section.

Subsection (5) provides that every regulation made under the section must be laid before the Dáil as soon as may be after it is made and if a resolution annulling the regulation is passed by the Dáil within the next 21 days on which the Dáil has sat after the regulation has been laid before it, the regulation shall be so annulled but without prejudice to the validity of anything previously done thereunder.

Subsection (6) provides that a Revenue officer authorised under the regulations may enter any premises or place of business of a financial institution for the purposes of

- (a) determining whether information
 - (i) included in a return was correct, or
 - (ii) not included in a return was correctly not included, or
- (b) examining the procedures put in place by the financial institution for the purposes of complying with its obligations under the regulations.

Subsection (7)

(a) provides that Section 898O shall apply to

- (i) a reporting financial institution fails to make a return as required by the regulations, and
 - (ii) the making of incorrect or incomplete returns,
- as it applies to the failure to make a return or the making of incorrect or incomplete returns as referred to in section 898O.

(b) provides that a person who does not comply with

- (i) the requirements of a Revenue officer in the exercise of the officer's powers or duties under section 891F or the regulations, or
- (ii) with any requirements of the regulations,

a penalty of €1,265.

Subsection (8) provides that section 4 of the Post Office Savings Bank Act 1861 will not apply to the disclosure of information required to be included in a return made under the regulations.

Subsection (9) is an anti avoidance provision that provides that where arrangements are entered into by any person and the main purpose or one of the main purposes of the arrangements is the avoidance of any of the obligations imposed by section 891F or the regulations, then the section and the regulations shall apply as if those arrangements had not been entered into.

Subsection (10) provides that where regulations are made under this section, any word or expression used in the making of those regulations will have the same meaning as given to it by Section VIII of the Standard.

891G Implementation of Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation Returns of certain information by financial institutions

Summary

This section implements Council Directive 2014/107/EU on administrative cooperation in direct taxation, (more commonly referred to as 'DAC 2'), into Irish law. It will enable the Revenue Commissioners to make regulations obliging financial institutions to report financial account information including account balances, information on interest, dividends and other similar income and the gross proceeds from the sale of financial assets.

This Directive was adopted by EU Member States in December 2014. It provides for the mandatory automatic exchange of financial account information. International best practice in this area is set out in the OECD's Common Reporting Standard and this Directive essentially imports this Standard into EU law. The exchange of data is provided for by Ireland's ratification on the Convention on Mutual Administrative Assistance in Taxation which is given legislative effect by **section 826** of the TCA.

Details

Subsection (1) sets out the purpose of the Section.

Subsection (2) defines the "Directive" as Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation and provides that other defined terms viz "account holder", "financial account", "high value account", "lower value account", "reportable account", "reporting financial institution", "TIN" (Tax Identification Number) and "change in circumstances" have the meanings given to them in the Directive.

Subsection (3) allows the Revenue Commissioners to make regulations under this section.

Subsection (4) states that the regulations may include provisions—

- (a) setting out the date by which financial institutions will have to make the returns required under the regulations,
- (b) prescribing the format of the return,
- (c) specifying the information to be included in the return,
- (d) specifying-

- (i) the currency in which the financial institutions is required to report,
 - (ii) the rules for conversion of amounts denominated in a different currency,
 - (e) specifying the requirement of the financial institutions to identify reportable accounts,
 - (f) specifying the records and documents to be examined and obtained by the financial institution to enable the institution to identify reportable accounts,
 - (g) specifying the records to be retained in relation to reportable accounts
 - (h) specifying the additional requirements in relation to high value accounts and lower value accounts,
 - (i) setting the circumstances in which a financial institution is required to aggregate all financial accounts held by the same individual or entity for the purpose of reporting those accounts,
 - (j) specifying the actions to be taken by a registered financial institution where there is a change in circumstances in regard to the account holder,
 - (k) setting out the conditions under which a financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the regulations,
 - (l) setting out the circumstances in which a registered financial institution may make a nil return,
 - (m) imposing an obligation on, and setting out the circumstances and time in which, a financial institution is obliged to obtain, and a customer is obliged to provide, a tax reference number,
 - (n) defining “books” and “records for the purposes of the regulations,
 - (o) determining the manner of keeping records and setting the period for retention of records so kept,
 - (p) enabling the authorisation of Revenue officers, for the purpose of such officers
 - (i) requiring-
 - (I) the production of books, records or other documents,
 - (II) the provision of information, explanations and particulars, and
 - (III) persons to give all such assistance as may reasonably required and as is specified in regulations,
- in relation to financial accounts within such time as may be specified in the regulations, and
- (ii) enabling the officers to make extracts from or copies of books, records or other documents or requiring that copies of such books, records and documents be made available, and
 - (q) specifying such supplemental and incidental matters as appears to the Revenue Commissioners to be necessary
 - (i) to enable any person to fulfil their obligations under the regulations, or
 - (ii) for the general administrations and implementation of the regulations, including
 - (I) delegating authority to a Revenue officer to allow them to discharge any functions authorised by this section, and
 - (II) authorisation of Revenue officers by the Revenue Commissioners to exercise any powers or functions conferred by this section.

Subsection (5) provides that every regulation made under the section must be laid before the Dáil as soon as may be after it is made and if a resolution annulling the regulation is passed by the Dáil within the next 21 days on which the Dáil has sat after the regulation has been laid before it, the regulation shall be so annulled but without prejudice to the validity of anything previously done thereunder.

Subsection (6) provides that a Revenue officer authorised under the regulations may enter any premises or place of business of a financial institution for the purposes of

- (a) determining whether information
 - (i) included in a return was correct, or
 - (ii) not included in a return was correctly not included, or
- (b) examining the procedures put in place by the financial institution for the purposes of complying with its obligations under the regulations.

Subsection (7)

- (a) provides that **section 898O** shall apply to-
 - (i) a reporting financial institution fails to make a return as required by the regulations, and
 - (ii) the making of incorrect or incomplete returns,

as it applies to the failure to make a return or the making of incorrect or incomplete returns as referred to in **section 898O**.

- (b) provides that a person who does not comply with-
 - (i) the requirements of a Revenue officer in the exercise of the officer's powers or duties under **section 891G** or the regulations, or
 - (ii) with any requirements of the regulations,

will be liable to a penalty of €1,265.

Subsection (8) provides that section 4 of the Post Office Savings Bank Act 1861 will not apply to the disclosure of information required to be included in a return made under the regulations.

Subsection (9) is an anti avoidance provision that provides that where arrangements are entered into by any person and the main purpose or one of the main purposes of the arrangements is the avoidance of any of the obligations imposed by **section 891G** or the regulations, then the section and the regulations shall apply as if those arrangements had not been entered into.

Subsection (10) provides that where regulations are made under this section, any word or expression used in the making of those regulations will have the same meaning as given to it by Section VIII of Annex I or Annex II to the Directive.

Subsection (11) provides that the provisions of **section 891F** will not apply to a reportable account to which **section 891G** applies in order to avoid dual reporting under both sections.

891GA Disclosure of certain information for the purposes of administrative cooperation in the field of taxation

Summary

This section allows the Revenue Commissioners to supplement the information which is required to be automatically exchanged under Council Directive 2011/16/EU, as amended by Council Directive (EU) 2015/2376 of 8 December 2015 (known as DAC 3) as regards mandatory automatic exchange of information in the field of taxation.

DAC 3 provides for the automatic exchange of information relating to advance cross-border rulings and advance pricing arrangements between Member States and to the European Commission.

Details

The section provides for the disclosure by the competent authority of certain information connected with or supplementing the information required to be exchanged under the Regulations. The Regulations are the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012, which transposed Council Directive 2011/16/EU into Irish law. (1)

Definitions

‘advance cross-border ruling’ is defined by reference to the Directive, as amended. In the Directive, as amended, advance cross-border ruling is defined as: (2)

“any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;
- b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;
- c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;
- d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment; and
- e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling”

‘advance pricing arrangement’ is also defined by reference to the Directive, as amended. In the Directive, as amended, advance pricing arrangement is defined as:

“any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local

- authorities, irrespective of whether it is effectively used;
- b) is issued, amended or renewed, to a particular person or a group of persons and upon which that person or a group of persons is entitled to rely; and
- c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

Enterprises are associated enterprises where one enterprise participates directly or indirectly in the management, control or capital of another enterprise or the same persons participate directly or indirectly in the management, control or capital of the enterprises. Transfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises, and “transfer pricing” is to be construed accordingly”.

‘competent authority’ means the Revenue Commissioners acting as competent authority for the purpose of the Directive.

‘Directive’ means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council Directive 2014/107/EU of 9 December 2014 and Council Directive (EU) 2015/2376 of 8 December 2015.

‘exchange information’ means the information described in Article 8a of the Directive that is required to be communicated by the competent authority under the Regulations.

‘Regulations’ means the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012.

‘relevant instrument’ means an advance cross-border ruling or an advance pricing arrangement.

The competent authority may, when exchanging information in respect of relevant instrument, also provide the following additional information: (3)

- The reference, if any, of the relevant instrument;
- Information identifying any other relevant instrument related to or connected with the one being exchanged;
- In respect of a person to whom the relevant instrument relates that person’s main business activity, annual turnover and annual profits or losses;
- In respect of an advance pricing arrangement an explanation of why more than one transfer pricing methodology is used, if relevant; and
- Any other information included on the standard form adopted by the European Commission for the purpose of exchanging information under the Directive.

The competent authority may delegate to any of its officers any of the functions to be performed by the competent authority under this section. (4)

891H Country-by-country reporting

Summary

This section was introduced by the 2015 Finance Act to give effect to the OECD Base Erosion and Profit Shifting (BEPS) Project recommendations for country-by-country reporting. The section was amended by the 2016 Finance Act to allow for the transposition of Council Directive (EU) 2016/881 as regards mandatory automatic exchange of information in the field of taxation (known as “DAC 4). DAC 4 aims to transpose the OECD BEPS recommendations for country-by-country reporting into EU legislation.

The section requires an Irish resident parent company of large Multinational (MNE) groups to provide annually, and for each tax jurisdiction in which they do business, a country-by-country report to the Revenue Commissioners. The requirement begins for fiscal years commencing on or after 1 January 2016.

The report is required to contain details of the MNE group’s revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

The country-by-country report is based on guidance published by the Organisation for Economic Co-operation and Development (OECD)/G20 as part of the Base Erosion and Profit Shifting (BEPS) project on 5 October 2015.¹ BEPS Action 13 recognised that improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. The report will be filed in the ultimate parent entity’s jurisdiction and shared with other tax administrations automatically through government-to-government exchange of information.

The section enables the Revenue Commissioners to make regulations in relation to country-by-country reporting. For example, regulations can be made to give effect to the manner and form in which a country-by-country report is to be provided. The regulations can also provide for group companies other than the parent company to provide a country-by-country report or an equivalent country-by-country report in certain circumstances.

¹ [‘Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report’](#)

Details

Definitions

‘constituent entity’, ‘MNE group’, ‘qualifying competent authority agreement’, ‘surrogate parent entity’, ‘systemic failure’ and ‘ultimate parent entity’, have the meanings given to them respectively by Article 1 of the OECD model legislation. The use of the meanings given in the OECD model legislation is designed to ensure that country-by-country reporting operates in a consistent manner across all participating jurisdictions. (1)

‘competent authority’ means a competent authority for the purposes of a qualifying competent authority agreement;

‘country-by-country report’, in relation to an MNE group, means a report that contains the information set out in subsection (4);

‘domestic constituent entity’ means a constituent entity, that is resident for the purposes of tax in the State, but does not include –

- (a) an ultimate parent entity,
- (b) a surrogate parent entity, or
- (c) an EU designated entity;

‘EU designated entity’ means a constituent entity of an MNE group, not being an ultimate parent entity or surrogate parent entity, that –

- (a) is resident in a Member State for tax purposes, and
- (b) has been designated as an entity by that MNE group to provide a country-by-country report on behalf of all constituent entities of the MNE group resident for tax purposes in a Member State;

‘fiscal year’ means an annual accounting period, or any such shorter accounting period, with respect to which the ultimate parent entity of the MNE group prepares its financial statements;

‘income tax’ means income tax or corporation tax or any foreign tax that corresponds to income tax or corporation tax in the State;

‘OECD’ means the Organisation for Economic Co-operation and Development;

‘OECD model legislation’ means the Model Legislation Related to Country-by-Country Reporting contained in Annex IV to Chapter V of the OECD Report of 2015;

‘OECD Report of 2015’ means the [‘Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report’ published by the OECD on 5 October 2015.](#)

‘reporting entity’ has the meaning given to it by Article 1 of the OECD model legislation and shall be deemed to include an EU designated entity;

‘TIN’ means a unique identification number allocated to a constituent entity by a jurisdiction for the purposes of income tax and, in relation to the State, means a tax reference number within the meaning of section 885.

An Irish resident ultimate parent entity of an MNE group shall provide to the Revenue Commissioners, not later than 12 months after the end of its fiscal year (being a fiscal year which commenced on or after 1 January 2016), a country-by-country report with respect to that MNE group for that year. (2)

Where an ultimate parent entity of an MNE group is Irish resident then it shall notify the Revenue Commissioners that it is an ultimate parent entity for the purposes of this section. The timing and manner of the notification shall be provided for in the regulations made under this section. (3)

A country-by-country report provided under **subsection (2)** must contain certain information. This information is identical to the information needed to complete the Model Template for the Country-by-Country Report set out in Annex III to Chapter V of the ‘Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report’ published by the OECD on 5 October 2015. (4)

For each tax jurisdiction that the MNE operates in the following information should be included on the country-by-country report:

- revenue,
- profit or loss before income tax,
- income tax paid,
- income tax accrued,
- stated capital,
- accumulated earnings,
- number of employees, and
- tangible assets other than cash or cash equivalents.

In addition, the country-by-country return should include:

- the identification and TIN of each constituent entity of the MNE group concerned,
- the jurisdiction of tax residence of such constituent entity and, where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organised, and
- the nature of the main business activity or activities of such constituent entity.

The Revenue Commissioners can make regulations under this section with respect to the manner and form in which a country-by-country report is to be provided. (5)

The regulations made under this section may in particular: (6)

- require a surrogate parent or an EU designated entity to provide a country-by-country report to the Revenue Commissioners and determine the date by which the report must be made,
- require a domestic constituent entity to provide a country-by-country report or equivalent country-by-country report to the Revenue Commissioners and determine the date by which the report must be made,
- amend the information to be included in an equivalent country-by-country report required to be provided by a domestic constituent entity,
- require and provide for the timing and manner of the notification of certain matters to the Revenue Commissioners by an ultimate parent entity, a surrogate parent entity, a EU designated entity or a domestic constituent entity of an MNE group,
- allow the Revenue Commissioners to notify a constituent entity resident in Ireland that there has been a systemic failure by the state of tax residence of its parent entity,
- specify and modify, as required, the manner and form in which a country-by-

country report or an equivalent country-by-country report is to be provided to the Revenue Commissioners,

- make provision regarding the use and confidentiality of the information contained in country-by-country reports and equivalent country-by-country reports,
- require a domestic constituent entity of an MNE group to request information from its ultimate parent entity to allow it to complete a country-by-country report for the MNE group and, where the ultimate parent entity refuses to provide such information, require the domestic constituent entity to notify the Revenue Commissioners of that refusal within such time and in such manner as may be specified, and
- contain supplemental and incidental matters that the Revenue Commissioners consider necessary for the operation and implementation of the section.

The penalties contained in **Section 898O** shall apply to a failure by a reporting entity to provide a country-by-country report or an equivalent country-by-country report to the Revenue Commissioners or the provision of an incorrect country-by-country report or equivalent country-by-country report or an incomplete country-by-country report. (7)

The reporting entity is required to retain, and provide upon request for inspection, such records that may be reasonably required by the Revenue Commissioners to determine the accuracy of a country-by-country report or an equivalent country-by-country report. (8)(a)

Such records shall be prepared on a timely basis and **subsection (3) of section 886** shall apply to such records as it applies to records required by that section. There is a requirement to retain such records for 6 years beginning at the end of the fiscal year to which the country-by-country report or equivalent country-by-country report relates. (8)(b)

Sections 900 and 901 apply with necessary adjustments to such records as if they were books, records or other documents within the meaning of **section 900**, and to information, explanations and particulars that the authorised officer, within the meaning of those sections, may reasonably require, being information, explanations and particulars which are related to, or in connection with, a country-by-country report or an equivalent country-by-country report. (8)(c)

Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. (9)

Notwithstanding section 851A, the Revenue Commissioners are authorised to communicate to the competent authority of another state information which is contained in a country-by-country report provided, in relation to states which are not EU Member States, that there is a qualifying competent authority agreement in place which allows for the exchange of such information. (10)

Any word or expression used in regulations made under this section will have the same meaning as given to it by Article 1 of the OECD model legislation, unless the contrary intention appears. (11)

892 Returns by nominee holder of securities

Summary

This section obliges a holder of securities, if so required by written notice from an inspector, to furnish to the inspector, within the time specified in the notice, information as to whether or not he/she is the beneficial owner of the securities and, if he/she is not the beneficial owner, to furnish, in respect of each person on whose behalf the securities are registered in his/her name, the name and address of such person and certain specified particulars in relation to the securities.

Details

“securities” include — (1)

- shares, stocks, bonds, debentures and debenture stock of a company (within the meaning of *section 4(1)*) and also any promissory note or other instrument evidencing indebtedness issued to a loan creditor (within the meaning of *section 433(6)*) of a company;
- Irish government securities and any stock, debenture, debenture stock, certificate of charge or other security which is issued with the statutory approval of the Minister for Finance and in relation to which the principal and interest is guaranteed by the Minister for Finance (for example, stock issued by the ESB);
- securities of the government of any country or territory outside the State.

An inspector may require any person in whose name any securities are registered to state whether or not he/she is the beneficial owner of the securities and, if he/she is not the beneficial owner, to supply in respect of each person on whose behalf the securities are registered — (2)

- the name and address,
- the nominal value of the securities and, where the securities include shares, the number and class of shares,
- the date each security was registered in the nominee’s name.

The request for the information must be sent by written notice from the inspector to the person in whose name the securities are registered and the information must be furnished to the inspector by that person within the time specified in the notice.

893 Returns by certain intermediaries in relation to UCITS

Section 893 was deleted by Finance Act 2001 section 232(1)(b) as respects any chargeable period commencing on or after 15 February 2001 (*see section 896*).

894 Returns of certain information by third parties

Summary

This section places a responsibility on certain persons or “third parties” (called “relevant persons”) to make certain returns of information by a specified date. The returns in question already have to be made under various sections of the Tax Acts (the “specified provisions”) but only when requested to do so by notice from an inspector. This section shifts the onus for making the return onto the relevant person without the issue of a notice from the inspector.

The information to be supplied under this procedure is that which would be required in a return to be provided under the “specified provisions”.

This shift in responsibility is in line with the major change in the compliance culture brought about by the introduction of Self Assessment whereby taxpayers must now file returns by a stipulated filing date without notification from the inspector.

The original right of the inspector to obtain a return by notice to the person concerned is preserved and the inspector is given power to remove the obligations of this section entirely from a person for a period or to modify those obligations where it seems appropriate.

The application in practice of this provision is covered by Statement of Practice, SP-IT/1/92 dealing with “Returns of Certain Information – Third Party Returns” and regard should be had to the contents of that Statement at all times.

Details

“appropriate inspector” is the inspector to whom the return in question is to be made. (1) He/she is, firstly, the inspector who has indicated to the person making the return that the return should be made. If the person who is to make the return has not been so notified, he/she should make it to the inspector to whom it is customary for that person to deliver any return, statement, list or declaration. Finally, as a default option, the return is to be made to the inspector of returns (as specified in *section 2*).

