Non-Routine Revenue Powers

Part 38-04-14

This document should be read in conjunction with sections 908A, 908C, 908D and 908E of the Taxes Consolidation Act 1997

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Note: This manual is currently subject to review and may not reflect up-to-date position. Most recent version.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Table of Contents

1 Introduction 3
1.1 Scope of Manual 4
2 Revenue offence: power to obtain information from financial institutions (section 908A TCA 1997) 4
2.1 Summary 4
2.2 Overview 4
2.3 Financial institutions covered by section 908A TCA 1997 5
2.4 Documents required to apply for an order under section 908A TCA 1997 5
2.4.1 Authorisation 5
2.4.2 Form of Consent 5
2.4.3 Preparing the information in support of the application under section 908A TCA 1997 6
2.4.4 Preparing an order under section 908A TCA 1997 6
2.5 Approval 6
2.6 Action by authorised officer on receiving consent of Revenue Commissioner 7
3 Search warrants (section 908C TCA 1997) 7
3.1 Summary 7
3.2 Overview 7
3.3 Documents required for application for a search warrant 7
3.3.1 Authorisation to exercise powers under section 908C TCA 1997 8
3.3.2 Application for a search warrant under section 908C TCA 1997 8
3.3.3 Preparing a warrant under section 908C TCA 1997 8
3.4 Approval 9
3.5 Execution of a search warrant by an authorised officer 9
3.6 Retention of material 9
3.7 Claims of Privacy and/or Legal and Professional Privilege (LPP) 9
3.7.1 Claims of Privacy 9

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3.7.2 Legal and Professional Privilege (LPP) 10
4 Order to produce evidential material (section 908D TCA 1997) 10
4.1 Summary 10
4.2 Overview 11
4.3 Documents required to apply for an order under section 908D TCA 1997 11
4.3.1 Authorisation to exercise the powers under section 908D TCA 1997 11
4.3.2 Information in support of the application under section 908D TCA 1997 11
4.3.3 Order under section 908D TCA 1997 12
4.4 Approval 12
5 Order to produce documents or provide information (section 908E TCA 1997) 12
5.1 Summary 12
5.2 Overview 13
5.3 Documents required to apply for an order under section 908E TCA 1997 13
5.3.1 Authorisation to exercise the powers under section 908E TCA 1997 13
5.3.2 Information in support of the application under section 908E TCA 1997 13
5.3.3 Order under section 908E TCA 1997 14
5.4 Approval 14

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1 Introduction

Revenue has at its disposal a number of investigative powers as provided for in the Taxes Consolidation Act 1997 (TCA 1997). The following powers may be used by Authorised Officers during investigations where there are reasonable grounds to suspect that revenue offences, as set out in section 1078 TCA 1997, may have been committed:

- Section 908A TCA 1997 (Order obtaining information from financial institutions)
- Section 908C TCA 1997 (Obtaining search warrants)
- Section 908D TCA 1997 (Order requiring a third party to produce evidential material)
- Section 908E TCA 1997 (Order requiring a person to produce documents or provide information).

The type of investigations in which these powers are used are commonly known as criminal investigations rather than civil investigations. These investigations are, in the main, carried out by case officers in Investigation and Prosecution Branch 1 in Revenue's Investigation, Prosecution and Frontier Management Division (IPFMD).

In order to exercise any of the powers contained in the above sections, an officer of the Revenue Commissioners must be authorised to do so. These powers are regarded as non-routine powers and require a separate written authorisation from those referenced on the Revenue Identity Card.

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Scope of Manual

This manual provides step-by-step guidance to authorised officers to ensure the appropriate use of Revenue's non-routine powers.

The following sections provide a summary of each power, its use, the documents and approvals required and procedures on how to correctly prepare these documents.

2 Revenue offence: power to obtain information from financial institutions (section 908A TCA 1997)

2.1 Summary

Section 908A TCA 1997 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.

2.2 Overview

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 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
- there is material in the 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.

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The application must specify the named individual(s) or company and the respective address(es) of those subject to the application.

