

Confidentiality of Taxpayer Information

Part 37-00-02

This document should be read in conjunction with
section 851A Taxes Consolidation Act 1997

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Table of Contents

1. Introduction	3
2. Confidential taxpayer information.....	3
3. Unauthorised disclosure	3
4. Authorised disclosures	4
4.1. Disclosures under criminal and legal proceedings	4
4.2. Disclosure to the Office of the Director of Corporate Enforcement	5
4.3. Disclosure to the Official Assignee in bankruptcy	5
4.4. Disclosure to service providers	5
4.5. Disclosure to professional bodies	6
4.6. Disclosure to taxpayers and their representatives	6
4.7. Disclosure under Freedom of Information Acts.....	6
4.8. Disclosure to the Department of Finance	6
4.9. Disclosure to the Department of Agriculture, Food and the Marine	7
4.10. Disclosure to the EU Commission	7
4.11. Disclosure under film relief legislation.....	8
4.12. Disclosure to charities.....	8
4.13. Administrative co-operation in relation to joint audits	8

1. Introduction

Section 851A Taxes Consolidation Act 1997 (TCA) formalises taxpayer confidentiality and reassures taxpayers that personal and commercial information disclosed to Revenue for tax purposes is protected against unauthorised disclosure by Revenue to third parties. The section also sets out the circumstances in which disclosure of taxpayer information is authorised.

2. Confidential taxpayer information

“Taxpayer information” is defined in section 851A(1) TCA as personal information relating to one or more persons obtained by Revenue, or by a service provider engaged by Revenue (see section 4.4 below) for the purposes of tax and duty legislation or which is prepared from information so obtained. It also includes information obtained by a Revenue officer or service provider purportedly for authorised purposes. Taxpayer information does not include information that does not directly or indirectly reveal the identity of a taxpayer to whom the information relates.

Section 851A(2) TCA provides that taxpayer information is confidential and can only be disclosed in accordance with that section or another statutory provision (see paragraph 4 below).

3. Unauthorised disclosure

Section 851A(3) TCA makes it an offence to disclose (directly or indirectly) taxpayer information other than as authorised by the section, and provides for penalties for the offence. It is an offence to knowingly –

- provide taxpayer information to anyone;
- allow taxpayer information to be provided to anyone;
- allow anyone to have access to taxpayer information; or
- use taxpayer information other than in the course of administering or enforcing the tax and duty legislation.

A Revenue officer, service provider engaged by Revenue or other persons to whom taxpayer information is disclosed who knowingly discloses unauthorised taxpayer information can be found guilty of an offence. (Paragraph 4 below contains examples of other persons to whom the disclosure of taxpayer information is authorised.) The penalty for the offence is €3,000 if convicted summarily and €10,000 if convicted on indictment. Section 851A(10) TCA applies section 13 Criminal Procedure Act 1967 (which sets out the procedure where an accused person pleads guilty in the District Court to an indictable offence) as if the €3,000 penalty in section 851A TCA applies instead of the lower penalty applied by that Act.

4. Authorised disclosures

Confidential taxpayer information may only be disclosed if authorised by a provision in section 851A TCA or by any other statutory provision which allows the disclosure of such information. The reference to other statutory provisions includes any other tax and non-tax legislation, in both primary legislation and regulations; for example, section 18 Company Law Enforcement Act 2001 (see paragraph 4.2 below) and section 18A Bankruptcy Act 1988 (see paragraph 4.3 below).

Section 851A(2) TCA does not specify the manner in which other statutory provisions may authorise disclosure. However, section 851A(8)(j) provides that the disclosure of taxpayer information under a statutory provision, other than section 851A TCA, must be **expressly** authorised by that other provision. This means an explicit and clear authorisation and not merely a general implied authorisation.

Section 851A(9) TCA provides that a Revenue Commissioner, a Revenue officer or a service provider, in the course of carrying out their work, may disclose taxpayer information to another Revenue Commissioner or Revenue officer.

4.1. Disclosures under criminal and legal proceedings

Section 851A(4) TCA provides, subject to section 851A(5), that a Revenue officer or service provider is not required to give or produce evidence relating to taxpayer information in connection with any legal proceedings.

Section 851A(5) TCA authorises the disclosure of taxpayer information in criminal proceedings or legal proceedings relating to the administration or enforcement of the tax and duty legislation, including proceedings before the Appeal Commissioners.