“chargeable period”, for a company, means its accounting period and, for all other cases, it means a year of assessment.

“specified provisions” are *paragraphs (d) and (e) of section 888(2) and sections 889, 890, 891, 891A and 892*. These sections deal with the following returns —

- *section 888(2)(d) and (e)*: returns from letting agents,
- *section 889*: returns of fees and commissions paid,
- *section 890*: returns of income received belonging to others,
- *section 891*: returns of interest paid or credited,
- *section 891A*: returns of interest payments to non-residents,
- *section 892*: returns by nominee holders of securities.

“specified return date for the chargeable period” identifies the date on or before which the return must be made for each chargeable period.

A relevant person is a person who is required to make a return under this section. This is any person who has information of a kind, makes a payment of a kind, pays or credits interest of a kind or is in receipt of money or value or profits or gains of a kind referred to in any of the specified provisions. (2)(a)

Certain persons are, however, excluded from the obligation to make returns. These are —

- any person who is not the beneficial owner of the securities referred to in *section 892* (the purpose of *section 892* is to get behind nominee holders of securities and find out who the beneficial owners are and, but for this exclusion in this section, every holder of a security, even those who are the beneficial owners themselves, would be required to make the return). (2)(c)

Although a person may be excluded as a relevant person in relation to information, etc, under one of the specified provisions, that person may be a relevant person in relation to another specified provision. (2)(e)

Every relevant person is to make a return for the chargeable period (that is, year of assessment or accounting period, as appropriate) setting out all the matters and particulars as would be included in a return made under the specified provision itself. (3)

The return must be made on or before the specified return date.

Of course, if a person has information or makes or receives payments relating to more than one of the specified provisions, he/she must make a separate return under each provision.

The inspector may by notice in writing relieve a person for one or more chargeable periods from the obligation to make a return under the section. (4)

The inspector is also permitted to relieve a person from the obligation to make a full return by confining the return to a particular type of information or payment. In this instance, such a partial return satisfies the requirements of the section. (5)

The inspector's right to seek a return by notice under the specified provisions themselves is not overruled by the obligation placed on the person by this section. Conversely, the issue of a notice under one of the specified sections does not overrule the obligations on a person under this section. (6)

The penalty provisions of *sections 1052* and *1054* apply to the failure to file a return under this section. (7)

894A Returns by third parties in relation to personal reliefs.

Summary

This section enables Revenue will seek to obtain, on a voluntary basis, information from third parties that is relevant to the granting of tax reliefs to taxpayers. Where on the basis of the information obtained, Revenue are satisfied as to the entitlement of a taxpayer to a relief then they may, if it is considered appropriate (for example, where the taxpayer has not already claimed the relief), grant the relief to the taxpayer without the need for a formal claim.

Details

The terms PPS number and personal reliefs are defined (1)

Where a person is in possession of information concerning expenditure defrayed by an individual that is relevant to establishing the title of that individual to a personal relief, or the amount of such a relief, that person may, notwithstanding anything contained in any other enactment or any obligation to maintain secrecy or other restriction on the disclosure of information, furnish details regarding the amount of such expenditure to the Revenue Commissioners if requested by them to do so. (2)

The information furnished is to be in an electronic format and contain the name, address and, if known, the PPSN of the taxpayer concerned. (3)

A person intending to make a return of information under the section has the right to ask the taxpayer for his/her PPSN if necessary but must explain to the taxpayer the reason for requesting the number (4)

Information furnished to Revenue under the section is to be used for the purpose of establishing the entitlement of a taxpayer to tax relief and for no other purpose; this is notwithstanding *section 872* which enables information obtained by Revenue in relation to one tax to be used by it in connection with another tax. (5)

The powers and functions conferred on the Revenue Commissioners under the section make be exercised by any of their officers acting under their authority (6)

895 Returns in relation to foreign accounts

Summary

This section places an obligation on financial institutions and other agents who act for or assist Irish residents in opening foreign bank accounts to make an appropriate return to the inspector. In line with the provision in *section 894* in relation to other third party return requirements, the return by the financial institutions under this section is on an automatic basis rather than waiting for a request from the inspector.

In addition, Irish residents themselves are obliged to report the opening of such accounts on their annual returns of income. This obligation applies irrespective of whether the matter also falls to be reported by a financial institution or other agent.

As the provision is an anti-evasion one, substantial penalties are provided for non-compliance. In the case of financial institutions and other agents, the penalty is €4,000 for each occasion they fail to comply with the section. In the case of the taxpayer, non-compliance attracts the surcharge for late submission of returns under *section 1084*. The surcharge will apply for the year in which the undeclared account was opened.

Details

“appropriate inspector” identifies the inspector to whom the details of foreign bank accounts are to be supplied by an intermediary. (1)

“chargeable period” derives its meaning from *section 321(2)* and means an accounting period of a company for corporation tax purposes or a year of assessment for income tax purposes.

“deposit” is a sum of money paid to a person on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made. The reference to “with or without interest” is intended to deal with the situation where, for example, the deposit is a non-interest-bearing deposit. The definition is intended to embrace normal deposit accounts, current accounts, certificates of deposit and time deposits.

“foreign account” defines the type of account which must be reported to the inspector as an account in which deposits are held at a location outside the State.

“intermediary” is any person carrying on in the State a trade or business in the ordinary course of the operations of which is provided a relevant service. The term chiefly refers to financial institutions and includes Irish branches of foreign banks.

“relevant person” is a person who in the normal course of trade or business receives or holds deposits. The definition includes foreign branches of Irish financial institutions.

“relevant service” means the acting in the State as an intermediary in or in connection with the opening of foreign accounts with relevant persons by or on behalf of residents.

“resident” is a person resident in the State.

“specified return date for a chargeable period” is the date by which the intermediary must make the return, that is, the 31st of October in the following year where the chargeable period is a year of assessment and 9 months after the end of the chargeable period where it is an accounting period of a company.

“tax reference number” has the meaning set out in *section 885*.

An obligation is imposed on intermediaries to make a return for a chargeable period to the appropriate inspector of all residents for whom they acted in that period in the opening of foreign bank accounts, specifying in respect of each resident — (2)

- the resident’s name and address,
- the resident’s tax reference number,
- the name and address of the relevant person with whom the foreign account was opened,
- the date on which the foreign account was opened, and
- the amount of the deposit made in opening the account.

The return must be made on or before the specified return date for the chargeable period. (3)

A resident who uses the services of an intermediary in the opening of a foreign bank account must supply the intermediary with the details which the intermediary is required to include in a return under this section. An obligation is also placed on the intermediary to take all reasonable care (including the requesting of documentary evidence) to confirm that the details supplied are correct.

A penalty of €4,000 is imposed on an intermediary for each and every failure to comply with the obligations of this section. A resident is liable to a similar penalty for failure to supply the required information to the intermediary or for supplying incorrect information. (4)

There is an obligation on residents to include in their annual returns of income details of any foreign accounts opened by them or, where they are the owners of the deposit held in the account, which they cause to be opened. Failure to comply with the obligation results in the application of the surcharge under *section 1084* for late submission of returns (or submission of incorrect returns). (6)

As PAYE taxpayers are not under an obligation to make mandatory returns of income and may not be requested by an inspector to make one for a particular year, it is provided that a resident is to be regarded as a chargeable person for the purposes of the surcharge under *section 1084* and the obligation to make automatic Self Assessment returns under *Chapter 3 of Part 41A* for any chargeable period in which he/she opens or causes to be opened a foreign account. The phrase “notwithstanding anything to the contrary in *section Part 41A* or *section 1084*” is because in normal circumstances PAYE taxpayers are excluded from the scope of chargeable person in the definition of that term in those sections.

The return of income (within the meaning of *section 1084*) to be delivered by the resident for the chargeable period is to include the following details of the foreign accounts —

- the name and address of the relevant person with whom the account was opened,
- the date on which the account was opened,
- the amount of the deposit made in opening the account, and
- the name and address of the intermediary, if any, who provided a relevant service (that is, gave assistance) in relation to the opening of the account.

896 Returns in relation to certain offshore products

Summary

This section ensures that investments in foreign investment funds are subject to the same reporting requirements as investments in foreign deposit accounts.

The reporting requirements under this section mean that persons who invest in offshore products, or who act as intermediaries in such investment, are required to automatically notify Revenue of the investment. As is the case with foreign deposit accounts, the annual return by intermediaries and the notification of such investments by investors

with their annual return of income is on the automatic basis. There is an obligation to notify the inspector regardless of whether or not the inspector has requested the information.

Details

“material interest” and “offshore fund” have the meaning set out in *section 743*. (1)

“offshore product” means a material interest in an offshore fund, or a foreign life policy.

“relevant facilities” means —

- marketing in the State of offshore products,
- acting in the State as an intermediary in connection with the acquisition or disposal, in whole or in part of offshore products by or on behalf of residents of the State, or
- provision in the State of facilities for making payments from offshore products to persons entitled to the product whether on its disposal in whole or in part, or otherwise.

Every intermediary is required to make a return for each chargeable period of services provided for people resident or ordinarily resident in the State in relation to offshore products. The return requires in relation to each person for whom the intermediary provided relevant facilities — (2)

- the name, address and tax reference number,
- a description of the relevant facilities provided, and
- details of all payments made by or to the person in respect of the offshore product.

An intermediary who fails to make a return or fails to make a full return will be liable to a penalty of €4,000 in respect of each such failure. A similar penalty applies to a person for whom the services are provided by the intermediary, where the person fails to supply to the intermediary the details required to be included in the return, or provides incorrect details. (3) & (4)

A person who acquires an offshore product in a chargeable period is deemed to be a chargeable person for the purposes of *Chapter 3 of Part 41A* and *1084* and is required to include in the return of income for the chargeable period details of that acquisition. The details should include — (5)

- the name and address of the offshore fund or the person who commenced the life policy
- a description, including the cost to the person, of the material interest acquired or, a description of the terms of the life policy, and
- the name and address of the person through whom the product was acquired.

896A Returns in relation to settlements and trustees

Summary

Section 896A provides for the delivery of information by a third party where that party is concerned with the making of a settlement where the settlor is resident in the State but the trustees are not resident in the State. In addition the section provides that an authorised officer of the Revenue Commissioners may by notice in writing request a party to a settlement to provide details of the settlement.

Details

In this section - (1)

“authorised officer” is defined in a manner that will ensure that only Revenue officials specifically authorised in writing to exercise the power to request information under this section will be able to do so.

“settlement” and “settlor” take their meanings from *section 10*.

Provision is made for the delivery of information by a third party where that party is concerned with the making of a trust or settlement where the settlor is resident in the State but the trustees are not resident in the State. The information required refers to the names and addresses of the settlors and trustees and the date of making of the settlement. (2)

Details of all settlements made on or after 24th December 2008 must be delivered within 4 months of that date. Details of those settlements made within the 5 years prior to and including 23rd December 2008 must be delivered within 6 months following 24th December 2008. (3)

The trustees are regarded as not resident in the State unless the general administration of the settlement is ordinarily carried on in the State and the trustees or a majority of each class of trustees are resident in the State. (4)

An authorised officer may by notice in writing require any person to furnish information relating to a settlement. (5)

896B Provision of information by National Transport Authority

This section provides for the supply to the Revenue Commissioners of such information held by the National Transport Authority as may be required for the performance of the functions of the Revenue Commissioners. The information is to be supplied at intervals as specified by the Revenue Commissioners.

896C

In this section- (1)

“Acts” has the meaning assigned to it by *section 1078(1)*.

“Agency” means the Child and Family Agency.

The Agency shall, at such intervals as are specified by the Revenue Commissioners, supply to the Revenue Commissioners such information held by the Agency for the purposes of Part VIIA of the Child Care Act 1991 as may be required for the performance of the functions of the Revenue Commissioners under the Acts. (2)

897 Returns of employees’ emoluments, etc

Summary

This section grants an inspector power to obtain information from employers with regard to payments made by them to their employees and which may constitute or include assessable income in the hands of the recipients.

An employer must give, as respects his/her employees, details not only of remuneration in the ordinary sense, such as salary and wages, but also details of expenses payments, etc.

Details

References to payments made to persons in respect of employment or in respect of remuneration also includes references to — (1)(a)

- payments made to employees in respect of expenses,
- payments made to employees which are not repaid by them, and
- payments to employees in a trade or business for services rendered in connection with that trade or business.

References to expenses payments include sums put at the disposal of an employee and used by him/her. **(1)(b)**

Every employer, when required to do so by an inspector, is to submit a return containing — **(2)**

- the name and address of all employees,
- details of any car provided by the employer,
- details of preferential loans made, released or written off (and also details of any preferential loan interest released, written off or refunded),
- details of scholarship payments,
- details of payments made to employees in respect of an employment (however, a return need not be made in respect of those employees whose income is less than €1,905 in the year).

Where the employer is a body of persons, the secretary (or any person acting as secretary) is treated as the employer and any director or person engaged in the management of a body corporate is treated as an employee. **(6)**

Where the employer is a body corporate (including a company), that body corporate as well as the secretary or other officer acting as secretary is liable to penalties for failure to make a return under this section.

Where an employee is, in the opinion of the Revenue Commissioners, totally exempt from tax, penalties are not imposed for failure to include that employee in the return to be made under this section.

Where an employer apportions expenses payments in relation to different matters, the return must indicate that the figure returned for any employee is an apportioned amount. If requested to do so by the inspector, the employer must give details of the apportionment and the method used to arrive at the apportioned figure.

If the inspector is dissatisfied with any apportionment, he/she may, for the purposes of an assessment, apportion the expenses. However, in this instance, the employer may, within 21 days appeal the inspector's apportionment.

Such appeal is heard as if it were an appeal against an assessment. **(7)**

897A Returns by employers in relation to pension products

Summary

This section requires employers to return statistical details in relation to tax relief for contributions to pension arrangements provided to employees through payroll systems. The information required is returned along with the PAYE details employers are required to provide to Revenue under *section 985G(2)* and the Income Tax Regulations 2018.

Details

The payments and contributions to pension arrangements which are subject to the reporting are — **(1)**

- employee contributions to occupational pension schemes which qualify for tax relief;

- employer contributions to such schemes which are tax deductible;
- employee contributions to PRSAs which qualify for tax relief;
- employer contributions to PRSAs which are treated as if made by the employee; and
- contributions to retirement annuity contracts (RACs) which are made by employees but which are deducted from the remuneration of employees by employers.

Employers are required to include additional details on the notification to Revenue (2) required under *section 985G(2)*. This notification is required on or before the making of a payment of any emoluments under the PAYE system. The additional details to be included are —

- the respective amounts of employee pension contribution, employee PRSA contribution, retirement annuity contract (RAC) premium and additional superannuation contribution (ASC) deductions from emoluments; and
- the respective amounts of employer pension contributions and employer PRSA contributions.

The penalty provisions of *section 1052* and *1054* are applied for a failure to make the (3) notification provided for by this section.

897B Returns of information in respect of awards of shares to directors and employees

Summary

This section makes it mandatory for employers to file returns of information in relation to awards of shares to directors and employees, except where the employer is already obliged to make such a return under another provision of this Act. Such returns are already required, for example, in respect of convertible securities (*section 128C*), in respect of restricted shares (*section 128D*) and in respect of forfeitable shares (*section 128E*) and under various provisions governing Revenue approved employee share schemes. This reporting requirement applies from 1 January 2010 in respect of shares awarded on or after 1 January 2009. *Schedule 29* provides for penalties where an employer fails to make a return of the required information.

Details

A number of terms used in the section are defined. “Director”, “employee” and (1) “employer” have the same meaning as in *section 779(1)* and “shares” has the same meaning as in *section 135*.

There is a mandatory requirement on any employer, or other person, who awards shares, (2)(a) in respect of which income tax is potentially chargeable, to a director or employee to return particulars of such awards to Revenue. The return must be submitted on or before 31 March in the year of assessment following that in which the shares are awarded.

The return referred to in *paragraph (a)* need not be submitted where the employer, or (2)(b) other person, is otherwise required to make such a return.

898 Returns of copies of rates and production of certain valuations

Summary

This section requires a rating authority, on receipt of a request from an inspector, to furnish the latest information in relation to rates for its rating area. The Revenue

Commissioners will pay the expenses of the rating authority for this information at a rate not exceeding €2 for every hundred ratings.

Details

A “rating authority” — (1)

- the corporation of a county or other borough,
- the council of a county,
- the council of an urban district.

When requested to do so by an inspector, the secretary or clerk (or other person acting as such) of a rating authority must submit to the inspector true copies of the last county rate or municipal rate made by the authority for its rating area. (2)

The Revenue Commissioners are to pay for these copies, but the section states that the Revenue are not to pay more than €2 for 100 ratings. (3)

The rating authority is to allow inspectors and other officers acting in the execution of the Tax Acts access to, copies of or extracts from any survey, valuation or record used in determining a county rate or municipal rate. (4)

898A Format of returns etc.

Where a person is required under any provision of this Chapter to deliver returns or to give or furnish information, the Revenue Commissioners may require that this be done in a specific format. The Revenue may also require that returns or information referred to in *section 888(2)(d)* and *(2)(e)*, and in *sections 891, 892* and *898*, be done in an electronic format. This is in order to facilitate the collation of the information.

The returns/information concerned relate to —

- lettings of property;
- fees and commissions paid by a person in the course of carrying on a trade or business;
- money a person receives on behalf of others – for example a resident agent receiving profits on behalf of a non-resident;
- interest paid to residents without deduction of tax;
- shares held as a nominee for the beneficial owner;
- intermediaries acting in the opening of foreign bank accounts or the selling of certain foreign investment products,
- employees’ emoluments etc., and
- rates.

CHAPTER 3A

Implementation of Council Directive 2003/48/EC of 3 June 2003 on the Taxation of Savings Income in the Form of Interest Payments and Related Matters

Summary

This Chapter transposed the EU Directive on the taxation of savings income in the form of interest payments into Irish law (Council Directive 2003/48/EC of 3 June 2003 refers). The Directive has been applied in Member States since 1 July 2005 with the aim of ensuring that interest payments made in one EU Member State to an individual resident for tax purposes in another Member State are taxed in accordance with the laws of the latter member State. Essentially, Chapter 3A obliged paying agent to establish the

identity and residence of all individuals to whom they made interest payments and report certain information to the Revenue Commissioners in respect of such payments. It also made provision for the related matters concerning the extension of the savings tax scheme to certain dependent and associated territories of the UK and the Netherlands., In addition it made provision for the implementation in Ireland of the measures necessary to implement the associated agreements between the EU and each of Andorra, Liechtenstein, Monaco, San Marino and Switzerland.

On 10 November 2015 the Directive was repealed by the Economic and Financial Affairs Council with effect from 1 January 2016. The repeal was deemed necessary in order to avoid dual reporting following the adoption of Directive 2014/107/EU which provides for the mandatory automatic exchange of information between Member States and which takes effect from 1 January 2016. Section 73 of Finance Act 2015 inserted *section 898S* to provide for the repeal of the Directive with effect from 1 January 2016. Notwithstanding the repeal of the Directive, the obligations of paying agents in relation to information collected prior to the date of the repeal should continue to be met. In relation to withholding tax levied under the transitional period referred to in the Directive, the provisions of *section 898L* and *section 898M* shall also continue to apply. In relation to the dependent and associated territories and the five third countries, each have committed to applying the OECD's Common Reporting Standard from 2016 or 2017. As regards the third countries, protocols amending the existing Savings Agreements will be signed to convert these agreements into reciprocal agreements imposing OECD Standard based reporting. Similarly, the bi-lateral agreements with the dependent and associated territories are also being replaced with OECD Standard based agreements. The provisions of this Chapter will continue to apply to interest payments in respect of the dependent and associated territories and the third countries until these territories have adopted the OECD Standard.