2.3 Financial institutions covered by section 908A TCA 1997

"Financial institution" is defined in section 908A(1) TCA 1997. The definition of financial institutions covers all deposit taking and credit institutions including banks, building societies, credit unions, savings banks, industrial and provident societies, friendly societies, etc.

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If a relevant institution does not fall within the definition of "financial institution" in section 908A, consideration can be given to obtaining an order under section 908D TCA 1997.

2.4 Documents required to apply for an order under section 908A TCA 1997

The following documents are required when making an application under section 908A TCA 1997:

- A copy of the authorised officer's section 908A powers;
- Form of Consent from a Revenue Commissioner;
- Information in support of the application for an order under the provisions of section 908A TCA 1997;
- Order under section 908A TCA 1997.

2.4.1 Authorisation

Section 908A is regarded as a non-routine power and requires the officer to have a separate written authorisation from those referenced on his/her Revenue Identity Card.

2.4.2 Form of Consent

A Form of Consent is a form which is signed and dated by a Revenue Commissioner giving the officer consent to apply to a judge of the appropriate Court for an order under section 908A TCA 1997.

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The following information must be included on the Form of Consent:

- The relevant Court Area and Court Number applicable to the registered address of the financial institution;

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- The name of the authorised officer making the application;
- The name of the financial institution concerned;
- The name and address of the person/entity being investigated.

2.4.3 Preparing the information in support of the application under section 908A TCA 1997

The information in support of the application under section 908A should be outlined in a clear and concise manner, and should include the following:

- The reasonable grounds for suspecting 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;
- The reasonable grounds for suspecting that there is material in the possession of a financial institution which is likely to be of substantial value to the investigation;
- The name of the financial institution concerned;
- Details of the account(s) concerned;
- Any other information relevant to the person/entity being investigated which supports the application e.g. registration details as per Revenue records, date of registration for each tax head, details of the offences which are suspected of being committed, details of the quantum of liability involved.

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2.4.4 Preparing an order under section 908A TCA 1997

The order is the document which the judge will sign if they are satisfied that there are reasonable grounds for making the order under section 908A TCA 1997.

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2.5 Approval

Once reviewed by the Revenue Solicitors Division, the case officer should send the Form of Consent, the information in support of the application (including a copy of the authorised officer's Section 908A power) and order under section 908A TCA 1997 to the relevant Revenue Commissioner for consideration via their Principal Officer.

If the Revenue Commissioner who examines the case is satisfied that it is appropriate to give consent, they will sign the form of consent. The papers, including the written consent, will then be returned to the relevant authorised officer.

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2.6 Action by authorised officer on receiving consent of Revenue Commissioner

Following receipt of signed approval from the relevant Revenue Commissioner, an application can then be made for the order under section 908A TCA 1997 to the judge in the relevant Court.

3 Search warrants (section 908C TCA 1997)

3.1 Summary

Section 908C TCA 1997 provides an authorised officer with the power to apply to a District Court judge for a search warrant where they are investigating an offence under "the Acts" as defined in section 1078 TCA 1997, or the Waiver of Certain Tax, Interest and Penalties Act 1993, 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 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 terms of the search warrant. Failure to do so can result in a fine of up to €5,000 and/or a prison term of up to 6 months.

3.2 Overview

If a judge of the District Court is satisfied by information given on oath by an authorised officer that there are reasonable grounds for suspecting -

(a) That an offence is being, has been or is about to be committed, and

(b) (i) that material which is likely to be of value (whether by itself or together with other information) to the investigation of the offence, or

(ii) that evidence of, or relating to the commission of the offence, is to be found in any place,

the judge may issue a warrant for the search of that place, and of anything and any persons, found there.

3.3 Documents required for application for a search warrant

If, having given careful consideration to the case being investigated, a search of premises is required, the case worker with the relevant authorisation may apply to the relevant District Court judge for a search warrant. In order to do this, the following documents are required:

- A copy of the authorised officer's section 908C powers;
- Information in support of the application for a search warrant under section 908C TCA 1997;
- Warrant under section 908C TCA 1997.

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3.3.1 Authorisation to exercise powers under section 908C TCA 1997

Section 908C is regarded as a non-routine power and requires the officer to have a separate written authorisation from those referenced on their Revenue Identity Card.

