

## **Failure by an Agent to meet the Professional Standards of a Professional Body**

### **Revenue referrals to Professional Bodies under Section 851A (7) TCA 1997**

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## 1. Introduction

Revenue recognises the important role that agents play in assisting taxpayers with filing requirements, interpretation of legislation and other related matters, and in facilitating tax compliance.

Revenue expects that all agents will, at all times, carry out their professional dealings with Revenue in accordance with the fundamental principles of integrity, courtesy, professional competence and standards, professional behaviour, and take due care to comply with relevant tax law and regulations.

Revenue also expects that any agent acting on behalf of a taxpayer will provide information and material which, to the best of their knowledge, is a true representation of a taxpayer's tax affairs.

The [Code of Practice for Revenue Audit and other Compliance Interventions](#), Paragraph 1.10.5, outlines Revenue policy regarding referrals of agents to their representative bodies. A referral by Revenue to a professional body will only be considered in the most serious of cases e.g. in cases of significant and/or repeated non-adherence to professional standards. This instruction sets out the considerations in relation to such a referral and the procedures to be followed.

It will be a matter for the professional body to examine the referral from Revenue and take any action under its own procedures, where necessary.

## 2. Definition of Agent/Professional Body

Section 851A Taxes Consolidation Act (TCA) 1997 outlines that 'agent' means a member of a professional body.

A 'professional body' means –

- a) an accountancy body that comes within the supervisory remit of the Irish Auditing and Accountancy Supervisory Authority,
- b) the Irish Auditing and Accounting Supervisory Authority (IAASA),
- c) the Irish Taxation Institute (ITI), or
- d) the Law Society of Ireland.

A Prescribed Accountancy Body (PAB) is any accountancy body that comes within the supervisory remit of [IAASA](#). There are currently eight PABs, see Appendix 2, each of which has its own formal system for dealing with referrals relating to its members/member firms, including, where necessary an investigation and disciplinary process.

Where an agent is a member of two, or more, professional bodies that come within the scope of section 851A TCA 1997, referral of the agent will be made to all the relevant professional bodies concerned. In cases where an agent is also a qualified solicitor, Revenue will notify the Law Society of Ireland of any failure to meet its standards of professional conduct.

### 3. Key Points of Note

Under section 851A TCA 1997, a Revenue officer may disclose taxpayer information to a professional body where they are satisfied that the work of an agent (who is a member of that professional body) does not meet the professional standards of a professional body. For agents that are not members of a professional body, [see paragraph 10](#) below.

The following key points should be noted:

- Only serious cases will be referred by Revenue to the relevant professional body,
- A section 851A TCA 1997 report will be made after the compliance intervention is finalised and closed,
- Revenue's intention to make a section 851A TCA 1997 report to the professional body will not be raised or discussed by the Revenue officer with the agent or taxpayer during the compliance intervention,
- The Accountant General's and Strategic Planning Division (AG&SPD) will issue the section 851A TCA 1997 referral to the professional body based on the information supplied by the Division,
- All referrals will be subject to approval by an Assistant Secretary.

### 4. Required Professional Standards of a Professional Body

The [ITI](#), [Law Society of Ireland](#) and each PAB under the supervisory remit of the [IAASA](#) set out the professional and ethical standards expected of accountants, auditors, solicitors, tax agents and tax practitioners.

These standards, generally include:

- Professional Behaviour – to comply with relevant laws and regulations and avoid any action that discredits the profession
- Honesty and Integrity – to be straightforward and honest in all professional and business work and relationships. Integrity also implies fair dealing and truthfulness
- Professional Competence and Due Care – carry out professional work with proper regard for technical and professional standards, with due care, competence and diligence and uphold professional standards.

Where serious failure to meet professional standards arises, the relevant PABs are responsible for the investigation of referrals and are required to process them in accordance with their investigation and disciplinary procedures which are approved by the IAASA. The ITI and Law Society of Ireland have similar processes in place.