898B Interpretation (Chapter 3A)

This section contains the interpretation of terms used throughout the Chapter. It either provides stand-alone definitions or cross-references terms to the point in the Chapter where the term is defined. (1)

The definitions of “building society” and “credit union” are needed for the purposes of the definition of “interest payment” in *section 898E*.

The definition of “certificate of residence for tax purposes” is modelled on the provision in *paragraph 8(f)* of *Schedule 2A* requiring the production of a similar type certificate. This definition is needed for the purposes of the provisions as to residence in *section 898G(5)(a)*.

The definition of “electronic means” is needed for the provision in *section 898G(7)* to allow for the non-face-to-face opening of accounts or purchase of interest bearing financial products. It is modelled on a similar definition in the Electronic Commerce Act 2000.

The definition of “money debt” is used for the definition of “security”. The definition of “securities” is intended to be as wide as possible (but excludes shares in a company). Specifically included is accrued or capitalised interest due in respect of loans which are not evidenced by the issue of a formal security and which might not otherwise be considered as securities.

An individual's permanent residence is defined as situated in the country where he/she has his/her permanent address. As this concept of “residence” is different to the usual concept of residence for the purposes of taxation a distinction is maintained in the (2)

Chapter between the use of the term where “permanent address” is intended and where actual “tax residence” is intended.

The term “resident for tax purposes in a territory” is defined by reference to the law of the territory concerned and not by reference to the law of any other territory. (3)

A standard interpretative measure is included to align the interpretation of terms used in the Chapter with those used in the directive. (4)

898C Beneficial owner

This section sets out the meaning of the term “beneficial owner”. This is an individual who receives an interest payment or for whom an interest payment is secured. (2)&(4)

However, not every recipient of an interest payment will be a beneficial owner and exceptions are provided for. An individual will not be a beneficial owner if he/she receives interest as a paying agent or on behalf of:

- A company or other legal person, a person within the charge to corporation tax or a similar tax imposed in another Member State, a UCITS established in a Member State or a UCITS equivalent established in a relevant territory other than a Member State, or a residual entity that has elected to be treated as a UCITS.
- Another individual whose identity (i.e. name and address) have been disclosed to the paying agent.
- A residual entity (see *section 898D* for details).

In the case of an individual acting on behalf of a residual entity, the individual is required to provide the name and address of the residual entity to the paying agent. Paying agents are then required to return the names and address of residual entities to Revenue within three months of the end of the tax year. This provision is designed to inform the tax authorities of that Member State that a paying agent has relations with a residual entity. (3)

An obligation is placed on paying agent to take reasonable steps to identify beneficial owners if the paying agent has any information which suggests that an individual is not the beneficial owner of an interest payment and he/she is not covered by any of the exceptions. (5)

If a paying agent is unable for any reason to establish the beneficial owner in relation to an interest payment, the paying agent shall treat the individual on whose behalf it receives or secures the interest payment as the beneficial owner. (6)

898D Paying agent and residual entity

This section defines the terms “paying agents” and “residual entities”.

Paying agents are economic operators who make interest payments to, or secure interest payments for, the immediate benefit of beneficial owners. The definition encompasses more than what would be normally regarded as paying agents. It also includes collecting and receiving agents. Specifically included in the definition are residual entities as respects certain payments received rather than paid by such entities. Also specifically included are Government Ministers and any body established by statute which might make or secure interest payments.

A bank, etc is not a paying agent as respects amounts of interest it merely credits to its clients accounts (e.g. the issuer of a security paying interest to a designed account held at a bank, etc will not mean that the bank is a paying agent in relation to the account holder in respect of the payment by the issuer).

A “residual entity” is defined by elimination. The entities excluded from the definition

are listed in **subsection (2)** provided the entity provides evidence to the paying agent that the exclusion applies to them. Residual entities are treated as paying agents on receipt (as opposed to on payment) of an interest payment and only have to comply with the reporting requirements as respects a deemed interest payment (i.e. as respects an interest payment received by them) rather than any actual payments that they may make.

A residual entity may elect to be treated as a UCITS for the purposes of the Chapter. Provision is made for the Revenue Commissioners to make regulations governing the election process and the issuing of certificates. Where such an entity makes such an election the effect will be that it will be treated as an actual “paying agent” where it makes or secures an interest payment for a beneficial owner and as such subject to the normal reporting arrangements.

A residual entity which does not opt for UCITS treatment does not have to report interest payments it makes to beneficial owners. Such payments are outside the scope of the directive (see definition of paying agent). However, a residual entity is considered to have made an interest payment (a “deemed interest payment”) when it receives an interest payment (see **section 898E(7)(a)**). The residual entity is then required to report the details of the portion of this deemed interest payment attributable to each beneficial owner (see **section 898J**) who is resident in a relevant territory. This, of course, applies even where the residual entity does not make an actual payment to the beneficial owner.

898E Interest payments

This section defines what is meant by “interest payments” for the purposes of the legislation. “Interest payment” is defined very widely. It includes distributions made by UCITS and income from the sale of units in certain UCITS. More detailed guidance on what is regarded as an “interest payment” for the purposes of this Chapter is contained in the Guidance Notes for Paying Agents published by the Revenue Commissioners on their website at www.revenue.ie/en/about/publications/savings-tax-directive.html.

898F Obligations of paying agents where contractual relations entered into before 1 January 2004

This section outlines the rules in relation to establishing identity and residence of beneficial owners in cases where a contract (written or otherwise) was in force on 1 January, 2004. This is the date the Directive came into effect as respects the rules to be applied in the identification of beneficial owners. Essentially, the paying agent establishes the name, address and residence of such customers, using whatever information is available, for money laundering purposes.

More detailed guidance on these rules and on what is meant by the term “contractual relations” for the purposes of this Chapter is contained in the Guidance Notes for Paying Agents published by the Revenue Commissioners on their website at www.revenue.ie/en/about/publications/savings-tax-directive.html.

898G Obligations of paying agents in other contractual relations entered into

This section outlines the rules in relation to establishing identity and residence of beneficial owners in the case of new (post 1 January, 2004) customers. A paying agent is obliged to establish —

- the identity of a beneficial owner consisting of name, address, tax identification number or date and place of birth if a tax identification number is not presented and
- the residence of such customers consisting of the person’s permanent address,

using the Directive rules for new customers. Basically, this involved looking for the

passport or official ID card in the first instance. More detailed guidance on these rules (including on how they are to be applied in the case of an individual who does not possess the relevant documentation) and on what is meant by the term “contractual relations” for the purposes of this Chapter is contained in the Guidance Notes for Paying Agents published by the Revenue Commissioners on their website at www.revenue.ie/en/about/publications/savings-tax-directive.html.

898H Returns of interest payments made to or secured for beneficial owners

This section deals with the returns that must be made to the Revenue Commissioners in respect of payments to beneficial owners in other EU States or in the territories with which Ireland has agreements for the purposes of the Directive. The returns will cover details about the paying agents themselves, about the beneficial owners to whom the interest was paid and about the amounts of interest paid. The returns must be made within 3 months of the end of the tax year 2005 onwards. For the tax year 2005 the returns will relate to interest payments made in the period 1 July 2005 to 31 December 2005. For subsequent tax years the returns will relate to interest payments made in the full tax year.

898I Returns of interest payments to residual entities

This section deals with the returns that must be made to the Revenue Commissioners in respect of payments to residual entities in other EU Member States or in the dependent or associated territories. The returns will cover the name, address and interest payment to the residual entity and must be done within 3 months of the end of the tax year. For the tax year 2005 the returns will relate to interest payments made in the period 1 July 2005 to 31 December 2005. For subsequent tax years the returns will relate to interest payments made in the full tax year.

898J Exchange of information between Member States

Section 898J deals with the exchange on information between Member States and other relevant territories. The section allows Revenue to give information contained in the returns under the preceding two sections to the Member State or relevant territory where the beneficial owner or residual entity is resident.

898K Special arrangements for certain securities

Section 898K is a technical section, which implemented Article 15 of the Directive providing for the grand fathering of certain securities.

It provided that these securities, as defined in the Directive, did not come within the definition of “interest”. This section ceased to apply from 31 December 2011.

898L Certificate for the purposes of Article 13.2 of the Directive

Section 898L provides for the issue by Revenue of certain certificates to Irish residents. These certificates, which are provided for in Article 13 of the Directive, will be issued on request and will give details on the individual, the paying agent and the interest. Irish residents who present these certificates to paying agents in countries that operate a withholding tax regime instead of the exchange of information rules will receive their interest payments without the deduction of tax.

898M Credit for withholding tax

This Section deals with cases where tax has been withheld under the Directive by

Austria, Belgium or Luxembourg or under the arrangements made with certain third countries and associated and dependent territories of the UK and the Netherlands from interest payments made to individuals. Certain Member States and other relevant territories are entitled to do this as an alternative to following the normal exchange of information rules of the Directive. The section provides that, where such tax is withheld from an interest payment to Irish residents, they will get a tax credit against their Irish tax liabilities. If the individual is exempt from tax or has a liability less than the amount deducted, a refund of the appropriate amount will be given.

898N Audit

Section 898N provides for the audit, by the Revenue Commissioners, of the procedures put in place by paying agents to comply with their obligations under the legislation. This covers issues such as requiring the paying agents to produce records of the relevant transactions.

898O Penalty for failure to make returns, etc.

Section 898O provides for penalties for non-compliance.

898P Arrangements with dependant and associated territories of Member States

Arrangements with dependent and associated territories

The Savings Directive will not apply unless Member States are satisfied that the necessary agreements or arrangements are in place to allow the same measures to be applied in the dependant and associated territories of the UK and the Netherlands. (1)

These territories are the UK Crown Dependencies of the Isle of Man, Jersey and Guernsey; the UK Caribbean territories of Anguilla, British Virgin Islands, Cayman Islands, Monserrat and the Turks and Caicos islands; and the Netherlands Caribbean territories of Aruba and the Netherlands Antilles.

The section provides for the application of the legislation to individuals resident in these territories as and when arrangements are put in place in the territories concerned to either send information to the Revenue Commissioners on interest payments to Irish residents or to apply a withholding tax to interest payments to residents of Ireland.

Arrangements with third countries

The section also provides for the implementation by Ireland of the appropriate provisions of agreements entered into between the EU and each of Andorra, Liechtenstein, Monaco, San Marino and Switzerland. These agreements provide for the implementation by these countries of measures equivalent to those implemented by Member States under the Savings Directive. Basically, the equivalent measures these 5 countries are implementing consist of the deduction of a withholding tax from interest payments made to individuals who are resident in EU Member States. The third countries will share the amount deducted with the country in which the individual is resident on the basis of 75% to be remitted to the country of residence with 25% retained by the country applying the withholding tax. There is no reciprocal withholding by Ireland from interest payments to residents of those countries. Ireland is required to provide a credit for the amounts deducted from an interest payment made to an Irish resident individual against the individual's Irish income tax liability. If the individual has no liability or a liability less than the amount deducted, he or she gets a refund. The other aspect of these agreements is the exchange of information on request in the case of "tax fraud and the like". These are reciprocal arrangements. (2)

The various Council Decisions concerning these agreements and to which the actual texts of the agreements are attached are set out in order to ensure that the text referenced is the authentic text of the agreement. (2)(a)

Effect in Irish law is given to the provisions providing for exchange of information on request in the case of tax fraud and the like as set out in the agreements by declaring them to have the force of law in the State. (2)(b)

Section 898M (which provides a credit/refund for tax deducted from interest payments under the Directive and the bilateral agreements with the dependent/associated territories) applies to provide for a similar credit/refund for amounts deducted/retained from interest payments by the third countries. (2)(c)

The Revenue Commissioners are authorised to make regulations if arrangements are made by the Government with any of the third countries for supplementing the exchange of information on request provisions given the force of law by **subsection (2)(b)**. By virtue of **section 898Q(3)** any regulations made in connection with the implementation of the EU Savings Directive (including any regulations made under this provision) will have to be laid before the Dáil. (2)(d)

For the purposes of the agreement with Andorra the provisions of **section 898L** that allow for the payment of interest without deduction of tax where an individual has disclosed details of the account or asset in the other country to the Revenue Commissioners are applied. (2)(e)

898Q Miscellaneous and supplemental

This section deals with miscellaneous administrative type issues, such as, for example, the Revenue Commissioners powers to make regulations.

898R Commencement (Chapter 3A)

This section provides for the commencement of the Chapter. Certain provisions will not commence unless a Ministerial order is made commencing them.

On 21 June 2005 the Minister for Finance made the necessary commencement order the effect of which is that all of the provisions of this Chapter are fully effective (S.I. No. 286 of 2005 refers).

898S Cessation

This section provides for the repeal of the Directive with effect from 1 January 2016. The provisions of Chapter 3A, with the exceptions of **sections 898L, 898M** and **898O**, cease to apply to interest paid to or secured on behalf of a person on or after the 1 January 2016 where the person is-

- (a) resident in another Member State, or
- (b) resident in a third country or a dependent or associated territory of a Member State which is a reportable jurisdiction within the meaning of Section VIII of the OECD Standard for the Automatic Exchange of Financial Account Information as defined in **section 891F**.

[Liechtenstein and San Marino are adopters of the OECD Standard from 1 January 2016 and therefore Chapter 3A will no longer apply in respect of payments made to residents of these jurisdictions with effect from that date. As Andorra, Monaco and Switzerland are not adopters of the OECD Standard until 2017, relevant interest payments will not

fall to be reported in respect of these jurisdictions under *section 891F* from 1 January 2016 and therefore the provisions of Chapter 3A will continue to apply. Similarly, the dependent and associated territories have all committed to exchanging information under the OECD Standard as and from 2016 or 2017.]

CHAPTER 4 *Revenue Powers*

Overview

This Chapter sets out a number of powers available to inspectors and other officers of the Revenue Commissioners enabling them, inter alia, to obtain information, carry out certain audits and in certain situations to enter and search premises. Most of these powers can only be used by officers who are specifically authorised by the Revenue Commissioners for that purpose.

899 Inspector's right to make enquiries

This section enables an inspector to verify the accuracy of information provided (whether automatically or on request) by —

- persons acting as agents in respect of rents (*section 888(2)(d)*),
- Ministers, Health Boards, Local Authorities, etc in respect of rents paid (*section 888(2)(e)*),
- fees or commissions paid for services (*section 889*),
- persons in receipt of income on behalf of others (*section 890*),
- those who pay or credit interest without deduction of tax – e.g. banks etc. (*section 891*),
- companies paying interest in certain circumstances without deduction of withholding tax (*section 891A*),
- nominee holders of securities (*section 892*),
- intermediaries in relation to the opening of foreign bank accounts (*section 895*),
- intermediaries in relation to offshore funds and foreign life assurance policies (*section 896*).

900 Power to call for production of books, information, etc

Summary

This section allows an authorised officer of the Revenue Commissioners to require a taxpayer to deliver, or to make available for inspection, books, records and other documents or to furnish information relevant to the taxpayer's tax liability.

Details

Definitions are as follows —

(1)

“authorised officer” is an officer of the Revenue Commissioners authorised by them in writing for the purpose of this section;

“books, records or other documents” are comprehensively defined;

“liability”, in relation to a person is defined to include any tax to which the person is, may be, or may have been, liable;

“tax” includes any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

An authorised officer can, by notice in writing, require a person to, within a period of (2) not less than 21 days —

- deliver, or to make available, books, records or other documents, and/or
- to furnish in writing or otherwise information, explanations and particulars,

as are specified in the notice and which are relevant to a liability in relation to the person.

Before the officer issues a notice under *subsection (2)* the person concerned must have (3) been given a reasonable opportunity to comply with the officer's requirements.

A person carrying on a profession cannot be obliged to disclose- (4)

- information which is bound by legal privilege,
- confidential medical information, or
- confidential professional advice given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

Where a person is required by a notice under *subsection (2)* to make available for (5) inspection by an authorised officer books, etc, the person is required to afford the officer reasonable assistance, including the giving of information in relation to the use of all electronic or other automatic means by which books, etc in non-legible form is capable of being reproduced in legible form.

The officer can take copies or extracts from the books, etc made available. (6)

A penalty of €4,000 is provided for the refusal or failure by a person to comply with a (7) notice or failure to give the assistance required under *subsection (5)*.

901 Application to High Court: production of books, information, etc

The power in this section is similar to that in *section 900* in that it enables an authorised officer to obtain from a person, books, etc and information, etc which are relevant to a liability in relation to that person. The section allows the officer to apply to a judge of the High Court for an order directing the person concerned to comply with the officer's requirements in so far as the judge so directs and in accordance with any conditions he or she may impose. As is the case in *section 900*, a person carrying on a profession cannot be obliged to disclose-

- information which is bound by legal privilege,
- confidential medical information, or
- confidential professional advice given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

902 Information to be furnished by third party: request of an authorised officer

Summary

902 Information to be furnished by third party: request of an authorised officer

Summary

This section enables an authorised officer to access records and information of third parties (other than financial institutions) which are relevant to the tax liability of another person, including any person (including a group or class of persons) whose identity is not known to the officer, but who is identifiable by other means.

Details

The definitions of “books, records or other documents” and “liability” in relation to a person have the same meaning as in *section 900*. (1)

An authorised officer is empowered by the section to issue a notice to a third party, other than a financial institution, seeking within a period of not less than 30 days access to (whether by way of delivery or making available) books, records or other documents as are in the third party’s power, possession or procurement and as contain, or may contain, information relevant to a liability in relation to another person (i.e. a taxpayer), including any person (including a group or class of persons) whose identity is not known. The officer may also or alternatively seek information, explanations or particulars from the third party which is relevant to that liability. (2)

It is a requirement that the officer concerned has reasonable grounds to believe that the third party to whom a notice is to issue is likely to have information relevant to the establishment of a tax liability of the taxpayer. (3)

A notice can be issued under the section in respect of a company which has been dissolved or an individual who has died. (4) &

Where the identity of the taxpayer is known to the authorised officer when they serve the notice on the third party, the taxpayer must be notified in writing of the service of the notice and upon whom it has been served at the time of service or as soon as is practicable thereafter. In other cases where the identity of the taxpayer is not known to the officer, the taxpayer must be notified in writing of the service of the notice and upon whom served as soon as is practicable after their identity becomes known to the officer. (6)

The third party is entitled to inspect and to obtain copies of any records which have been delivered to the authorised officer and the officer is entitled to make extracts from or copies of records made available by the third party for inspection. (7) & (8)

A person carrying on a profession cannot be obliged to disclose— (9)

- information which is bound by legal privilege,
- confidential medical information, or
- confidential professional advice given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

Where a third party makes books, etc available for inspection by an authorised officer, he or she is required to afford reasonable assistance to the officer. Failure to provide such assistance or to comply with a notice can render a person liable to a penalty of €4,000. (10) & (11)

902A Application to High Court: information from third party

This section is similar to *section 902* in that it empowers an authorised officer to obtain information from a third party, other than a financial institution. The information sought can apply to a named taxpayer or an unidentified taxpayer or group of taxpayers. However, the authorised officer must apply to a judge of the High Court for an order requiring the third party to supply the information or, as the case may be, to deliver, or make available for inspection, books, records or other documents. Before making an application to the High Court the authorised officer must obtain the consent in writing of a Revenue Commissioner and must be satisfied that —

- there are reasonable grounds for suspecting that the taxpayer(s) has (have) failed to comply with any provisions of the Acts (as defined),
- such failure is likely to lead or have lead to serious prejudice to the proper assessment or collection of tax, and

- information which is likely to be available from the third party is relevant to the proper assessment or collection of tax.