3.3.2 Application for a search warrant under section 908C TCA 1997

The information contained in the application should include the following:

- The reasonable grounds for suspecting that an offence is being, has been, or is about to be committed,
- The reasonable grounds for suspecting that material which is relevant to the investigation or evidence relating to the commission of an offence may be held at this premises,
- Any other relevant information in support of the application e.g. details of the offences which are suspected of being committed, details of the quantum of liability involved,
- The address of the place to be searched,
- The name of the authorised officer,
- List of the official names of the Revenue officers who will accompany the authorised officer on the search, and
- The name and address of other persons e.g. locksmith, interpreter, that may be required on the day of the search. Note: members of An Garda Síochána may accompany the authorised officer without being named on the application.

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3.3.3 Preparing a warrant under section 908C TCA 1997

To prepare a warrant under section 908C TCA 1997:

- List the official names of the Revenue officers that will accompany the authorised officer on the search;
- Include the name and address of others e.g. locksmith, interpreter, who may be required on the day of the search.

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3.4 Approval

Once reviewed by the Revenue Solicitor's Division, the case officer should send the information in support of the application (including a copy of the authorised officer's section 908C power) and warrant to the relevant Assistant Secretary for consideration via their Principal Officer.

Following approval from the relevant Assistant Secretary, an application can then be made to the relevant District Court judge.

3.5 Execution of a search warrant by an authorised officer

A search warrant issued under section 908C TCA 1997 entitles the Warrant Holder, and those listed on the warrant, to enter the place named on the warrant up to one month after its date of issue. The Warrant Holder should identify themselves to the taxpayer, explain the purpose of the search and provide a copy of the Search Warrant to the taxpayer. Once inside, the Warrant Holder and named 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 they have in their possession. The Warrant Holder or named colleagues may also examine, seize and retain any material found therein if the officer believes the material may be useful in investigating the offence.

Once the Warrant Holder seizes and retains material e.g. books, documents or other physical records, they may make copies at a later stage. 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.

A Warrant Holder or any named 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 colleague in that regard by operating the computer themselves, providing passwords, etc.

3.6 Retention of material

Any material seized by the Warrant Holder or their colleagues during the search may be retained by them for as long as required for the purposes of any legal or criminal proceedings.

3.7 Claims of Privacy and/or Legal and Professional Privilege (LPP)

During a search, material in either hard copy or soft copy may be seized. This may give rise to a claim of Privacy and/or LPP. If the taxpayer or their legal representative makes such a claim, then the Warrant Holder will determine if it is reasonable to address the claim onsite or after the completion of the search.

3.7.1 Claims of Privacy

The taxpayer or their legal representative must provide sufficient information which will a) enable the Warrant Holder to identify the relevant material and b) provide a reason as to why the material is considered to give rise to privacy rights. It should be noted that Revenue will not accept general privacy claims and efforts must be made by the taxpayer or their legal representative to aid Revenue in identifying the appropriate material.

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Where it is not reasonable to deal with privacy claims onsite during the search operation, the Warrant Holder will inform the taxpayer of the process by which a review of the material will be conducted and who will carry out the independent review.

3.7.2 Legal and Professional Privilege (LPP)

If, during the search, a claim of LPP is made in relation to hard copy material, then those records should be retained securely by the Warrant Holder. The Warrant Holder should explain to the taxpayer and their legal representative how the documents will be stored to ensure the confidentiality of relevant material pending an independent determination of its status.

If, during the search, a claim of LPP is made in relation to soft copy material being held on an electronic device(s), or the devices themselves, then the Warrant Holder can request that the forensic expert listed on the warrant store the material and/or devices separately. If the electronic material/device(s) cannot be separated from other electronic material/device(s) over which LPP has not been claimed, the entirety of the electronic material/device(s) will be stored separately. The Warrant Holder should explain to the taxpayer and their legal representative that the material will be stored securely by Revenue's Information and Communications Technology and Logistics Division to ensure the confidentiality of relevant material pending an independent determination of its status.

If, subsequent to a search, Privacy or LPP is claimed, or during a review by an authorised officer of the seized material information which may be subject to LPP is identified, this should be brought to the attention of Revenue Solicitors Division. The status of any material will then need to be independently determined.