Section 851A(6) TCA authorises a Revenue officer who has information that leads them to suspect that a criminal offence may have been committed to report the matter and provide relevant information to a statutory body responsible for the investigation of alleged criminal offences (an “investigating authority”). The investigating authority may use any such information solely for the purposes of detection or investigation of the matter reported to it.

Section 851A(8)(b) TCA authorises the disclosure of taxpayer information for the purposes of any enquiry under the Tribunal of Enquiry (Evidence) Acts 1921 to 2002.

Disclosure of taxpayer information is also authorised in relation to proceedings initiated by the Office of the Director of Corporate Enforcement (see section 4.2 below).

4.2. Disclosure to the Office of the Director of Corporate Enforcement

Section 18 Company Law Enforcement Act 2001 allows a Revenue officer to disclose to the Office of the Director of Corporate Enforcement (ODCE), in relation to provisions of the Companies Acts, information which, in the opinion of the Revenue officer, relates to non-compliance, the duties and obligations of companies and their officers and the commission of offences, or that could materially assist the ODCE in conducting investigations or proceedings.

Revenue has a Memorandum of Understanding with the ODCE which sets down protocols to be followed in relation to the disclosure of information under the Company Law Enforcement Act 2001. All requests for information by the ODCE and all information provided by Revenue to the ODCE is to be routed through the appropriate Liaison Officers.

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

[...]

4.3. Disclosure to the Official Assignee in bankruptcy

Section 18A Bankruptcy Act 1988 provides that, where requested by the Official Assignee or by a trustee in bankruptcy in relation to a person adjudicated bankrupt, Revenue must provide any information held by it in relation to the carrying on of any trade or profession or relating to any matter in respect of which a return is required to be made to Revenue and to which the bankrupt is or was a party.

Any request for information received from the Official Assignee or a trustee in bankruptcy should be directed to insolvency@revenue.ie in the Office of the Collector-General.

4.4. Disclosure to service providers

“Service provider” is defined as “any person engaged or formerly engaged by or on behalf of the Revenue Commissioners, or any person employed by such person, for the purposes of carrying out work relating to the administration of any taxes or duties under the care and management of the Revenue Commissioners”.

Examples of service providers include external legal, tax and IT experts, auctioneers and valuers, and call centre providers that may be engaged by Revenue from time to time. Section 851A(8)(k) TCA authorises disclosure of taxpayer information to a service provider for the purpose for which the service provider is engaged by Revenue.

See also section 4.11 below in relation to film relief and the role of the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media.

4.5. Disclosure to professional bodies

Section 851A(7) TCA allows the disclosure of taxpayer information to any of the bodies specified in the definition of “professional body” in section 851A(1), where a Revenue officer is satisfied that the work of a member of the particular body does not meet the professional standards expected of its members by that body.

Disclosure is intended to facilitate the body in investigating the alleged unprofessional conduct of its members and the taxpayer information is not to be used for any other purpose. The bodies include professions dealing with a person’s tax affairs, such as various taxation and accounting bodies and the Law Society.

4.6. Disclosure to taxpayers and their representatives

Section 851A(8) TCA contains a number of authorisations that relate to the disclosure of taxpayer information to taxpayers and their representatives.

Section 851A(8)(c) authorises the disclosure of taxpayer information that relates to the person to whom it is disclosed.

Section 851A(8)(d) authorises the disclosure of taxpayer information where the taxpayer to whom the information relates has consented to the disclosure.

Section 851A(8)(e) authorises the disclosure of taxpayer information to persons acting in a representative capacity where the information is relevant to the person in that capacity. This would include disclosure to tax agents and disclosure to the personal representatives administering the estate of a deceased person.

Section 851A(8)(h) authorises the disclosure of taxpayer information relating to a particular taxpayer where it may reasonably be regarded as necessary for the purposes of determining the tax position of another person. This is not a blanket authorisation and the requirement for the disclosure to be ‘reasonably’ regarded as necessary means that each case should be examined on its own facts and circumstances. Examples of where this provision may apply would be where the tax positions of a company and its directors are interrelated; or where the tax positions of a partnership and its partners are interrelated.

4.7. Disclosure under Freedom of Information Acts

Section 851A(8)(a) TCA provides that information may be disclosed where this is authorised by the Freedom of Information (Fol) Acts, but it excludes information that is taxpayer information from this provision.

Section 851A(9A) provides that an officer of the Department of Finance may provide taxpayer information (which would have been provided to the Department by Revenue) to the Information Commissioner where this is required under the Fol Acts.