When making an application to the High Court, an authorised officer may make a request to the judge to provide that any order made by the court is subject to a condition that, except for the purposes of complying with the order, the existence of or any of the details of the order, may not be disclosed (directly or indirectly) to any person. An authorised officer may only make such a request to the judge where they have reasonable grounds to suspect that the disclosure of such an order is likely to lead to serious prejudice to the proper assessment or collection of tax. The authorised officer has the right to make this request to the judge but it is entirely at the discretion of the judge as to whether they grant the request.

As with *section 902*, a person carrying on a profession cannot be obliged to disclose-

- information which is bound by legal privilege,
- confidential medical information, or
- confidential professional advice given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

902B Power of inspection: life policies

Section 902B empowers Revenue to inspect, at the premises of a life assurance company, the records held by the company relating to a sample of policies and the policyholders to whom they were issued. A Revenue official can only use this power if directed by a Revenue Commissioner to investigate a class or classes of policies issued by the assurance company and the policyholders thereof. A Revenue Commissioner can only issue such a direction if he or she forms the opinion that there are circumstances that suggest that untaxed funds have been invested in a class or classes of policies issued by the assurance company concerned. Any information obtained from an inspection, under *section 902B*, of the records of a life assurance company can only be used to enable an application to be made to a judge of the High Court under *section 902A*.

903 Power of inspection: PAYE

Summary

This section allows an authorised officer to enter business premises and search for, examine and remove records for the purposes of PAYE. The officer is entitled to expect reasonable assistance from those concerned in this task. For the purposes of this section, all records relating to PAYE must be retained for at least 6 years (this can be reduced with Revenue approval) by the business.

Details

“authorised officer” means a person authorised in writing by the Revenue Commissioners to exercise the powers conferred by this section. (1)

“records” essentially mean all payroll records held in any form by an employer.

An authorised officer may at all reasonable times enter a business premises — (2)

- from which a person acts as an employer,
- from which a person pays emoluments or provides benefits in kind, or
- where records are kept.

The authorised officer may require any person who is on the premises (other than those not connected with the business) to produce the required records or, where the required

records are not produced, the authorised officer may search the premises for these records and may examine, copy, remove and retain any such records for possible subsequent legal proceedings.

There is a prohibition on the authorised officer entering premises, or part of a premises, occupied as a private residence unless the consent of the occupier is given or a warrant is obtained from a Judge of the District Court, authorising such entry. (2A)

The authorised officer can require reasonable assistance in his/her task from persons on the premises (other than those not connected with the business). (3)

The authorised officer is to produce evidence of authorisation if requested. (4)

Failure to comply with the authorised officer's request renders the person liable to a penalty of €4,000. (5)

Records addressed by this section must be retained for 6 years or for such lesser period as the Revenue Commissioners authorise. (6)

904 Power of inspection: tax deduction from payments to certain subcontractors

Summary

This section relates to subcontractors in the construction, forestry and meat processing industries. The section gives powers of inspection to an authorised officer of the Revenue Commissioners in relation to payments by principals to subcontractors. These powers include —

- power to enter premises, search for, examine, remove and retain records for use in later legal proceedings,
- power to seek explanations, and
- the extension of the entry and inspection powers of the section to subcontractors themselves and employees of both principals and subcontractors so as to cover any premises where records of construction operations are kept.

The powers provided for in this section mirror those in *section 903* in relation to PAYE and employees.

Details

“authorised officer” means an officer of the Revenue Commissioners authorised for the purpose of this section. (1)

“principal”, “relevant contract”, “relevant operations” and “subcontractor” have the meanings set out in *Chapter 2 of Part 18*.

“records” mean records to be kept under *Chapter 2 of Part 18 and regulations made under that Chapter* (payments to subcontractors in certain industries) and *section 886* (obligation to keep certain records).

An authorised officer may at all reasonable times enter a premises on suspicion that relevant operations (construction, forestry or meat processing) are or have been carried on there or that there are records located there. (2)

The authorised officer may require records to be supplied by appropriate persons. (2)(i)

If the authorised officer believes that any of the records required to be produced are not so produced a search for such records may be conducted. (2)(ii)

The authorised officer may remove, retain, copy or make extracts from any records either for further examination or possible court cases. (2)(iii)

There is a prohibition on the authorised officer entering premises, or part of a premises, occupied as a private residence unless the consent of the occupier is given or a warrant is obtained from a Judge of the District Court, authorising such entry. (2A)

An authorised officer can require all reasonable assistance in going about his/her work. (3)

An authorised officer is to produce evidence of authorisation on request. (4)

A penalty of €4,000 applies for non-compliance with the provisions of this section. (5)

Records to which this section applies are to be kept for 6 years or such lesser period as the Revenue Commissioners may authorise. (6)

904A Power of inspection: returns and collection of appropriate tax

Summary

This power enables Revenue to audit the deposit interest retention tax (DIRT) returns of financial institutions.

Details

For the purposes of this section the definitions of “amount on account of appropriate tax”; “appropriate tax”; “deposit”; “interest”; “relevant deposit taker”; “relevant interest”; and “return” are imported from *section 256*. Definitions are also provided for “authorised officer”; “books, records or other documents”; “liability” in relation to a person; and “tax”. (1)

An authorised officer may at all reasonable times enter any premises or place of business of a relevant deposit taker (essentially a financial institution) for the purposes of auditing the DIRT return for a year of assessment. (2)

The audit procedures can include — (3)

- examination of the procedures put in place by the institution to ensure compliance with *section 257(2)* which states that —
“A relevant deposit taker shall treat every deposit made with it as a relevant deposit unless satisfied that such a deposit is not a relevant deposit; but, where a relevant deposit taker has satisfied itself that a deposit is not a relevant deposit, it shall be entitled to continue to so treat the deposit until such time as it is in possession of information which can reasonably be taken to indicate that the deposit is or may be a relevant deposit.”
(A relevant deposit is one which is subject to DIRT.)
- checking a sample of accounts which have been treated as being free of DIRT to determine whether —
 - the procedures referred to above have been observed in practice and whether they are adequate;
 - the institution is in possession of the appropriate declarations under *section 263, section 263A, or section 246A(3)(b)(ii)(III)* or the tax reference numbers referred to in *paragraph (f)(ii)* or *(h)(ii)* of *section 256* and *paragraph (b)(ii)(I)* or *(b)(ii)(II)* of *subsection (3)* of *section 246A*; and
 - there is information in the institution’s possession indicating that the account should not have been treated as being free from DIRT.

Should the audit indicate that an account should not have been treated as being free from DIRT the authorised officer can make such further enquiries as are necessary to establish whether this indicates that someone has a tax liability. (4)

The institution is required to afford reasonable assistance to the authorised officer in carrying out his or her duties under the section. (5)

An employee of the institution or, as the case may be, the institution itself can be liable to a penalty for failure to afford such assistance. (6) & (7)

904B Report of Committee of Public Accounts: publication etc.

This section permitted the Revenue Commissioners to make public, a report of what became known as the “Dirt look-back” audits. It also obliged them to make a report in that regard to the Committee of Public Accounts of Dáil Eireann before 1 November, 2000.

904C Power of inspection (returns and collection of appropriate tax) assurance companies

This section provides an audit power in respect of certain returns made by life assurance companies. The returns concerned are those of appropriate tax, being the tax which those entities are required to deduct from payments to policyholders on encashment of their policy and in certain other circumstances. The provisions mirror those of *section 904A* which relate to the audit of DIRT returns of financial institutions.

904D Power of inspection (returns and collection of appropriate tax) investment undertakings

This section provides an audit power in respect of investment undertakings. The returns concerned are those of appropriate tax, being the tax which those entities are required to deduct from payments to unit holders when they surrender their units, and in certain other circumstances. The provisions mirror those of *section 904A* which relate to the audit of DIRT returns of financial institutions.

904E Power of inspection: claims by authorised insurers

Summary

Under the tax relief at source (TRS) arrangements individuals deduct a percentage equal to the standard rate when making premium payments to medical insurers. In the case of premium payments to which *section 470B* applies (premiums which qualify for the age-related tax credit in respect of insured persons aged 50 years or older), individuals also deduct an amount equivalent to the age-related tax credit(s) due in respect of the premium. The insurers, in turn, claim repayment of equivalent amounts from the Revenue Commissioners.

This section enables the Revenue Commissioners to audit claims for repayments by medical insurers to ensure that these are correct. To ensure that the relief at source arrangements are being complied with, the Revenue Commissioners can check procedures relating to the vouching of the claims and they are also permitted to examine, on a sample basis, underlying records to ensure that the procedures are both adequate and observed and that claims from individuals are valid.

Details

“authorised insurer” is defined by reference to the meaning of that term in *section 470(1)* in respect of claims made under *section 470(3)(b)(ii)*, and by reference to *section 470B(1)* in respect of claims made under *section 470B(6)(b)(ii)*. (1)

“authorised officer” means a person authorised in writing by the Revenue

Commissioners to exercise the powers conferred by this section.

An authorised officer may enter, at all reasonable times, any premises or place of business of a medical insurer to audit claims for repayment made by that insurer under *section 470(3)(b)(ii)* or *section 470B(6)(b)(ii)* of sums deducted by individuals under the TRS arrangements. (2)

The audit procedures can include— (3)

- examination of the procedures adopted by the medical insurer relating to the vouching of claims,
- checking a sample of the cases in respect of which a claim has been made to determine whether those procedures have been observed and are adequate.

The authorised officer can require the insurer or its employees to give information, explanations and particulars and to afford reasonable assistance in carrying out his or her duties. (4)

The authorised officer is to produce proof of authorisation on request. (5)

An employee of a medical insurer is liable to a penalty of €1,265 for failure to comply with the requirements of an authorised officer in the exercise or performance of his or her powers or duties. (6)

Where the medical insurer fails to comply, the penalty is €19,045 with a further penalty of €2,535 for each day that the failure continues. (7)

904F Power of inspection: claims by qualifying lenders

Summary

Under the tax relief at source (TRS) arrangements individuals deduct a percentage equal to the standard rate when paying mortgage interest to mortgage lenders. The lenders, in turn, claim repayment of equivalent amounts from the Revenue Commissioners. This section enables the Revenue Commissioners to audit claims for repayments by mortgage lenders to ensure that these are correct. To ensure that the relief at source arrangements are being complied with, the Revenue Commissioners can check procedures relating to the vouching of claims and they are also permitted to examine, on a sample basis, underlying records to ensure that the procedures are both adequate and observed and that claims from individuals are valid.

Details

“authorised officer” means a person authorised in writing by the Revenue Commissioners to exercise the powers conferred by this section. (1)

“books, records or other documents” includes any records used in the business of the mortgage lender, documents and correspondence and records of other communications between a mortgage lender and an individual borrower.

“qualifying lender” and “qualifying mortgage loan” are defined by reference to their meanings in *section 244A*.

An authorised officer may enter, at all reasonable times, any premises or place of business of a mortgage lender to audit claims for repayment made by that lender of sums deducted by individuals under the TRS arrangements. (2)

The audit procedures can include —

- examination of the procedures adopted by the mortgage lender relating to the

vouching of claims,

- checking a sample of the cases in respect of which a claim has been made to determine whether those procedures have been observed and are adequate. (3)

The authorised officer can require the lender or its employees to produce books, documents and records, to give information and explanations and to afford reasonable assistance in carrying out his or her duties. (4)

An authorised officer may make extracts from, or copies of, books, documents and records of the mortgage lender or require that copies be made available to him or her in carrying out his or her duties under the section. (5)

The authorised officer is to produce proof of authorisation on request. (6)

An employee of a mortgage lender is liable to a penalty of €1,265 for failure to comply with the requirements of an authorised officer in the exercise or performance of his or her powers or duties. (7)

Where the mortgage lender fails to comply, the penalty is €19,045 with a further penalty of €2,535 for each day that the failure continues. (8)

904G Power of inspection: claims by qualifying insurers

Summary

Under the tax relief at source (TRS) arrangements individuals deduct a percentage equal to the standard rate when paying premiums under qualifying long-term care policies to qualifying insurers. The insurers, in turn, claim repayment of equivalent amounts from the Revenue Commissioners. This section enables the Revenue Commissioners to audit claims for repayments by insurers to ensure that these are correct. To ensure that the relief at source arrangements are being complied with, the Revenue Commissioners can check procedures relating to the vouching of claims and they are also permitted to examine, on a sample basis, underlying records to ensure that the procedures are both adequate and observed and that claims from individuals are valid.

Details

“authorised officer” means a person authorised in writing by the Revenue Commissioners to exercise the powers conferred by this section. (1)

“qualifying insurer” and “qualifying long-term care policies” are defined by reference to their meanings in *section 470A*.

An authorised officer may enter, at all reasonable times, any premises or place of business of a qualifying insurer to audit claims for repayment made by that insurer of sums deducted by individuals under the TRS arrangements. (2)

The audit procedures can include — (3)

- examination of the procedures adopted by the qualifying insurer relating to the vouching of claims,
- checking a sample of the cases in respect of which a claim has been made to determine whether those procedures have been observed and are adequate.

The authorised officer can require the insurer or its employees to give information, explanations and particulars and to afford reasonable assistance in carrying out his or her duties. (4)

The authorised officer is to produce proof of authorisation on request. (5)

An employee of a qualifying insurer is liable to a penalty of €1,265 for failure to comply with the requirements of an authorised officer in the exercise or performance of his or

her powers or duties.

Where the qualifying insurer fails to comply, the penalty is €19,045 with a further (7) penalty of €2,535 for each day that the failure continues.

904H Power of inspection: qualifying savings managers

Summary

This section enables the Revenue Commissioners to audit returns and examine procedures in connection with the special savings incentive scheme which is provided for in **Part 36A**. This is to ensure that the provisions governing various aspects of that scheme are operated in a proper manner.

Details

“authorised officer” means a person authorised in writing by the Revenue (1) Commissioners to exercise the powers conferred by this section.

“qualifying savings manager” and “special savings incentive account” are defined by reference to their meanings in **section 848B**.

An authorised officer may enter, at all reasonable times, any premises or place of business of a qualifying savings manager or a person appointed by a qualifying savings manager, for the purpose of auditing compliance with the provisions of **Part 36A**, that is, the scheme for special savings incentive accounts. The audit procedures can include —

- an audit of monthly and annual returns, (2)(a)
- an examination of the procedures put in place by a qualifying savings manager/appointed person so as to ensure that the obligations imposed by **Part 36A** are complied with, (2)(b)
- an examination of all (or a sample of) special savings incentive accounts to establish that the procedures governing those accounts and the terms under which they were opened and are operated comply with the conditions laid down, (2)(c)
- an examination of any notice and declaration arising out of the transfer of special savings incentive accounts. (2)(d)

The authorised officer can require the qualifying savings manager, the appointed person (3) or their employees to produce records, to give information and explanations and to afford reasonable assistance in carrying out his or her duties.

An employee of a qualifying savings manager/appointed person is liable to a penalty of (4) €1,265 for failure to comply with the requirements of an authorised officer in the exercise or performance of his or her powers or duties.

Where the qualifying savings manager or the appointed person fails to comply, the (5) penalty is €19,045 with a further penalty of €2,535 for each day that the failure continues.

904I Power of inspection: returns and collection of dividend withholding tax.

Summary

This section gives Revenue the power to carry out an on-site audit of Dividend Withholding Tax (DWT) returns. Such returns are required to be made by a company if it deducts tax from dividends or by an authorised withholding agent, if the agent takes responsibility for deducting the tax on behalf of client companies – see **Chapter 8A** of **Part 6**. This audit power is very similar in its terms to the DIRT audit power in **section 904A**.

Details

The definitions of “authorised withholding agent”; “dividend withholding tax” and “relevant distribution” are the same as in *section 172A*. Definitions are also provided for “accountable person”; “authorised officer” and “records”. (1)

An authorised officer may at all reasonable times enter any premises or place of business of an accountable person for the purposes of auditing the DWT return for a year of assessment. (2)

The audit procedures can include — (3)

- examination of the procedures put in place by the institution to ensure compliance with Dividend Withholding Tax rules.
- checking a sample of records in the possession of the accountable person to determine whether —
 - these procedures have been observed in practice and whether they are adequate;
 - there is information in the accountable person’s possession indicating that the information contained in the records is incorrect.

The accountable person and their employee’s are required to afford reasonable assistance to the authorised officer in carrying out his or her duties. (4)

An authorised officer may make copies of records or extracts of the records. (5)

Employees of accountable persons and accountable persons are liable to the penalties set out in the sections if they fail to comply with the requirements of the authorised officer. (6) & (7)

904J Power of inspection: tax deduction from payments in respect of professional services by certain persons

Summary

Under the terms of the professional services withholding tax (PSWT) scheme, accountable persons are required to make monthly returns to the Revenue containing details in connection with the PSWT. This section enables the Revenue Commissioners to carry out on-site audits of these returns and also to examine procedures to ensure compliance by accountable persons with their obligations in connection with the PSWT.

Details

“authorised officer” means a person authorised in writing by the Revenue Commissioners to exercise the powers conferred by this section. (1)

“books, records or other documents” includes any records used in the business of the accountable person, documents and correspondence and records of other communications between an accountable person and a specified person.

“accountable person” and “specified person” are defined by reference to their meanings in *sections 521* and *520* respectively.

An authorised officer is empowered to enter, at all reasonable times, any premises or place of business of an accountable person for the purpose of auditing returns made by that accountable person under *section 525*. (2)

The audit procedures can include — (3)

- examination of the procedures adopted by the accountable person to ensure that the accountable person is complying with the obligations imposed by *Chapter 1* of

- **Part 18** dealing with the payments in respect of professional services;
checking all or a sample of the returns made to determine whether — (3)(b)
 - those procedures have been observed,
 - those procedures are adequate.

The accountable person or its employees are required to produce books and records, to give information and explanations and to afford reasonable assistance to the authorised officer in carrying out his or her duties. (4)

An authorised officer may make extracts from, or copies of, books and records of the accountable person or require that copies be made available to him or her in carrying out his or her duties under the section. (5)

The officer is to produce proof of authorisation on request. (6)

An employee of an accountable person is liable to a penalty of €1,265 for failure to comply with the requirements of an authorised officer in the exercise or performance of his or her powers or duties. (7)

Where the accountable person fails to comply, the penalty is €19,045 with a further penalty of €2,535 for each day that the failure continues. (8)

904K Power of inspection: notices of attachment

Summary

Section 1002 provides for returns to be made in respect of deductions from payments due to tax defaulters. This section allows for the inspection of those returns to ensure compliance by relevant persons.

Details

Definitions

“authorised officer”, “books, records or other documents”, “relevant employee”, “relevant person” and “return” are defined for the purposes of this section and are self-explanatory. (1)

An authorised officer is empowered to enter, at all reasonable times, any premises or place of business of a relevant person for the purpose of auditing returns made by that relevant person under **section 1002**. (2)

The relevant person or their employees are required to produce books and records, to give information and explanations and to afford reasonable assistance to the relevant officer in carrying out his or her duties. (3)

An authorised officer may make extracts from, or copies of, books and records of the relevant person or require that copies be made available to him or her in carrying out his or her duties under the section. (4)

The officer is to produce proof of authorisation on request. (5)

An employee of a relevant person is liable to a penalty of €1,265 for failure to comply with the requirements of an authorised officer in the exercise or performance of his or her powers or duties. (6)

Where the relevant person fails to comply, the penalty is €19,045 with a further penalty of €2,535 for each day that the failure continues. (7)

905 Inspection of documents and records

Summary

This section enables an authorised officer, at a reasonable time, to enter premises, where any trade or profession is carried on, in order to inspect records relevant to establishing or verifying any tax liability. However, entry to a private residence is only permitted with the consent of the occupier or on foot of a warrant issued by the District Court. The authorised officer is empowered to remove the records (not subject to professional privilege) for examination and to require certain persons at the premises to render all reasonable assistance. A person who fails to comply with an authorised officer is liable to a penalty of €4,000.