## 5. Failures by Agents to meet the Professional Standards of a Professional Body

Revenue expects that agents will at all times carry out their professional dealings with Revenue in accordance with professional standards whether or not they are a member of a professional body. The process for dealing with general non-cooperation or failure by a taxpayer or agent to cooperate fully is outlined in Revenue's Tax and Duty Manual on '[Failure to cooperate fully with a Revenue Compliance Intervention](#)'.

Where the work of an agent raises concerns for Revenue, the Revenue officer should first consider whether to pursue a €4,000 penalty under section 1055 TCA 1997 (civil penalty for assisting in making incorrect returns, etc.) – see paragraph 11 below - and/or whether a person (agent) may have committed a criminal offence under section 1078 TCA 1997 (Revenue offences) – [see paragraph 12](#) below.

If action is to be taken by a Revenue officer under section 1055 TCA 1997 or section 1078 TCA 1997, then this action should be finalised before consideration of any referral action under section 851A TCA 1997.

In all situations, the compliance intervention [including settlement of any additional liability for tax, duty, interest and penalty (if any)] **must be** finalised before referring details of the unprofessional behaviour of the agent to their professional body.

## 6. Referral of a case to AG&SPD

Where a Revenue officer is satisfied that the work of an agent does not meet the professional standards of a professional body, a referral will be made by the AG&SPD directly to the relevant PAB, the ITI or the Law Society of Ireland. A report should be prepared and the following information should be submitted to AG&SPD:

- The name and address of the agent/firm.
- Date the compliance intervention was finalised and a copy of the finalised compliance intervention report.
- The name of the professional body of which the agent/firm is a member.
  - The best way to establish this is to ask the agent directly. If the agent is also a registered auditor, their membership body details can be obtained from the [Companies Registration Office](#) website.
  - Alternatively, PABs can be contacted to enquire whether the agent is a member of their body, see Appendix 2.
- A 'Failure to meet Professional Standards' report outlining reasons why it is the Revenue officer's contention that the work of the agent does not meet the professional standards of a professional body should be completed and submitted. A full synopsis of the issues is required.
- Any other relevant information.

The referral should be submitted to Compliance Policy and Evaluation Branch(CPEB), AG&SPD and must be signed off by the relevant Assistant Secretary.

Where complete information is not included in the report, the case may be returned to the Revenue officer for re-referral.

## 7. Section 851A Referrals to Professional Bodies

The facts for the report will be provided by the Revenue officer/Audit Manager dealing with the agent and must be approved by the Divisional Assistant Secretary.

The AG&SPD referral will confirm that:

- **‘A Revenue officer is satisfied that the work of an agent does not meet the professional standards of a professional body’.**

In addition, details of the facts of the case that gave rise to the Revenue decision, as outlined by the Revenue officer dealing with the case, will be supplied to the relevant professional body.

The Revenue officer initiating the referral must have an objective basis to ground their decision to ask their Assistant Secretary to approve the referral (via **AG&SPD**) of an agent to the professional body in question.

The Revenue officer, in consultation with their Audit Manager, is required to satisfy themselves that based on the evidence before them, the standards expected of a professional do not appear to have been met in a significant way in one or more instances in the matter at hand and therefore, there are grounds to warrant an investigation into the behaviour of the agent in question by their professional body.

## 8. Issues outside the scope of section 851A TCA 1997

The referral of a report under section 851A TCA 1997 is not appropriate where the matter that gives rise to the report is:

- Frivolous, vexatious or not made in good faith
- Not relevant to Revenue e.g. disputes over fees where no other relevant professional standard issues are present
- A matter that does not relate to the tax or duty compliance position of the taxpayer.

## 9. Time Limits etc. for referrals under section 851A (7) TCA 1997

While there are no specific time limits in the Tax Acts for making a report to a PAB, ITI, IAASA or the Law Society of Ireland, a report should be sent to AG&SPD within **2 months** of the completion of the Revenue compliance intervention.