4.8. Disclosure to the Department of Finance

Section 851A (8)(g) authorises the disclosure of taxpayer information to an official of the Department of Finance solely for the purposes of the formulation or evaluation of fiscal policy.

Section 851A (8)(n) authorises the disclosure of taxpayer information to an official of the Department of Finance solely in connection with the State's compliance with EU-related obligations and investigations. See also paragraph 4.10 below.

See also paragraph 4.7 above in relation to the disclosure of information required by Freedom of Information legislation by an officer of the Department of Finance to the Information Commissioner.

4.9. Disclosure to the Department of Agriculture, Food and the Marine

Section 851A (8)(l) authorises the disclosure of taxpayer information to the Minister for Agriculture, Food and the Marine where the information relates to a registered farm partnership's failure to comply with the conditions in sections 667C(1A) or 667D(2) for entry on the register of farm partnerships or succession farm partnerships. See also paragraph 4.10 below in relation to compliance with EU State Aid rules.

4.10. Disclosure to the EU Commission

Certain taxpayer information may need to be provided to the EU Commission in connection with its functions under the Treaty on the functioning of the European Union (TFEU) and in ensuring compliance with its State Aid rules. Section 851A (8)(m), (n) and (o) TCA authorise the disclosure of taxpayer information in this regard.

Section 851A(8)(m) authorises the disclosure of taxpayer information to the Minister for Agriculture, Food and the Marine solely to comply with EU Regulation 1408/2013 of 18 December 2013, which applies State Aid rules in relation to small amounts of grant aid or tax relief in the agricultural sector (known as 'de minimis' schemes). This disclosure relates to relief granted under

- section 81D (leasing of farmland) Stamp Duties Consolidation Act 1999, or
- section 667C TCA (registered farm partnerships).

Section 851A(8)(n) authorises the disclosure of taxpayer information to an official of the Department of Finance solely in relation to requirements to provide the EU Commission with particular information in relation to the TFEU; that is

- for compliance with the State's obligations under Article 108 or under regulations made pursuant to Article 109, or
- for the preparation of a response to the EU Commission when exercising its functions under Articles 107 to 109 or regulations made pursuant to Article 109.

Section 851A(8)(o) authorises the disclosure of taxpayer information directly to the EU Commission (rather than via the Department of Finance as in paragraph (n)) in relation to compliance with the State's obligations under Article 108 of the TFEU or under regulations made pursuant to Article 109.

Section 851A (8A) allows the disclosure of specified taxpayer information relating to a company in receipt of tax relief for the production of a ‘qualifying film’ under section 481. Such disclosure is required to meet Ireland’s EU State Aid obligations under the ‘Communication from the EU Commission on State Aid for films and other audiovisual works’. The specified information is published on the Revenue website.

4.11. Disclosure under film relief legislation

Section 851A (8B) TCA deems the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media to be a service provider for the purposes of section 851A, thereby ensuring that all taxpayer information provided to that Department as part of the revised application process (introduced by section 26 Finance Act 2018) for film relief under section 481 TCA is protected from unauthorised disclosure.

4.12. Disclosure to charities

Section 851A (8)(f) TCA allows the disclosure to the Charities Regulator of specified taxpayer information relating to a charity that is, the name of the charity, its objectives, governing documents and its principal officers. Such information is held by Revenue’s Personal Division (Charities and Sports Exemption Unit) in relation to the granting of charitable tax exemption under section 207 TCA.

4.13. Administrative co-operation in relation to joint audits

Section 891L TCA, introduced by Finance (No. 2) Act 2023, provides for joint audits carried out by Revenue officials with nominated officials from other EU Member States. This implements article 12a of DAC7, the Directive on Administrative Co-operation. A joint audit is an administrative inquiry conducted by Revenue and the competent authority of another Member State and linked to a person of common or complimentary interest to both jurisdictions.

Section 891L(5) allows Revenue to authorise a foreign tax official as a “nominated officer” for the purpose of conducting a joint audit. These “nominated officers” will accompany Revenue officials on the audit, will interview individuals and examine records. During the joint audit, the nominated officers will have access to confidential taxpayer information. They will not be permitted to remove or make copies of any documentation provided during the course of the joint audit.

Section 891L(23)(a) confirms that the conditions of section 851A apply to a “nominated officer” in the same manner as they apply to a Revenue official.