Details

Definitions

“authorised officer” is a Revenue officer specifically authorised by the Revenue Commissioners to exercise the powers conferred by this section. **(1)**

“property” is any asset relating to a tax liability.

“records” is defined so as to include all written, printed and computer stored information which relates to a business carried on by a person or which a person is obliged to either keep or produce for tax purposes.

“tax” is defined so as to apply to all taxes and duties, levies and charges which are administered by the Revenue Commissioners.

“tax liability” includes both current liabilities and liabilities which arise as a consequence of the exercise of the powers of this section by an authorised officer.

Powers

An authorised officer may at a reasonable time enter any premises if he/she believes — **(2)(a)**

- a taxable activity is being carried on or has been carried on there,
- records relating to the taxation of this activity or other tax records are located there, or
- any property is or has been kept at the premises.

The authorised officer is empowered to require any person at the premises (other than a customer) to produce records or property.

If the records or property he/she is seeking are not produced, the authorised officer may search the premises for the records or property. The authorised officer is entitled to —

- examine and take copies or extracts from any records or property;
- remove and retain records for further examination or for subsequent legal proceedings;
- examine property listed in any records.

The authorised officer may require reasonable assistance from any person whom he/she believes — **(2)(b)**

- is or was engaged in the trade, profession or activity,
- is or was liable to any tax, or
- has information relating to any tax liability.

A person carrying on a profession shall not be required to disclose - **(2)(c)**

- information to which a claim of legal professional privilege could be maintained in legal proceedings,

- information of a confidential medical nature, or
- professional advice of a confidential nature given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

[**Subsection (2)(d)**, which prohibited entry to financial institutions, was repealed by the Finance Act 1999.] (2)(d)

An authorised officer may not enter a private residence without the consent of the occupier except on foot of a warrant issued under **subsection (2A)**. (2)(e)

Application for search warrant

An application can be made by an authorised officer to a District Court Judge for a warrant to empower the officer, accompanied by other named Revenue officials and other persons, to enter within one month of the issue of the warrant (if need be by force), a premises or place for the purposes of searching and examining anything found there. If the officer has reasonable grounds for suspecting that any records found there are material to the proper assessment or collection of tax (or required for legal proceedings instituted by a Revenue officer) the records can be removed and retained. Before issuing a search warrant, the Judge must be satisfied by information given on oath that there are reasonable grounds for suspecting — (2A)

- that a person may have failed, or may fail, to comply with the Acts,
- that any such failure would be prejudicial to the proper assessment and collection of tax, and
- that records which are material to such assessment or collection are likely to be kept or concealed at the premises or place for which the warrant is sought.

Penalty

Failure to comply with the requirements of an authorised officer in the exercise or performance of his or her powers or duties leaves a person liable to a penalty of €4,000. (3)

Proof of authorisation

Proof of authorisation under this section must be shown by an authorised officer on request. (4)

906 Authorised officers and Garda Síochána

This section allows an officer of the Revenue Commissioners who is authorised to enter premises to carry out inspection duties in relation to PAYE, Relevant Contracts Tax or Self Assessment audit may bring with him/her a member or members of the Garda Síochána. If the Revenue officer is obstructed or interfered with, the Gardaí have the power of arrest without warrant.

906A Information to be furnished by financial institutions

Summary

The power granted by this section, which permits access to information in financial institutions, parallels the general third party power of *section 902*.

Details

Definitions, for the purposes of this section and *sections 907, 907A and 908*, are given (1) for “the Acts”; “authorised officer”; “books, records or other documents”; “connected person”; “deposit”; “interest”; “financial institution”; “liability” in relation to a person; and “tax”.

For the purposes of enquiring into the liability of a named person, or any person (2) (including a group or class of persons) whose identity is not known to the officer, but who is identifiable by other means., an authorised officer may serve a notice on a financial institution, requiring it, within a period of not less than 30 days, to make available for inspection the books, records or other documents, and/or to furnish the information, relevant to the person’s liability, and which are specified in the notice.

Where the financial institution is required to make books, etc available it is also required (3) to afford reasonable assistance to the authorised officer in carrying out his or her inspection.

Before a notice can be issued under the section the authorised officer must have (4) reasonable grounds to believe that the financial institution concerned is likely to have information relevant to the tax liability of the person concerned and the officer must also obtain the written consent of a Revenue Commissioner.

The information sought by a notice under the section can relate to a person connected (5) & (6) with the person under enquiry. Persons under enquiry can include a company which has been dissolved and an individual who has died.

In the case where the identity of the person is known to the authorised officer that (8) person must be notified in writing of the service of the notice and upon whom it is served at the time of service or as soon as practicable thereafter.. In other cases where the identity of the person is not known to the officer, to the person must be given the written notification as soon as is practicable after their identity becomes known to the officer.

The authorised officer is entitled to make extracts from or copies of books, records or (9) other documents made available by virtue of the service of a notice under this section.

Failure or refusal to comply with a notice served under this section, or to provide (10) reasonable assistance to the authorised officer, can render the financial institution concerned liable to a penalty.

907 Application to Appeal Commissioners: information from financial institutions

Summary

This section enables an authorised officer of the Revenue Commissioners to apply to the Appeal Commissioners for consent to serve a notice on a financial institution seeking information relevant to a taxpayer’s liability. The taxpayer concerned can include a person, or a group or class of persons, whose identity or identities is or are, not known to the authorised officer. The section can also apply where the taxpayer has made a declaration of non-residence for DIRT purposes. The authorised officer must have

reasonable grounds for suspecting that the taxpayer in question is or was engaged in serious tax evasion and that the financial institution holds information relevant to the proper assessment of the taxpayer. The written consent of a Revenue Commissioner is necessary before making an application. If the application is successful, the financial institution has 30 days to comply with the notice before facing a penalty. The authorised officer can require the financial institution to give assistance in retrieving electronically stored documents.

Details

Definitions

For the purposes of the section “taxpayer” means any person, including a person whose identity is not known to the authorised officer, or a group or class of such persons and also a person who has made a non-resident DIRT declaration. The persons who may be treated as a taxpayer for the purposes of this section can also include a company which has been dissolved and an individual who has died. (1) & (6)

Application to the Appeal Commissioners

An authorised officer may make an application to the Appeal Commissioners seeking consent to serve a notice on a financial institution for the purpose of obtaining information relevant to the liability of a taxpayer. Where the Appeal Commissioners are satisfied that there are reasonable grounds for the application, they may give their consent to the service of a notice. The application to the Appeal Commissioners is procedurally similar to the hearing of an appeal against a tax assessment. However the determination of the Appeal Commissioners is final and conclusive. (2), (5) & (8)

Before making an application to the Appeal Commissioners the authorised officer must obtain the written consent of a Revenue Commissioner, and must have reasonable grounds to believe that the taxpayer concerned may have failed, or may fail, to comply with the Acts, and that such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax. The officer must also be satisfied that the information in the possession of the financial institution is likely to be relevant to the proper assessment or collection of tax in relation to the taxpayer. (3)

The application to the Appeal Commissioners can relate to information in respect of a person connected with the taxpayer whose tax affairs are under enquiry. (4)

Result of a successful application

Where the Appeal Commissioners give their consent to the service of a notice and its contents, the notice must be served within 14 days. The financial institution is required to comply with the notice within 30 days of its service. Failure to comply with the notice can render the financial institution liable to a penalty, with further daily penalties applicable should the failure to comply continue after the 30 day period. (7) & (9)

The financial institution, in complying with a notice served on it, is required to give the authorised officer reasonable assistance in accessing information which may be stored electronically or by other automatic means. The authorised officer is entitled to make copies of or extracts from the documentation made available for inspection by the financial institution. (7A) & (7B)

907A Application to Appeal Commissioners: information from third party

Summary

This section enables an authorised officer of the Revenue Commissioners to apply to the

Appeal Commissioners for consent to serve a notice on a third party seeking information relevant to a taxpayer's liability. The taxpayer concerned can include a person, or a group or class of persons, whose identity or identities is or are, not known to the authorised officer. The authorised officer must have reasonable grounds for suspecting that the taxpayer in question is failing or has failed to comply with any provision of the Tax Acts and that the third party holds information relevant to the proper assessment of the taxpayer. The written consent of a Revenue Commissioner is necessary before making an application. If the application is successful, the third party has 30 days to comply with the notice before facing a penalty.

Details

Definition

For the purposes of the section “taxpayer” means any person, including a person whose identity is not known to the authorised officer, or a group or class of such persons. The persons who may be treated as a taxpayer for the purposes of this section can also include a company which has been dissolved and an individual who has died. (1) & (6)

Application to the Appeal Commissioners

An authorised officer may make an application to the Appeal Commissioners seeking consent to serve a notice on a third party for the purpose of obtaining information relevant to the liability of a taxpayer. However, certain confidential information such as legal or medical advice is not required to be disclosed. Where the Appeal Commissioners are satisfied that there are reasonable grounds for the application, they may give their consent to the service of a notice. The application to the Appeal Commissioners is procedurally similar to the hearing of an appeal against a tax assessment. However the determination of the Appeal Commissioners is final and conclusive. (2), (5), (7) & (9)

Before making an application to the Appeal Commissioners the authorised officer must obtain the written consent of a Revenue Commissioner, and must have reasonable grounds to believe that the taxpayer concerned may have failed, or may fail, to comply with the Acts, and that such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax. The officer must also be satisfied that the information in the possession of the third party is likely to be relevant to the proper assessment or collection of tax in relation to the taxpayer. (3)

The application to the Appeal Commissioners can relate to information in respect of a person connected with the taxpayer whose tax affairs are under enquiry. (4)

Result of a successful application

Where the Appeal Commissioners give their consent to the service of a notice and its contents, the notice must be served within 14 days. The third party is required to comply with the notice within 30 days of its service. Failure to comply with the notice can render the third party liable to a penalty, with further daily penalties applicable should the failure to comply continue after the 30 day period. (8) & (10)

908 Application to High Court seeking order requiring information: financial institutions

Summary

This section enables an officer authorised by the Revenue Commissioners to apply to the High Court to require a financial institution to furnish certain information regarding the liability of a taxpayer (including a person, or a group or class of persons whose identity

or identities is or are not known to the authorised officer). The application can also seek information regarding a person connected to the taxpayer. The section mirrors **section 907** with the addition that the High Court can freeze any account if it deems it necessary. Furthermore, the authorised officer can be afforded a measure of anonymity in proceedings should the Court consider that it is in the public interest to do so. The authorised officer must have reasonable grounds for suspecting that the taxpayer in question has been involved in serious tax evasion and that the financial institution has information relevant to the proper assessment of the taxpayer. When making such an application, an authorised officer may request that the judge direct that save for the purposes of complying with the order, the existence of or any details of the order shall not be disclosed (whether directly or indirectly) to any person. An authorised officer may only make such a request to the judge where they have reasonable grounds to suspect that the disclosure of such an order is likely to lead to serious prejudice to the proper assessment or collection of tax. While an authorised officer may make such a request to the judge it is entirely at the discretion of the judge as to whether the request is granted. The written consent of a Revenue Commissioner is necessary before making an application. The authorised officer can require the financial institution to give assistance in retrieving electronically stored documents.

Details

Definitions

“Judge” is a judge of the High Court. “A taxpayer” is defined as any person including a person, or a group or class of persons, whose identity is, or whose individual identities are, not known to the authorised officer and also a person who has made a non-resident DIRT declaration. “A taxpayer” can also include a company which has been dissolved and an individual who has died. (1) & (6)

Application to the High Court

An authorised officer may apply to the High Court seeking an order directing a financial institution to furnish or make available for inspection information relevant to a taxpayer’s liability. (2)

When making such an application, an authorised officer may request that the judge direct that, save for the purposes of complying with the order, the existence of or any details of the order shall not be disclosed (whether directly or indirectly) to any person. While an authorised officer may make such a request to the judge it is entirely at the discretion of the judge as to whether the request is granted. The officer may only make such a request to the judge where they have reasonable grounds to suspect that the disclosure of such an order is likely to lead to serious prejudice to the proper assessment or collection of tax. (2A) (3(ba))

Before making an application to the courts in the first place, the authorised officer must obtain the written consent of a Revenue Commissioner and be satisfied that there are reasonable grounds for suspecting that the taxpayer may fail or may have failed to comply with the Acts, and that such failure is likely to lead or to have led to serious prejudice to the proper assessment or collection of tax. The officer must also be satisfied that the financial institution concerned is likely to have information relevant to the proper assessment or collection of tax in relation to the taxpayer. (3)

The information sought from the financial institution can relate to a person who is connected with the taxpayer. (4)

Where the judge is satisfied that there are reasonable grounds for the application, he or (5) & (8)

she may issue an order, subject to such conditions as he or she specifies in the order, requiring the financial institution to furnish any information as may be detailed in the order. The judge may also require that assets of the taxpayer in the custody of the financial institution be frozen for a specified time if the authorised officer makes an application in that regard.

Result of a successful application

The financial institution, in complying with an order, is required to give the authorised officer reasonable assistance in accessing information which may be stored electronically or by other automatic means. The authorised officer is entitled to make copies of or extracts from the documentation made available for inspection by the financial institution. **(6A) & (6B)**

Court proceedings

An application, and any appeals relating to that application, is heard in camera. In addition, the judge, if he or she considers that it is in the public interest to so do, can afford the authorised officer anonymity, by requiring that the name and address of the authorised officer should not appear on copies of certain documents relating to the proceedings. The judge can also order that, should the authorised officer be cross-examined, his/her name and address is not to be disclosed in court and their visual identity is to be hidden from all present except the judge. **(7) & (9)**

908A Revenue offence: power to obtain information from financial institutions

Summary

This section enables an authorised officer to apply to a judge of the Circuit Court or District Court for an order authorising the officer to inspect and take copies of any entries in the records of a financial institution for the purposes of investigating a revenue offence. It also outlines the procedure to be followed should a copy of an entry in the records of a financial institution be required as evidence in legal proceedings.

Details

Definitions

In this section —

“the Acts” means the Waiver of Certain Tax, Interest and Penalties Act, 1993, as well as the meaning given to it in ***section 1078(1)***; **(1)**

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred on him/her by this section;

“books, records or other documents” means any and all records used in the business of a financial institution, whether they are kept in paper, electronic or any other format;

“judge” means a judge of the Circuit or District Court;

“financial institution” means a person who holds or has held a licence granted by the Central Bank, or a person who holds or has held a corresponding licence under the law of another European Community Member State authorising them to carry on banking business in the State. As well as the domestic banks this includes —

- the Post Office Savings Bank,
- a building society,
- an industrial and provident society,
- a friendly society,
- a credit union,
- an investment trust company,
- the manager under a unit trust scheme in respect of the carrying on of the business of the scheme, and
- any European credit institution authorised by the Central Bank to carry on business in the State;

“liability”, in relation to a person, means any tax liability to which the person is, may have been, or may be subject;

“offence” means an offence which falls under any provision of the Acts;

Application for an order by an authorised officer

If a judge, to whom an application is made by an authorised officer, is satisfied that, based on information given on oath by the officer, there are reasonable grounds for suspecting — (2)

- that an offence which would result in serious prejudice to the proper assessment or collection of tax is being, has been or is about to be committed, and
- that there is material in possession of a financial institution specified in the officer’s application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,

the judge may make an order authorising the officer to inspect and take copies of any entries in the records of the financial institution and of any associated documents, for the purposes of investigation of the offence. Before making an application the officer must have the written consent of a Revenue Commissioner.

Minor offence leading to a more serious offence

If there are reasonable grounds for suspecting that the commission of a particular non-serious offence is part of a course of conduct which is likely to result in serious prejudice to the proper assessment or collection of tax, then the commission of that offence can be regarded as resulting in such serious prejudice. (3)

Admission as evidence in legal proceedings of a copy of an entry in a financial institution’s records

Provided it meets specific criteria, a copy of any entry in the records of the financial institution can be received in all legal proceedings as prima facie evidence of such an entry, and of the matters, transactions and accounts therein recorded. (4)

The aforementioned criteria which must be met are — (5) & (6)

- where a copy of such an entry has been reproduced in a legible form from a non-legible form, that must be proved by some person who has been in charge of the reproduction concerned;
- where the copy sought to be received in evidence is a correctly made copy of a reproduction of such an entry in a legible form from a non-legible form, this must be proved by a person who has been in charge of the reproduction concerned and the copy of that reproduction must be proved by a person who has examined the reproduction and its copy; and
- in the case of any other entry in the records of the financial institution, its copy must be proved by some person who has examined the copy and the original entry

and deemed the copy to be correct.

Proof may be given either orally or by way of sworn affidavit.

908B Application to High Court seeking order requiring information: associated institutions

Summary

This section empowers an authorised officer to apply to the High Court to seek an order requiring a domestic financial institution to supply information held by a foreign entity over which it has control. The provisions of the section are largely similar to those of *section 908* which allows similar access to information in the hands of a domestic financial institution.

Details

Definitions

The definitions of “the Acts”, “associated institution”, “authorised officer”, “books, records or other documents”, “financial institution”, “judge”, “liability”, “tax” and “a taxpayer” are set out. (1)

“the Acts” has the meaning given to it in *section 1078(1)*;

“associated institution” is defined in relation to a financial institution and means a person that is controlled by the financial institution and is also not resident in the State. Under *section 432*, in general, a person has control of a company if the person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company’s affairs, including where the person possesses the greater part of the share capital of the company.

“a taxpayer” is defined to include a person whose identity is not known to the authorised officer, and a group or class of persons whose individual identities are not so known.

Application for an order by an authorised officer

An authorised officer may make an application to a judge of the High Court for an order requiring a named financial institution to do either or both of the following — (2)

- make available for inspection by the authorised officer books, records or other documents of its associated institution, or
- furnish to the authorised officer information held by that institution.

The books, records or other documents concerned must contain, or be reasonably considered to contain information relevant to a taxpayer’s liability. Likewise the information sought must be relevant to such liability.

Before an authorised officer can make an application under *subsection (2)*, the consent of a Revenue Commissioner must be obtained, and the authorised officer must be satisfied that there are reasonable grounds for suspecting that the taxpayer concerned (or in the case of a group or class of persons, all or any one of those persons) have evaded tax to a significant extent and that the information or books, records or other documents sought are relevant to the correct assessment of the taxpayer’s liability. (3)

Where an application is made under *subsection (2)*, if the judge is satisfied that there are reasonable grounds for the application being made he/she may, subject to such conditions that are considered proper and are specified in the order, make an order requiring the financial institution to make specified records available for inspection and/or furnish specified information. (4)

Books, records or other documents or information sought under this section can be in relation to an individual who has died or a company which has been dissolved. (5)

Execution of an order

A financial institution, which has been required by a High Court order to make books, records or other documents available for inspection by an authorised officer, is required to give reasonable assistance to the authorised officer for the purposes of that inspection. (6)

The authorised officer is permitted to make extracts from, or copies of, the books, records or other documents made available for inspection. (7)

Court hearings

The hearing of an application under this section for an order or the hearing of any appeal connected to that order is to be held in camera. (8)

908C Search warrants

Summary

This section provides the Revenue Commissioners with the power to apply to a District Court judge for a search warrant where they are investigating a tax offence with a view to having the offender prosecuted. The power provided under this section may not be used if the investigation does not have a criminal element, i.e. if the investigation is solely to determine a person's tax liability. A search warrant issued under this section is valid for up to one month from the date of issue. Material found during the search may be seized, copied and retained if the authorised Revenue officer believes the material may be useful in investigating the offence. Persons found in the place subject to the search warrant must comply with the search; failure to do so can result in a fine of up to €5,000 and/or a prison term of up to 6 months.