## 10. Agents who are not members of a Professional Body

Some agents are not members of a professional body. They may previously have been a member and membership has lapsed or they may never have been a member of a professional body. In such instances where the work of an agent raises concerns for Revenue, please refer to the potential actions set out in paragraphs 11 and 12 below.

## 11. Section 1055 TCA 1997 – Penalty for assisting in making incorrect returns etc.

Section 1055 provides for a penalty for ‘Any person who deliberately assists in or induces the making or delivery for any purposes of income tax or corporation tax of any incorrect return, account, statement or declaration shall be liable to a penalty of €4,000’.

## 12. Section 1078 TCA 1997 – Revenue offences

Section 1078 provides for a penalty for ‘Any person who knowingly aids, abets, assists, incites or induces another person to make or deliver any incorrect return, statement, or accounts in connection with any tax shall be liable to a penalty of €5,000 (summary prosecution) or a maximum of €126,970 (on indictment) or to a term of imprisonment, or both’.

## APPENDIX 1 – Extract from section 851A (7) TCA 1997

Under section 851A TCA 1997, a Revenue officer may disclose (taxpayer information) to a professional body where he or she is satisfied that the work of an agent does not meet the professional standards of a professional body. The information received by a professional body may only be used for the purposes of any investigation by the professional body.

### **Taxpayer Information**

‘Taxpayer information’ means information of any kind and in any form relating to one or more persons that is-

- obtained by a Revenue officer or service provider for the purposes of the Acts,
- obtained by a Revenue officer or service provider purportedly for the purposes of the Acts, or
- prepared from information so obtained,

but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates.



## APPENDIX 2 – Contact details to establish whether an agent is a member of a professional body

Professional Body	Full Name	Search details
<a href="#">ACCA</a>	Association of Chartered Certified Accountants	<a href="https://www.accaglobal.com/ie/en/member/find-an-accountant.html?isocountry=ie">https://www.accaglobal.com/ie/en/member/find-an-accountant.html?isocountry=ie</a>
<a href="#">AIA</a>	Association of International Accountants	<a href="http://www.aiaworldwide.com/find-an-international-accountant">http://www.aiaworldwide.com/find-an-international-accountant</a>
<a href="#">CIMA</a>	Chartered Institute of Management Accountants	<a href="http://www.cimaglobal.com/Members/Find-a-practising-accountant/">http://www.cimaglobal.com/Members/Find-a-practising-accountant/</a>
<a href="#">CIPFA</a>	Chartered Institute of Public Finance and Accountancy	<a href="https://www.cipfa.org/members/members-directory">https://www.cipfa.org/members/members-directory</a>
<a href="#">ICAEW</a>	Institute of Chartered Accountants in England & Wales	<a href="http://www.icaew.com/en/members/local-support-and-services/contact-members">http://www.icaew.com/en/members/local-support-and-services/contact-members</a>
<a href="#">ICAI</a>	Institute of Chartered Accountants in Ireland	<a href="https://www.charteredaccountants.ie/en/Members/Member-Search/">https://www.charteredaccountants.ie/en/Members/Member-Search/</a>
<a href="#">ICAS</a>	Institute of Chartered Accountants of Scotland	<a href="https://www.icas.com/find-a-ca">https://www.icas.com/find-a-ca</a>
<a href="#">ICPAI</a>	Institute of Certified Public Accountants in Ireland	<a href="http://portal.cpaireland.ie/memberdirectory.aspx">http://portal.cpaireland.ie/memberdirectory.aspx</a>

The ITI is not within the supervisory remit of the IAASA so referrals for [ITI members](#) will be made only to the ITI. Membership of the ITI is based on individual membership – they do not operate membership by firms so any referral will be made in relation to a named individual only.

To search for a solicitor or firm please see the [Law Society of Ireland](#) website.