Details

Definitions

In this section — (1)

“the Acts” means the Waiver of Certain Tax, Interest and Penalties Act, 1993, as well as the meaning given to it in ***section 1078(1)***;

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred on him/her by this section;

“commission”, in relation to an offence, includes an attempt to commit the offence;

“computer” includes any electronic device which is capable of performing logical or arithmetical operations on data in accordance with a set of instructions;

“computer at the place which is being searched” includes any other computer, either at the place being searched or elsewhere, which can be lawfully accessed by that computer;

“information in non-legible form” means information which is kept in non-legible form, e.g. on microfilm, magnetic tape, etc.;

“offence” means an offence under the Waiver of Certain Tax, Interest and Penalties Act, 1993 and the enactments referred to in ***section 1078(1)***;

“place” includes any building, dwelling, vehicle, aircraft, etc.;

“record” includes any information in non-legible form which can be reproduced in a permanently legible form.

Application for a search warrant by an authorised officer

A District Court judge may issue a warrant to search a place and any thing or person found there if he/she is satisfied, based on the sworn evidence of a Revenue officer authorised for the purposes of this section, that an offence under the Acts is being, has been or is about to be committed there, or that evidential material relevant to the offence may be found there. (2)

Execution of a search warrant by the authorised officer

A search warrant issued under *subsection (2)* entitles the authorised Revenue officer, and certain other people, to enter the place named on the warrant up to one month after its date of issue. Once inside, the authorised Revenue officer and colleagues may search the place and any person or thing found therein. Any person found therein must give certain personal details if required, and must hand over any material he/she has in his/her possession. The authorised Revenue officer and colleagues may also examine, seize and retain any material found therein if the officer believes the material may be useful in investigating the offence. (3)

Where the authorised Revenue officer seizes and retains any material, if that material is books, documents or other physical records, he/she may make copies of same. If the material is a computer or other storage medium, the officer may retain it for as long as necessary and may make copies of any records found in the computer or other storage medium. (4)

An authorised Revenue officer or their colleague may operate any computer found in the place being searched. The officer can also require a person found in the place being searched to assist the officer or their colleague in that regard by operating the computer themselves, providing passwords, etc. (5)

Penalty

Where a person found in the place being searched obstructs the entry of the authorised Revenue officer or his/her colleagues, obstructs the examination or seizure of any material, fails to give, or gives false personal details when requested, or fails to assist in the operating of any computers, that person is guilty of an offence and is liable, on summary conviction, to a fine of up to €5,000 for an offence committed on or after 14 March 2008, (€3,000 for offences committed before that date) or a prison term of up to 6 months, or to both the fine and prison term. (6)

The authorised Revenue officer may also be accompanied by one or more Gardaí, who are empowered to arrest any person who obstructs the search, who fails to cooperate with the search or who otherwise commits an offence under *subsection (6)*. (7)

Retention of material

Any material seized by the authorised Revenue officer or his/her colleagues during the search may be retained by them for as long as it is required for the purposes of any legal or criminal proceedings. (8)

908D Order to produce evidential material

Summary

This section provides the Revenue Commissioners with the power to apply to a District Court judge for an order requiring a third party, who it is reasonable to suspect has possession of material which could be used in an investigation of criminal tax offences, to surrender that material to the Revenue Commissioners. This power will, in most

situations, obviate the need to use the more intrusive search warrant (*section 908C*) when seeking information from innocent third parties. A person who is the subject of an order under this section must provide access to records in their possession and allow an authorised Revenue officer to copy them and/or take them away for use as evidence in any criminal proceedings. However, an order does not apply to records subject to legal privilege. The person who is the subject of an order must comply with the order; failure to do so can result in a fine of up to €5,000 and/or a prison term of up to 6 months.

Details

Definitions

In this section — (1)

“the Acts” means the Waiver of Certain Tax, Interest and Penalties Act, 1993, as well as the meaning given to it in *section 1078(1)*;

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred on him/her by this section;

“commission”, in relation to an offence, includes an attempt to commit the offence;

“computer” includes any electronic device which is capable of performing logical or arithmetical operations on data in accordance with a set of instructions;

“information in non-legible form” means information which is kept in non-legible form, e.g. on microfilm, magnetic tape, etc.;

“material” means any books, documents, records or other things and also includes a computer;

“offence” means an offence under the Acts;

“record” includes any information in non-legible form which can be reproduced in a permanently legible form.

Application for an order by an authorised officer

If a District Court judge is satisfied, based on the sworn evidence of a Revenue officer authorised for the purposes of this section, that an offence under the Acts is being, has been or is about to be committed and that material relevant to the investigation of the offence is likely to be in the possession or control of a person, then the judge may issue an order requiring the person to produce the material for the authorised Revenue officer to access it or to take it away either immediately or within a period specified in the order. (2)

Execution of an order by an authorised officer

Where the material includes records contained on a computer, the person must produce or give access to the records in a visible and legible form so they can be taken away by the authorised Revenue officer. (3)

An order issued under this section also allows the authorised Revenue officer to make copies of any books, documents or records, etc. The requirements of the order take precedence over any secrecy obligations, with the exception of any material that is subject to legal privilege. (4)

Any material taken away by an authorised Revenue officer under this section can be used as evidence in any criminal proceedings. (5)

Any information obtained or accessed by an authorised Revenue officer in accordance with an order issued under this section can be used as evidence in any criminal (6)(a)

proceedings unless it is subject to legal privilege, was supplied by a person who cannot be compelled to give evidence for the prosecution, was compiled for the purposes of civil, criminal, disciplinary or other proceedings or unless the requirements of the provisions mentioned in *subsection (6)(b)* are not complied with.

References in sections 7, 8 and 9 of the Criminal Evidence Act 1992 to a document or to information contained in a document shall be construed as including references to books, documents and records (and the information in those books, documents and records) mentioned in *subsection (6)(a)*, and the provisions of sections 7, 8 and 9 of the Criminal Evidence Act 1992 shall have effect accordingly with any necessary modifications. **(6)(b)**

Variation or discharge of an order

A District Court judge may vary or discharge an order on the application of an authorised Revenue officer or any person to whom an order under this section relates. **(7)**

Penalty

A person who fails or refuses to comply (without reasonable excuse) with an order issued under this section is guilty of an offence and is liable, on summary conviction, to a fine of up to €5,000 for an offence committed on or after 14 March 2008, (€3,000 for offences committed before that date) or a prison term of up to 6 months, or to both the fine and prison term. **(8)**

908E Order to produce documents or provide information

Summary

This section facilitates the more effective investigation of white collar crime and will speed up investigations and prosecutions. The provisions are targeted at serious and complex revenue offences attracting a penalty of at least 5 years imprisonment. An authorised officer of the Revenue Commissioners may apply to the District Court for an order to require a person to produce documents or to provide information required by that officer in an investigation.

Details

Definitions for this section and *section 908F* are given. The definitions of “authorised officer” and “relevant offence” are self-explanatory. **(1)**

An authorised officer may apply to the District Court for an order— **(2)**

- (a) to require a person to make particular documents, or documents of a particular type available to him/her, or
- (b) to require a person to provide information.

A District Court Judge may make an order where he/she is satisfied that— **(3)**

- (a) the person has possession or control of the documents,
- (b) the documents are relevant to the investigation,
- (c) the documents may constitute evidence in relation to the offence, and
- (d) there is benefit to the investigation by the production of the documents.

The Judge may order the person to produce the documents, or to identify and categorise

certain documents in such manner as the Judge orders and to produce the documents so categorised, or to give access to the documents by the authorised officer.

The period in which the order is to be complied with may be stated in the order.

In place of producing the documents, as provided above, the Judge may order the person (4) to answer specified questions and/or to make a statement setting out the answers.

Information that a person may be required to give is limited to information that that (5) person acquired in the course of business.

Where a person appears to the Judge to be entitled to allow entry to a place where (6) documents are located, that person may be required to allow an authorised officer enter the place to obtain access to the documents.

Where documents are not in a legible form, the order shall have effect to– (7)

- (a) require the provision of passwords,
- (b) require the documents to be provided in a form that is legible and comprehensible,
- (c) require the provision of documents in a form in which they can be removed, and are or can be made legible and comprehensible.

An order providing for the production or taking away of a document – (8)

- (a) allows for the making a copy and taking the copy away,
- (b) does not allow access to documents that are subject to legal professional privilege, and
- (c) shall have effect notwithstanding any other provisions.

A person may request retention of a document while the authorised officer takes or (9) retains a copy of it. The authorised officer may accede to the request where he/she is satisfied that the person requires it for their business and undertakes, in writing, to keep it and furnish it to the authorised officer when required in connection with any criminal proceedings.

If the person fails to deliver up the document when required, a copy of the document may be admitted in evidence.

Any document taken away by an authorised officer may be retained by him/her for use as (10) evidence in a criminal prosecution.

Any information provided by a person following an order shall not be admissible in (11) evidence in any proceedings brought against that person for an offence. This does not apply where the offence relate to non-compliance with the order, where the person deliberately gives incorrect information or the person refuses to deliver up a document in respect of which he/ she had given a written undertaking to produce when required.

In relation to any documents, the person may be ordered to furnish a statement (12) confirming the authenticity of the documents and, in the case of non-legible documents, to provide details of the system or manner in which the documents were reproduced. This may be required at the time the documents are produced or at a later time, as may be specified by order.

The production of any documents shall be without prejudice to any lien that the person (13) may hold over the documents.

A District Court Judge may, following an application by the person concerned, vary or (14)

discharge an order.

Where a person requests the return of a document and the authorised officer does not accede to the request, the person may apply to the District Court for the return of the document and the Judge may make an order concerning the return of the document, subject to such condition as he/she may direct. (15)

A person who refuses to comply with an order under this section shall be guilty of an offence and liable to a fine, imprisonment or both. (16)

A person who deliberately provides false or incorrect information shall be guilty of an offence and liable to a fine, imprisonment or both. (17)

A person who, following the giving of a written undertaking to furnish a document to an authorised officer when required in connection with a criminal proceeding, fails to deliver up the document shall be guilty of an offence and liable to a fine, imprisonment or both. (18)

An application for an order shall be made to the District Court in the area where— (19)

- (a) the documents are located,
- (b) the person from whom the documents or information is sought lives or carries on a profession, business or occupation, or
- (c) in the case of a company, the registered office is located, or it carries on a business.

This provision shall not affect any other provision under which a court can order the production of documents in relation to the investigation of an offence. (20)

908F Privileged legal material

Summary

An order under *section 908E* does not apply to documents that are subject to legal professional privilege. Where, in relation to any document, legal professional privilege is asserted by a person subject to an order under *section 908E*, procedures are provided in this section to allow for a determination of whether privilege arises.

Details

A definition of “privileged legal material” is provided for this section. (1)

Where a person refuses to provide a document on the basis that it is privileged legal material, an authorised officer may apply to the District Court for a determination as to whether it is privileged legal material. (2)

Where a person refuses to provide a document on the basis that it is privileged legal material, that person may apply to the District Court for a determination as to whether it is privileged legal material. (3)

Where a person refuses to provide a document on the basis that it is privileged legal material, that person shall maintain the document safely pending a determination on the matter and if it is determined that the document is not privileged, he/she shall produce it in accordance with the order. (4)

Pending a final determination, a District Court Judge may make interim or interlocutory directions and where the documents are voluminous, appoint a person to examine the documents and prepare a report to assist him/her in making a determination. (5)

An application in relation to privileged legal material may be heard in camera, if the Judge so direct. (6)

In the case of an application for a determination in relation to documents that are claimed to be privileged legal material, notice of the application to the District Court must be given to the other party. (7)

An appeal against a determination of the District Court may only be made to the Circuit Court. (8)

Rules of court may provide for early hearing of applications for determinations under this section. (9)

909 Power to require return of property

Summary

This section requires a “statement of affairs” of a taxpayer to be provided within a specified time period upon a written request from an inspector to the taxpayer. This power may be invoked where a person is required to deliver a tax return. There are provisions to ensure that property of a spouse, a civil partner, minor children or a trustee of the taxpayer should also be included in this “statement of affairs”.

This section also sets out the factual data which must be included in the “statement of affairs”. The person completing the “statement of affairs” must also sign it and include a declaration that the statement is correct to the best of their knowledge and belief. Finally, guidelines for calculating the cost of acquisition of an asset are also included.

Details

Definitions

“asset” includes any interest in an asset such as a share in the ownership of the asset. (1)(a)

“limited interest” – this means an interest in property other than a leasehold interest or any other absolute interest. It can last for the duration of a life, lives, or a certain period.

“prescribed” means prescribed by the Revenue Commissioners.

“property” includes interests and rights of any description and, without prejudice to the generality of these words, also includes —

- property in which a limited interest subsists or on which a limited interest is charged or secured,
- an interest in expectancy and property included in a settlement made by a person,
- an interest or share in a partnership, joint tenancy, or estate of a deceased person,
- stock or shares in a company being liquidated, or
- an annuity.

“settlement” has the meaning set out in *section 794*.

“specified date” is the date of the notice under *subsection (2)*.

“tax” is income tax and capital gains tax.

Cost of acquisition of an asset

In this section, the cost of acquisition of an asset includes — (1)(b)

- the amount or value in money or moneys’ worth of the consideration given by or on behalf of the beneficial owners to acquire the asset together with any incidental costs incurred in acquiring the asset, or, if the asset was not acquired by the

- person, the expenditure incurred in creating or providing it (e.g. a sculpture);
- any expenditure incurred which added to the value of the asset and which is reflected in the state or nature of the asset on the specified date and any expenditure incurred in establishing, preserving or defending legal title to, or a right over, the asset (expenditure incurred which did not add to the value of the asset (e.g. an abortive planning application) must not be included in the cost of acquisition).

Statement of affairs

Where a person is required under the Tax Acts or the Capital Gains Tax Acts to deliver a tax return, an inspector of taxes or the inspector of returns may, by notice served in writing on the person, require the person to deliver to them a “statement of affairs” within a specified period for the purposes of determining the person’s tax liability. The inspector may issue a further notice or notices in writing requiring the delivery to him/her, within a specified period (not being less than 30 days), a statement verifying the statement of affairs together with such evidence, etc which the inspector may require in respect of any property (assets and liabilities) included in the statement or in respect of any property (assets and liabilities) the inspector believes should have been included in the statement of affairs. (2)

The term “statement of affairs” is widely defined to encompass all assets and liabilities of the person and their spouse or civil partner. Where a person holds assets or liabilities in trust on behalf of another person, the trustee may also be served with such a notice requiring a “statement of affairs” to be provided. The “statement of affairs” is to include any assets of a minor child of the person upon whom notice has been served, where those assets have previously been disposed of by that person whether to the minor child or not, or the assets were acquired for the minor child with consideration supplied directly or indirectly by the person. (3)

The “statement of affairs” is to contain full details of each asset including — (4)

- a full description,
- its location on the specified date,
- the cost and date of its acquisition,
- the name and address of the vendor if it was not acquired at arm’s length, and
- details of any insurance policies taken out in respect of it.

The statement must be signed and accompanied by a declaration by the person that the particulars are correct and complete to the best of their knowledge and belief. The Revenue Commissioners may require that the declaration is made under oath.

910 Power to obtain information from Minister of the Government

In relation to the assessment and collection of any taxes, duties, etc under their care and management, the Revenue Commissioners may require, by notice in writing, any Minister of the Government or any body established by or under statute to provide details, in an approved electronic format, of all payments made by it to specified persons or class of persons. This power may be delegated to an officer of the Revenue Commissioners.

911 Valuation of assets: power to inspect

Summary

An authorised person may inspect, at all reasonable times, any asset to determine its value for the purposes of any tax or duty. The authorised person is not to be obstructed

in these actions. Evidence of authorisation must be produced if requested by the person having possession or custody of an asset – or by the occupier in the case of property. A person who obstructs an authorised person in the inspection of an asset is guilty of an offence under *section 1078(2)(j)*.

Details

Definitions

“the Acts” have the same meaning as in *section 1078*. This is to ensure that the power to inspect any asset applies to all Revenue legislation. (1)

“authorised person” means an inspector of taxes or Revenue officer or a person suitably qualified to value an asset who is authorised for that purpose by the Revenue Commissioners.

“value” means “market value”, “current use value” or any other form of “value” that may be mentioned in any of the Acts

Where the Revenue Commissioners require any asset to be valued they may authorise an authorised person to inspect the asset (and where the asset is land, to enter on the land) for the purposes of ascertaining its value and reporting it to the Revenue Commissioners. The person having custody or possession of the asset (or the occupier in the case of premises) must permit the authorised person to inspect /enter the asset at such reasonable times as the Revenue Commissioner necessary. The authorised person must produce authorisation if requested. (2)

An authorised person may not enter a persons private residence or any part of a property that is occupied wholly and exclusively as a private residence without either the consent of the occupier or a warrant issued by a Judge of the District Court. (3)

A Judge may issue a warrant if satisfied by reference to information given under oath that it is proper to do so for the purposes of the Acts.

The Revenue Commissioners will meet the costs incurred in obtaining any valuation. (4)

912 Computer documents and records

For the purposes of any of the taxes, duties, etc under the care and management of the Revenue Commissioners any requirement on a person to retain and produce records and any power of inspection by officer of the Revenue Commissioners applies also where the data is stored electronically. The Revenue Commissioners may require reasonable assistance in obtaining or retrieving information or data from these sources.

912A Information for tax authorities in other territories

Summary

This section facilitates the exchange of information by the Revenue Commissioners with tax authorities of other countries under double tax treaties or tax information exchange agreements – each of these is authorised under *section 826* or, in the case of capital acquisitions tax, section 106 of the Capital Acquisitions Tax Consolidation Act 2003. The section enables Revenue to obtain information under various sections of the Taxes Consolidation Act 1997 where it is required for the purposes of a tax liability in a tax treaty country.

Details

Definitions

“foreign tax” is defined as tax chargeable under the laws of a country with which Ireland (1) has a double tax treaty or a tax information exchange agreement as well as tax chargeable under the laws of a territory in relation to which the Convention on Mutual Administration Assistance in Tax Matters or any Protocol to the Convention apply.

“liability to foreign tax” means any liability to foreign tax to which that a person is liable, or the amount of such a liability.

Modification of certain provisions

A number of sections of this Act are applied with appropriate modifications for the (2) purposes of complying with exchange of information obligations in double tax treaties, tax information exchange agreements, the Convention and the Protocol. The sections concerned provide access to information where it is required for Irish tax purposes. The sections are applied by this section in relation to tax liabilities in treaty partner countries. The modification provides that references in the sections to a tax liability is to be interpreted as including references to a tax liability in a tax treaty.

The sections concerned are —

Sections 900 and 901 concerning the power to call for a taxpayer’s books;

Section 902 concerning access to information concerning third parties;

Section 902A concerning access to information concerning third parties by way of application to the High Court;

Section 905 concerning inspection of documents and records;

Section 906A concerning access to information of financial institutions concerning third parties;

Section 907 concerning access to information of financial institutions concerning third parties by way of an application to the Appeal Commissioners;

Section 907A concerning access to information of third parties concerning third parties by way of an application to the Appeal Commissioners;

Section 908 concerning access to information of financial institutions concerning third parties by way of an application to the High Court.

A second modification of *sections 902A, 905, 907, 907A and 908* is provided for. In (3) each case the meaning of “tax” relates to foreign tax.

Definitions for this section and *section 908F* are given. The definitions of “authorised officer” and “relevant offence” are self-explanatory. (1)

An authorised officer may apply to the District Court for an order— (2)

- (c) to require a person to make particular documents, or documents of a particular type available to him/her, or
- (d) to require a person to provide information.

A District Court Judge may make an order where he/she is satisfied that— (3)

- (e) the person has possession or control of the documents,
- (f) the documents are relevant to the investigation,
- (g) the documents may constitute evidence in relation to the offence, and
- (h) there is benefit to the investigation by the production of the documents.

The Judge may order the person to produce the documents, or to identify and categorise certain documents in such manner as the Judge orders and to produce the documents so categorised, or to give access to the documents by the authorised officer.

The period in which the order is to be complied with may be stated in the order.

In place of producing the documents, as provided above, the Judge may order the person to answer specified questions and/or to make a statement setting out the answers. (4)

Information that a person may be required to give is limited to information that that person acquired in the course of business. (5)

Where a person appears to the Judge to be entitled to allow entry to a place where documents are located, that person may be required to allow an authorised officer enter the place to obtain access to the documents. (6)

Where documents are not in a legible form, the order shall have effect to— (7)

- (d) require the provision of passwords,
- (e) require the documents to be provided in a form that is legible and comprehensible,
- (f) require the provision of documents in a form in which they can be removed, and are or can be made legible and comprehensible.

An order providing for the production or taking away of a document – (8)

- (d) allows for the making a copy and taking the copy away,
- (e) does not allow access to documents that are subject to legal professional privilege, and
- (f) shall have effect notwithstanding any other provisions.

A person may request retention of a document while the authorised officer takes or retains a copy of it. The authorised officer may accede to the request where he/she is satisfied that the person requires it for their business and undertakes, in writing, to keep it and furnish it to the authorised officer when required in connection with any criminal proceedings. (9)

If the person fails to deliver up the document when required, a copy of the document may be admitted in evidence.

Any document taken away by an authorised officer may be retained by him/her for use as evidence in a criminal prosecution. (10)

Any information provided by a person following an order shall not be admissible in evidence in any proceedings brought against that person for an offence. This does not apply where the offence relate to non-compliance with the order, where the person (11)

deliberately gives incorrect information or the person refuses to deliver up a document in respect of which he/ she had given a written undertaking to produce when required.

In relation to any documents, the person may be ordered to furnish a statement (12) confirming the authenticity of the documents and, in the case of non-legible documents, to provide details of the system or manner in which the documents were reproduced. This may be required at the time the documents are produced or at a later time, as may be specified by order.

The production of any documents shall be without prejudice to any lien that the person may hold over the documents. (13)

A District Court Judge may, following an application by the person concerned, vary or discharge an order. (14)

Where a person requests the return of a document and the authorised officer does not accede to the request, the person may apply to the District Court for the return of the document and the Judge may make an order concerning the return of the document, subject to such condition as he/she may direct. (15)

A person who refuses to comply with an order under this section shall be guilty of an offence and liable to a fine, imprisonment or both. (16)

A person who deliberately provides false or incorrect information shall be guilty of an offence and liable to a fine, imprisonment or both. (17)

A person who, following the giving of a written undertaking to furnish a document to an authorised officer when required in connection with a criminal proceeding, fails to deliver up the document shall be guilty of an offence and liable to a fine, imprisonment or both. (18)

An application for an order shall be made to the District Court in the area where— (19)

- (d) the documents are located,
- (e) the person from whom the documents or information is sought lives or carries on a profession, business or occupation, or
- (f) in the case of a company, the registered office is located, or it carries on a business.

This provision shall not affect any other provision under which a court can order the production of documents in relation to the investigation of an offence. (20)

908F Privileged legal material

Summary

An order under *section 908E* does not apply to documents that are subject to legal professional privilege. Where, in relation to any document, legal professional privilege is asserted by a person subject to an order under *section 908E*, procedures are provided in this section to allow for a determination of whether privilege arises.

Details

A definition of “privileged legal material” is provided for this section. (1)

Where a person refuses to provide a document on the basis that it is privileged legal material, an authorised officer may apply to the District Court for a determination as to whether it is privileged legal material. (2)

Where a person refuses to provide a document on the basis that it is privileged legal material, that person may apply to the District Court for a determination as to whether it (3)

is privileged legal material.

Where a person refuses to provide a document on the basis that it is privileged legal material, that person shall maintain the document safely pending a determination on the matter and if it is determined that the document is not privileged, he/she shall produce it in accordance with the order. (4)

Pending a final determination, a District Court Judge may make interim or interlocutory directions and where the documents are voluminous, appoint a person to examine the documents and prepare a report to assist him/her in making a determination. (5)

An application in relation to privileged legal material may be heard in camera, if the Judge so direct. (6)

In the case of an application for a determination in relation to documents that are claimed to be privileged legal material, notice of the application to the District Court must be given to the other party. (7)

An appeal against a determination of the District Court may only be made to the Circuit Court. (8)

Rules of court may provide for early hearing of applications for determinations under this section. (9)

909 Power to require return of property

Summary

This section requires a “statement of affairs” of a taxpayer to be provided within a specified time period upon a written request from an inspector to the taxpayer. This power may be invoked where a person is required to deliver a tax return. There are provisions to ensure that property of a spouse, a civil partner, minor children or a trustee of the taxpayer should also be included in this “statement of affairs”.

This section also sets out the factual data which must be included in the “statement of affairs”. The person completing the “statement of affairs” must also sign it and include a declaration that the statement is correct to the best of their knowledge and belief. Finally, guidelines for calculating the cost of acquisition of an asset are also included.

Details

Definitions

“asset” includes any interest in an asset such as a share in the ownership of the asset. (1)(a)

“limited interest” – this means an interest in property other than a leasehold interest or any other absolute interest. It can last for the duration of a life, lives, or a certain period.

“prescribed” means prescribed by the Revenue Commissioners.

“property” includes interests and rights of any description and, without prejudice to the generality of these words, also includes —

- property in which a limited interest subsists or on which a limited interest is charged or secured,
- an interest in expectancy and property included in a settlement made by a person,
- an interest or share in a partnership, joint tenancy, or estate of a deceased person,
- stock or shares in a company being liquidated, or
- an annuity.

“settlement” has the meaning set out in *section 794*.

“specified date” is the date of the notice under *subsection (2)*.

“tax” is income tax and capital gains tax.

Cost of acquisition of an asset

In this section, the cost of acquisition of an asset includes — (1)(b)

- the amount or value in money or moneys’ worth of the consideration given by or on behalf of the beneficial owners to acquire the asset together with any incidental costs incurred in acquiring the asset, or, if the asset was not acquired by the person, the expenditure incurred in creating or providing it (e.g. a sculpture);
- any expenditure incurred which added to the value of the asset and which is reflected in the state or nature of the asset on the specified date and any expenditure incurred in establishing, preserving or defending legal title to, or a right over, the asset (expenditure incurred which did not add to the value of the asset (e.g. an abortive planning application) must not be included in the cost of acquisition).

Statement of affairs

Where a person is required under the Tax Acts or the Capital Gains Tax Acts to deliver a tax return, an inspector of taxes or the inspector of returns may, by notice served in writing on the person, require the person to deliver to them a “statement of affairs” within a specified period for the purposes of determining the person’s tax liability. The inspector may issue a further notice or notices in writing requiring the delivery to him/her, within a specified period (not being less than 30 days), a statement verifying the statement of affairs together with such evidence, etc which the inspector may require in respect of any property (assets and liabilities) included in the statement or in respect of any property (assets and liabilities) the inspector believes should have been included in the statement of affairs. (2)

The term “statement of affairs” is widely defined to encompass all assets and liabilities of the person and their spouse or civil partner. Where a person holds assets or liabilities in trust on behalf of another person, the trustee may also be served with such a notice requiring a “statement of affairs” to be provided. The “statement of affairs” is to include any assets of a minor child of the person upon whom notice has been served, where those assets have previously been disposed of by that person whether to the minor child or not, or the assets were acquired for the minor child with consideration supplied directly or indirectly by the person. (3)

The “statement of affairs” is to contain full details of each asset including — (4)

- a full description,
- its location on the specified date,
- the cost and date of its acquisition,
- the name and address of the vendor if it was not acquired at arm’s length, and
- details of any insurance policies taken out in respect of it.

The statement must be signed and accompanied by a declaration by the person that the particulars are correct and complete to the best of their knowledge and belief. The Revenue Commissioners may require that the declaration is made under oath.

910 Power to obtain information from Minister of the Government

In relation to the assessment and collection of any taxes, duties, etc under their care and management, the Revenue Commissioners may require, by notice in writing, any Minister of the Government or any body established by or under statute to provide

details, in an approved electronic format, of all payments made by it to specified persons or class of persons. This power may be delegated to an officer of the Revenue Commissioners.

911 Valuation of assets: power to inspect

Summary

An authorised person may inspect, at all reasonable times, any asset to determine its value for the purposes of any tax or duty. The authorised person is not to be obstructed in these actions. Evidence of authorisation must be produced if requested by the person having possession or custody of an asset – or by the occupier in the case of property. A person who obstructs an authorised person in the inspection of an asset is guilty of an offence under *section 1078(2)(j)*.

Details

Definitions

“the Acts” have the same meaning as in *section 1078*. This is to ensure that the power to inspect any asset applies to all Revenue legislation. (1)

“authorised person” means an inspector of taxes or Revenue officer or a person suitably qualified to value an asset who is authorised for that purpose by the Revenue Commissioners.

“value” means “market value”, “current use value” or any other form of “value” that may be mentioned in any of the Acts

Where the Revenue Commissioners require any asset to be valued they may authorise an authorised person to inspect the asset (and where the asset is land, to enter on the land) for the purposes of ascertaining its value and reporting it to the Revenue Commissioners. The person having custody or possession of the asset (or the occupier in the case of premises) must permit the authorised person to inspect /enter the asset at such reasonable times as the Revenue Commissioner necessary. The authorised person must produce authorisation if requested. (2)

An authorised person may not enter a persons private residence or any part of a property that is occupied wholly and exclusively as a private residence without either the consent of the occupier or a warrant issued by a Judge of the District Court. (3)

A Judge may issue a warrant if satisfied by reference to information given under oath that it is proper to do so for the purposes of the Acts.

The Revenue Commissioners will meet the costs incurred in obtaining any valuation. (4)

912 Computer documents and records

For the purposes of any of the taxes, duties, etc under the care and management of the Revenue Commissioners any requirement on a person to retain and produce records and any power of inspection by officer of the Revenue Commissioners applies also where the data is stored electronically. The Revenue Commissioners may require reasonable assistance in obtaining or retrieving information or data from these sources.

912A Information for tax authorities in other territories

Summary

This section facilitates the exchange of information by the Revenue Commissioners with tax authorities of other countries under double tax treaties or tax information exchange agreements – each of these is authorised under *section 826* or, in the case of capital acquisitions tax, section 106 of the Capital Acquisitions Tax Consolidation Act 2003. The section enables Revenue to obtain information under various sections of the Taxes Consolidation Act 1997 where it is required for the purposes of a tax liability in a tax treaty country.

Details

Definitions

“foreign tax” is defined as tax chargeable under the laws of a country with which Ireland (1) has a double tax treaty or a tax information exchange agreement as well as tax chargeable under the laws of a territory in relation to which the Convention on Mutual Administration Assistance in Tax Matters or any Protocol to the Convention apply.

“liability to foreign tax” means any liability to foreign tax to which that a person is liable, or the amount of such a liability.

Modification of certain provisions

A number of sections of this Act are applied with appropriate modifications for the (2) purposes of complying with exchange of information obligations in double tax treaties, tax information exchange agreements, the Convention and the Protocol. The sections concerned provide access to information where it is required for Irish tax purposes. The sections are applied by this section in relation to tax liabilities in treaty partner countries. The modification provides that references in the sections to a tax liability is to be interpreted as including references to a tax liability in a tax treaty.

The sections concerned are —

Sections 900 and 901 concerning the power to call for a taxpayer’s books;

Section 902 concerning access to information concerning third parties;

Section 902A concerning access to information concerning third parties by way of application to the High Court;

Section 905 concerning inspection of documents and records;

Section 906A concerning access to information of financial institutions concerning third parties;

Section 907 concerning access to information of financial institutions concerning third parties by way of an application to the Appeal Commissioners;

Section 908 concerning access to information of financial institutions concerning third parties by way of an application to the High Court.

A second modification of *sections 902A, 905, 907 and 908* is provided for. In each case (3) the meaning of “tax” relates to foreign tax.

912B Questioning of Suspects in Garda Síochána Custody in certain circumstances

Summary

This section provides for an authorised officer of the Revenue Commissioners to question suspects in Garda custody, who have been arrested and detained by the Gardai in respect of certain Revenue offences. The offences concerned are serious indictable offences under Revenue law which are “arrestable offences” within the meaning of section 2 of the Criminal Law Act 1997 i.e. offences which may be punished by imprisonment for a term of five years, or by a more severe penalty. The section limits the application of the power to such offences under the Customs Acts, under the statutes relating to excise and to serious extraction type frauds relating to Relevant Contracts Tax and VAT under certain of the provisions of *sections 1078 and 1078A*.

Details

Definitions

“authorised officer” is defined to ensure that only Revenue officials specifically (1) authorised in writing to exercise the questioning power are able to use it. The officials concerned are those engaged in criminal investigation work.

“specified offence” defines the offences in respect of which the power of questioning applies. These are serious indictable offences under Revenue law which are “arrestable offences” within the meaning of section 2 of the Criminal Law Act 1997. An arrestable offence is an offence that may be punished by imprisonment for a term of five years, or by a more severe penalty. Under the definition the application of the power is limited to arrestable offences under —

- the Customs Acts and related legislative instruments, including Revenue Offences under *section 1078 or 1078A*, insofar as these relate to customs, (1)(a)
- the statutes relating to excise, including Revenue Offences under *section 1078 or 1078A*, insofar as these relate to excise, and (1)(b)
- to serious extraction type frauds relating to Relevant Contracts Tax and VAT under certain of the provisions of *sections 1078 and 1078A*. These frauds involve individuals establishing bogus identities or sham businesses and claiming repayments of RCT or VAT using fictitious invoices or fictitious documentation. (1)(c) & (d)

The specific provisions of *section 1078 and 1078A* referred to in *subsection (1)(c) & (d)* are as follows —

- *Section 1078(1A)* relates to the offence of facilitating the fraudulent evasion of tax.
- *Section 1078(2)(c)* relates to the offence of falsely obtaining or claiming relief or exemption from, or repayment of, any tax.
- *Section 1078(2)(d)* relates to the offence of knowingly or wilfully issuing or producing incorrect invoices, receipts or instruments in connection with any tax.
- *Section 1078(2)(ii)* relates to the offence of failing to deduct, or remit, tax under Relevant Contracts Tax.

- **Section 1078A** relates to the offence of falsifying, concealing, destroying or otherwise disposing of material relevant to the investigation of a revenue offence.

The power of questioning in Garda custody only applies in relation to the serious (2) arrestable offences specified in the section.

Where a person has been arrested without warrant by a member of the Garda Síochána (3) on suspicion of committing, or of having committed, a specified offence and has been detained in a Garda station under the provisions of section 4 of the Criminal Justice Act 1984, then up to two authorised Revenue officers may attend and participate in the questioning of the suspect. However, this may only take place where the Garda requests the attendance of the authorised Revenue officers with a view to progressing the investigation of the offence and they must be accompanied by a member of the Gardai at all times.

An authorised officer may not commit any act or make any omission in the course of (4) being involved in the questioning of a suspect, which if done or made by a member of the Gardai would be in breach of the Custody Regulations. The Custody Regulations govern the detention of suspects in Garda custody.

Notwithstanding *subsection (4)*, an act or omission done or made by an authorised (5) officer in contravention of the Custody Regulations shall not of itself leave the authorised officer liable to criminal or civil proceedings or, of itself, affect the lawfulness of the custody of the suspect or the admissibility in evidence of any statement made by the suspect.

CHAPTER 5

Capital gains tax: returns, information, etc

Overview

This Chapter provides for the making of capital gains tax returns. The general application for capital gains tax purposes of the income tax provisions relating to the making of returns is set out (*section 913*) and then follows provisions for returns by particular businesses or individuals such as issuing houses, stockbrokers, auctioneers, etc (*section 914*), nominee shareholders (*section 915*), parties to a settlement (*section 916*), persons involved in non-resident companies and trusts (*section 917*), and persons involved with non-resident trustees (*section 917A to 917C*)

Section 871 authorises the combination of any return relating to chargeable gains or capital gains tax with a return relating to income or income tax.

Reference should be made to *Chapter 3 of Part 41A* as regards the obligation to make a return of chargeable gains for Self Assessment purposes.

Reference should be made to *Part 47 (Chapter 3)* for details of penalties for failure to make certain returns and penalties for fraudulently or negligently making incorrect returns. *Part 47* also contains provisions imposing a surcharge for the late submission of a return (*section 1084*) and for the publication of the names of tax defaulters, including persons who have been successfully prosecuted for failure to make a return (*section 1086*).

913 Application of income tax provisions relating to returns, etc

Summary

This section imposes a statutory obligation on persons to furnish returns for the purposes of capital gains tax when required to do so by notice, and requires persons liable to the

tax who have not been served with a notice to give notice to the inspector that they are chargeable. In general, the section applies to capital gains tax the income tax provisions relating to returns, etc and provides that certain specific income tax provisions relating to returns are to apply also to capital gains tax. In addition, the section provides for the furnishing of information regarding acquisitions of assets, the names of persons from whom assets were acquired and the price at which assets were acquired.

Details

Application of income tax provisions

This section provides for the general adaptation for capital gains tax purposes (and (1) subject to any necessary modifications) of the income tax provisions requiring returns to be made and notice of liability to be given by a liable person.

Application of specific income tax provisions

Without prejudice to the above, the following income tax provisions are in particular, (2) and subject to any necessary modifications, to apply for capital gains tax —

- requirement to give notice of liability to tax (*section 876*),
- returns by persons chargeable (*section 877*),
- returns by persons acting for incapacitated persons and non-residents (*section 878*),
- returns of chargeable gains (*section 879*),
- partnership returns (*section 880*),
- returns by lessors, lessees and agents (*section 888*),
- power to require production of accounts and books (*section 900*), and
- returns by holders of mineral licence (*Schedule 1, paragraph 1*).

Acquisition of assets

A person may be required to furnish particulars not only of realised gains but also of (3) assets acquired by the person. However, the acquisition of assets as trading stock or the acquisition of government and certain other securities exempted under *section 607* or other assets exempted under *section 613* (miscellaneous exemptions for certain kinds of property) need not be returned.

Particulars regarding the person from whom an asset has been acquired and the price (4) paid for the asset may also be required.

Company reconstructions or amalgamations

The transfer or receipt of shares or debentures on a company amalgamation by exchange (5) of shares (*section 586*) or on a company reconstruction or amalgamation (*section 587*) which, by virtue of *section 584(3)* (reorganisation or reduction of share capital), does not give rise to a charge to capital gains are to be regarded as a disposal or acquisition for the purposes of making a capital gains tax return and for that purpose only. Consequently, details of such transfers or receipts are returnable.

Returns by lessors, lessees and agents

In applying *section 888* (returns, etc by lessors, lessees and agents) for the purposes of (6) capital gains tax, property and leases of property other than premises are included in its application in addition to premises and leases of premises.

Partnership returns

In addition to the requirements of returns by partnerships under *section 880*, this section (7)

also requires returns on the acquisition and disposal of partnership assets during the period to which the return relates.

Married persons

A return under **section 879** of chargeable gains made by a married woman (who is not separated from her husband) may be requested from her or, if she is jointly assessed with her husband for a tax year, from her husband. (8)

914 Returns by issuing houses, stockbrokers, auctioneers, etc

Summary

This section empowers inspectors to request returns from issuing houses, stockbrokers, auctioneers and certain other persons of the particulars of certain business transactions.

Details

Application

For capital gains tax purposes, an inspector may by notice in writing require returns under any of the provisions of this section. The Revenue Commissioners may require those returns to be made in an approved electronic format. (1), (8)

Issuing houses

Issuing houses (and similar institutions) are obliged, when requested, to furnish particulars of persons to whom shares or securities are issued or allotted, or with whom the shares are placed, and the number of shares issued or allotted to each person. The term “shares” includes units in a unit trust. (2)

A person who is not in the business of issuing, allotting or placing shares but has done so may also be required by notice to make a similar return. (3)

Members of the Stock Exchange

A member of a stock exchange in the State is obliged, when requested, to furnish particulars of all share transactions, namely, details of the buyer and seller, the number of shares bought and sold and the price paid for the shares. (4)

A person acting as an agent in the State in transactions in shares and securities and who is not a member of a stock exchange in the State may also be required by notice to make a similar return. (5)

Auctioneers and other dealers

An auctioneer or other dealer is required to make returns for all transactions in tangible movable property for which the price paid was greater than €19,050 (or €6,350 where the transaction was effected in the period from 6 April, 1994 to 5 April, 1995). (6)

Time limit

Returns under this section are not required for transactions occurring more than 3 years before the service of the notice requesting the return. (7)

915 Returns by nominee shareholders

Where shares in a company are registered in the name of any person, that person may be required by notice in writing from the Revenue Commissioners to state whether or not he/she is the beneficial owner of the shares and, if not, to state the name and address of the person on whose behalf the shares are registered. The term “shares” includes

securities and loan capital.

916 Returns by party to a settlement

A party to a settlement may be required by notice in writing by the Revenue Commissioners to provide information in relation to the settlement for capital gains tax purposes. The information must be provided within the time set out in the notice which cannot be less than 28 days.

917 Returns relating to non-resident companies and trusts

A person having an interest (or acting on behalf of someone having an interest) in a non-resident trust or holding shares or securities in a non-resident company may be required by notice from the Revenue Commissioners to furnish such information as the Commissioners consider necessary for the purposes of establishing whether or not a capital gains tax liability arises under *sections 579 to 579F* to the trust's Irish resident beneficiaries or under *section 590* to the company's Irish participators.

917A Return of property transfers to non-resident trustees

Where a person, on or after 11 February 1999, transfers property to an offshore trust, the person is obliged to advise Revenue within 3 months of the date of transfer, identifying the property, the date of transfer, the consideration received and the settlement concerned. This obligation does not apply to a transaction entered into at arm's length. Penalties apply for failure to comply with this section.

917B Return by settlor in relation to non-resident trustees

Where a settlor of an offshore settlement (or one in respect of which the trustees are not within the charge to Irish tax by virtue of a double taxation relief agreement), which is created on or after 11 February 1999, is domiciled and resident or ordinarily resident in the State, he or she is obliged to advise Revenue, within 3 months of the date of creation of the settlement, indicating the date of creation, his or her name and address and the names and addresses of the then current trustees. Penalties apply for failure to comply with this section.

917C Return by certain trustees

This section requires a statement to be made to Revenue by certain trustees of a settlement where the settlement goes offshore or falls out of the charge to Irish tax by virtue of a double taxation relief agreement. Any person who was a trustee of the settlement immediately before that happening is obliged, within 3 months, to advise Revenue of the day the settlement was created, the name and address of the settlor and the names and addresses of the trustees. Penalties apply for failure to comply with this section.

CHAPTER 6

Electronic transmission of returns of income, profits, etc., and of other revenue returns

Overview

This Chapter introduces a legal framework for making electronic tax returns to the Revenue Commissioners. A tax return made electronically under these provisions has the same status as a return made on paper. The Revenue Online Service (ROS) looks after the operations of the electronic filing of returns. Their website is www.ros.ie.

Orders made under this Chapter include—

- SI No 289 of 2000 which specified returns made under:
 - section 19 of the VAT Act, 1972, and
 - regulations 22, 25, 31 and 31A of the Income Tax (Employments) Regulations, 1960.
- SI No 112 of 2001 which specified returns made under regulation 35 of the Income Tax (Employments) Regulations, 1960.
- SI No 441 of 2001 which specified returns made under *section 951(1)* (apart from *paragraph (b)*).
- SI No 522 of 2001 which specified returns made under *section 951(1)(b)*.
- SI No 194 of 2002 which specified returns made under *sections 172K, 258(2), 525(2), 730G(2), 739F(2), 848P and 848Q*.
- SI No 464 of 2002 which specified returns made under:
 - sections 131(2)(a) and 133(2)(a) of the Finance Act 1992, and
 - regulations 13(2) and 15 of the Vehicle Registration and Taxation Regulations 1992.
- SI No 127 of 2003 which specified returns made under *section 531(3A)(a)*.
- SI No 443 of 2003 which specified returns made under section 46 of the Capital Acquisitions Tax Consolidation Act 2003 (apart from subsections (3), (7), (13) and (15)).
- SI No 803 of 2004 which specified returns made under:
 - section 70 of the Finance Act 2002, and
 - regulation 5(1) and (3) of the Betting Duty Regulations 2004.
- SI No 874 of 2005 which specified returns made under *sections 898C(3)(b), 898H and 898I*.
- SI No 636 of 2006 which specified returns made under *section 951(2)*.
- SI No 544 of 2007 which specified returns made under regulations 9 and 41 of the Control of Excisable Products Regulations 2001.
- SI No 830 of 2007 which specified returns made under *section 485FB(3)*.
- SI No 339 of 2008 which specified returns made under:
 - sections 5A(6) and 19A(1) to (4) of the VAT Act 1972, and
 - regulation 14(2) of the VAT Regulations 2006.
- SI No 135 of 2009 which specified returns made under regulation 8 of the Air Travel Tax Regulations 2009.
- SI No 188 of 2011 which specified returns made under *section 889(2) and (3)* as applied by *section 894(3)*.

As further returns are included in ROS more Orders will be made under this Chapter.

917D Interpretation (Chapter 6)

Summary

This section defines the terms and expressions, and provides for the construction of references, used in the Chapter.

Details

Definitions

The tax codes to which electronic filing will apply are defined. (1)

Among other terms defined are —

“digital signature” which for the purposes of making electronic tax returns equates with an advanced electronic signature within the meaning of the Electronic Commerce Act, 2000 and the digital certificate (referred to in the definition as a qualified certificate within the meaning of the Electronic Commerce Act, 2000) which is associated with that advanced electronic signature.

“electronic identifier”, in relation to a person, is the person’s digital signature or such other means of electronic identification as the Revenue Commissioners specify or authorise for the purposes of the Chapter.

“return” is any item of information which a person is or may be by law required to give to the Revenue Commissioners or any officer of the Revenue Commissioners.

Making of a return

References in this Chapter to “the making of a return” include all the different expressions used throughout the various tax codes to refer to the way in which any informational item is required to be provided to Revenue. (3)

917E Application

This section provides for the effective commencement of electronic filing. For practical reasons electronic filing will be introduced on a roll-out basis. Particular types or classes of tax returns will be eligible for electronic filing with effect from a date to be determined by an order made by the Revenue Commissioners.

917EA Mandatory electronic filing and payment of tax

Summary

This section is an enabling provision allowing the Revenue Commissioners to make regulations to oblige certain categories of taxpayers to file tax returns or pay tax liabilities electronically. Any regulations made may also provide for the repayment of tax electronically. The section came into operation on 28 July 2008 following the making of commencement order SI 308/2008 by the Minister for Finance.

Details

Interpretation

The definition of “electronic means” is designed to be technologically neutral. This will allow for any new developments in the area of the automated transfer of data to be used for electronic filing of tax returns or the payment of taxes electronically if considered desirable. (1)

The term “repayment of tax” is defined in such a way as to include any other amount relating to the tax to be repaid (for example, interest on the tax).

A person who will be obliged to either file their tax return electronically or to pay their tax electronically or to do both is referred to in the legislation as a “specified person”. Such a person may be a group of persons or a class of persons identified in the regulations to be made governing mandatory e-filing and e-payment.

Also to be identified in the regulations governing e-filing or e-payment are the returns which must be made electronically under the regulations (known as the “specified return”) and the tax liabilities which must be paid electronically (known as “specified tax liabilities”). These include any interest which is payable along with these tax liabilities. The reason these concepts are needed is to ensure that a person who is obliged to file and pay electronically is only obliged to do so in respect of returns and liabilities which Revenue are capable of receiving electronically.

The interpretive provisions of *section 917D* apply for the purposes of any regulations making e-filing or e-payment mandatory in the same way as they apply for the purposes of the Revenue Online Service (ROS). This ensures that the mandatory e-filing and e-payment regulations can be applied to all the taxes and duties listed in *section 917D*. It also means that the definition of “return” in *section 917D* applies for the purposes of mandatory e-filing. The effect of this is that any piece of information which a person is legally obliged to supply to Revenue can if for some reason it is essential that it be filed electronically be required by regulation to be so filed. (2)

Regulations

Revenue may make regulations requiring — (3)

- the mandatory electronic filing of the returns specified in the regulations by the persons specified in the regulations where the returns specified are capable of being filed through the Revenue On-Line Service;
- the mandatory electronic payment of the tax liabilities specified in the regulations by the persons specified in those regulations; and
- the electronic repayment of tax due for repayment as specified in the regulations.

Regulations may require the mandatory electronic payment of tax but might not necessarily require the return in relation to that tax to be made electronically. Likewise, the regulations could provide for the electronic re-payment of tax where there might not be any mandatory requirement to either make the return or pay the tax electronically in the first place.

Exclusion and Appeals

Specific provision is to be made in the Regulations providing for the exclusion of certain persons from the mandatory e-filing and e-payment requirements. This exclusion applies where Revenue is satisfied that the person could not reasonably be expected to have the capacity to file a tax return or to pay tax electronically. In this regard it is the person’s capacity to do these things by electronic means which must be looked at and not their capacity to file a return or to pay tax. Where a person is aggrieved at their non-exclusion there is a right to appeal to the Appeal Commissioners. (4)

Ancillary Matters

The regulations may include, but are not be limited to, certain additional ancillary matters. These matters may or may not be needed depending on the way any particular regulation made is intended to work and include matters such as: (5)

- the electronic means of paying or repaying tax;
- the conditions to be complied with in electronically paying or repaying tax;
- determining the time when tax is paid or repaid electronically;
- the proof of payment by electronic means;
- the notification of persons specified in the regulations; and
- any other matters that the Revenue Commissioners deem necessary.

Delegation

The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by regulations made under this section to be performed or discharged by the Revenue Commissioners. (6)

Penalty for non-compliance

Where a specified return has been made by a specified person in a form which does not comply with regulations made under this section or a specified person has made a payment of tax other than in accordance with the regulations a penalty of €1,520 applies. (7)

Regulations to be laid before Dáil Éireann

Regulations made are to be laid before Dáil Éireann. If a vote annulling them is passed by Dáil Éireann within 21 days the regulation are annulled. (8)

Commencement

By virtue of section 164(2) of the Finance Act 2003 this section will only come into operation following a commencement order by the Minister for Finance. The section came into operation on 28 July 2008 following the making of commencement order SI 308/2008 by the Minister for Finance.

917F Electronic transmission of returns

Summary

This section contains the substantive provisions of the Chapter allowing tax returns to be made electronically.

Details

Satisfying obligations

The obligation of any person to make a tax return is treated as having been satisfied if information is transmitted electronically in response to that obligation and subject to the fulfilment of certain requirements. These requirements are designed to ensure the security and integrity of the information transmitted. (1)

There are four requirements to be met if a return is to be treated as made electronically —

- The electronic return must be made by a person specifically approved by the Revenue Commissioners (called the “approved person”) or a person authorised (called the “authorised person”) to make that return by the approved person. The conditions which any person must meet for approval are set out in **section 917G**.
- The electronic return must be made in the manner approved by the Revenue Commissioners. **Section 917H** sets out the requirements under which the return must be transmitted.
- The electronic return must have the electronic identifier of the approved person or authorised person affixed to it.
- The receipt of the electronic return is acknowledged by the Revenue system.

Information included

The additional elements which are currently incorporated into the paper return are also incorporated into the electronic return. This provision ensures that the electronic return can include facility for making claims for relief similar to that in paper returns. (2)

Provisions disapplied

Where requirements which are normally incorporated as part of the paper tax return are not suitable for inclusion in an electronic return, or cannot easily be applied to the electronic return, these provisions of the various tax codes are disapplied for electronic returns. The particular requirements covered by this provision are — (3)

- the declaration normally incorporated into the return,
- the signature of the person making the return,
- the making of the return in writing,
- the signing of the return by a person acting under the authority of a person obliged to make a return,
- the provision whereby the Revenue Commissioners prescribe the form of a return, and
- the provision whereby the Revenue Commissioners prescribe the form of a claim.

Date of submission

The date on which an electronic return is acknowledged as received by Revenue shall be treated as the day on which the obligation of a person to make a return is treated as fulfilled. (4)

Keeping of hard copies

Where an electronic return is submitted on behalf of an approved person or authorised person, the person transmitting the return is required to make a hard copy of the return submitted. Such a printed copy is to be made under specific conditions and authenticated in a specific way. These requirements are set out in **section 917K**. This is to ensure that a taxpayer will not be able to repudiate a return made on his behalf by some other person (e.g. a tax agent). (5)

Supporting documentation

Where any provision requires that a tax return, or related claim, be accompanied by supporting documents or evidence, the requirements need not be complied with where the return is made electronically. Instead, such documents must be retained by the taxpayer for production to a revenue officer on request. (6)

917G Approved persons

Summary

This section sets out the requirements necessary for a person to be approved by Revenue to make electronic returns.

Details

Approved persons

An approved person for the purposes of the submission of electronic returns is defined. (1)

Applications

This subsection establishes that applications for approval must be made to the Revenue Commissioners. (2)

Conditions

The conditions which must be conformed to by an applicant for electronic filing are set out. These place an onus on the person seeking access to the system to notify Revenue (3)

of the persons the applicant wants to authorise (in addition to him or her self) to make transmissions on his/her behalf as authorised persons. It also obliges all persons who access the system to make transmissions (that is, to transmit tax return information rather than obtain information from Revenue) to comply with the requirements set out in *subsections (2) and (3) of section 917H*.

Approval/Refusal

The Revenue Commissioners must give notice of the grant or refusal of approval and, (4) where a refusal is made, of the grounds for the refusal.

Withdrawal of approval

The procedure whereby an approval to make electronic returns is withdrawn by the (5) Revenue Commissioners is set out.

Circumstances of withdrawal

The circumstances under which the Revenue Commissioners may withdraw an approval (6) are set out. These are —

- where the approved person or an authorised person is in breach of a condition under which approval was granted, or
- where the person has failed to comply with one of the requirements set by Revenue on the manner in which transmission must be made.

Appeal

An appeal against a refusal or withdrawal of a grant of approval may be made in writing to the (7) Appeal Commissioners. An appeal must be made within the period of 30 days after the date of the notice of refusal/withdrawal of a grant of approval. The appeal is heard and determined in the manner provided for in Part 40A.

917H Approved transmissions

Summary

This section ensures that an electronic return is made in the manner approved by Revenue.

Details

Approved transmissions

The electronic transmission of information to be included as part of a return is not an (1) approved transmission unless it complies with Revenue requirements.

Obligations

The Revenue Commissioners are obliged to publish and make known to everyone who (2) has access to the ROS system the requirements —

- applicable to the manner in which tax return information is to be transmitted electronically, and
- governing the use of a person's electronic identifier.

The obligation on Revenue to make such requirements known are met by ensuring that these requirements are specifically brought to the user's attention during the application process. The published requirements are also permanently available for access on the system.

Terms and Conditions

This sets out the type of requirements which the Revenue Commissioners may set. (3)
These include requirements —

- as to the type of software which should be used in accessing the system,
- the actual terms and conditions of using the system, and
- the terms and conditions governing the use of the person's electronic identifier.

For the purposes of determining terms and conditions for the use of a person's electronic identifier, the Revenue Commissioners may determine different terms and conditions in relation to different returns or categories of a return, different categories of persons and different returns or categories of a return made by different categories of persons. (4)

917I Digital signatures

This section was deleted by the Finance Act, 2001.

917J Acknowledgement of electronic transmissions

This section requires Revenue to provide an electronic acknowledgement of the receipt of an electronic return.

917K Hard copies

Summary

This section sets out the requirements which must be followed in making and authenticating the hard copy of the electronic return as submitted to Revenue. The purpose is to enable tax practitioners to retain a hard copy of their submission in the event of a dispute later as to the content of an electronic tax return which they submitted.

Details.

Making of hard copy

The hard copy must be made in such a way so that the information in the hard copy is the information transmitted or to be transmitted in the electronic tax return. (1)

Approved format

The printed out version of the tax return must be in a form approved by Revenue.

Authentication of printed copy

The printed out version of the return is authenticated only if it is signed by the person who would have been required to sign the return or make any declaration required on a return had the return been made on paper. (2)

917L Exercise of powers

Summary

This section is concerned with ensuring that neither the Revenue nor the taxpayer will be in any way disadvantaged where a tax return is made electronically.

Details

Fulfilling obligations

The electronic submission of a tax return is treated as fulfilling a person's obligation to submit a return. (1)

Powers and duties

The Revenue Commissioners and their officers have the same powers and duties in relation to an electronic return as they have in relation to a return made in the traditional way. (2)

Taxpayers' rights

A taxpayer has all the rights and duties in relation to an electronic return as he/ she has in relation to a return made in the traditional way. (3)

917M Proceedings

Summary

This section is concerned with ensuring that electronic tax returns will be admissible for the purposes of any proceedings which may arise.

Details

Application

This section only applies where an electronic return has been made by, or on behalf of, a person. (1)

Proceedings

Proceedings are defined as — (2)

- civil and criminal proceedings,
- proceedings before the Appeal Commissioners, and
- proceedings before any other tribunal having jurisdiction in tax matters.

True copy

A printed copy of an electronically submitted return which has been certified by a revenue officer as a true copy of the tax return is to be regarded as if it were an actual return made by post and as if it contained any necessary signature, declaration or certificate. This provision also applies in relation to any claim incorporated into the return. (3)

Admissibility

This subsection ensures the admissibility in proceedings of any representation in the printed out version of the electronic tax return certified by a revenue officer as a true copy of the information transmitted electronically. This provision only applies where the representation is a representation as to — (4)

- the information transmitted by an approved or authorised person in accordance with *section 917F(1)*,
- the date or time of transmission, and
- the identity of the person who made the electronic tax return or on whose behalf the return was made.

917N Miscellaneous

This section allows the Revenue Commissioners to delegate their functions under this Chapter to nominated officers.