4 Order to produce evidential material (section 908D TCA 1997)

4.1 Summary

Section 908D of TCA 1997 provides an authorised officer with the power to apply to a judge of the District Court for an order requiring a third party to produce material to the authorised officer or give the authorised officer access to it either immediately or within a period specified on the order. The authorised officer must have reasonable grounds for suspecting that the third party has possession or control of material which could be used in a criminal investigation.

A person who is the subject of the order under section 908D TCA 1997 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 either immediately or within a period specified on the order. However, an order under this section does not apply to material subject to legal privilege.

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The person who is 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.

4.2 Overview

Before an order under section 908D will be given by a District Court judge, they must be satisfied that, based on information given on oath by an authorised officer, there are reasonable grounds for suspecting -

(a) that an offence is being, has been or is about to be committed, and

(b) that material -

(i) which is likely to be of value (whether by itself or together with other information) to the investigation of the offence, or

(ii) which constitutes evidence of, or relating to the commission of, the offence,

is in the possession or control of the person specified in the application.

Once these criteria are satisfied, the judge may order that person to produce the material for the authorised officer to access it or take it away either immediately or within a specified period.

4.3 Documents required to apply for an order under section 908D TCA 1997

The following documents are required to apply for an order under section 908D TCA 1997:

- A copy of the authorised officer's section 908D powers;
- Information in support of the application under section 908D TCA 1997;
- Order under section 908D TCA 1997.

4.3.1 Authorisation to exercise the powers under section 908D TCA 1997

Section 908D is regarded as a non-routine power and requires the officer to have a separate written authorisation from those referenced on their Revenue Identity Card.

4.3.2 Information in support of the application under section 908D TCA 1997

Information in support of the application under section 908D should be outlined in a clear and concise manner, and should include the following:

- The reasonable grounds for suspecting that an offence is being, has been, or is about to be committed,
- The reasonable grounds for suspecting that material which is relevant to the investigation or evidence relating to the commission of an offence is in possession or control of the named third party,
- Any other relevant information in support of the application e.g. details of the offences which are suspected of being committed, details of the quantum of liability involved,

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- The name of the authorised officer making the application, and
- The name of the third party concerned.

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4.3.3 Order under section 908D TCA 1997

This is the document which the judge will sign if they are satisfied that there are reasonable grounds for making the order under section 908D TCA 1997.

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4.4 Approval

Once reviewed by the Revenue Solicitor's Division, the case officer should send the information in support of the application (including a copy of the authorised officer's section 908D power) and order to the relevant Assistant Secretary for consideration via their Principal Officer.

Following approval from the relevant Assistant Secretary, an application can then be made to the relevant District Court judge.

5 Order to produce documents or provide information (section 908E TCA 1997)

5.1 Summary

Section 908E TCA 1997 provides an authorised Revenue officer with the power to seek from the District Court an order requiring a third party to produce documents or to provide particular information by answering questions and/or making a statement, for the purposes of the investigation of a relevant offence, including a section 1078 TCA 1997 offence.

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5.2 Overview

Before an order will be granted by a District Court judge under section 908E TCA 1997, they must be satisfied that, based on information given on oath by an authorised officer, there are reasonable grounds for believing that:

- The person has possession or control of the documents,
- The documents are relevant to the investigation,
- The documents may constitute evidence in relation to the offence, and
- There is benefit to the investigation by the production of the documents.

The period within which the order is to be complied with will be stated on the order.

In place of producing documents, the judge may order the person to answer specified questions and/or make a statement setting out the answers to the questions. Before doing so, the judge must be satisfied that, based on information given on oath by an authorised officer, there are reasonable grounds for believing that:

- The person has information which they have refused, without reasonable excuse, to give to the authorised officer,
- The information is relevant to the investigation,
- The information may constitute evidence in relation to the offence, and
- There is benefit to the investigation by the production of this information.

Information that a person may be required to give is limited to information that they acquired in the ordinary course of business.

5.3 Documents required to apply for an order under section 908E TCA 1997

The following documents are required,

- Authorisation to exercise powers under section 908E TCA 1997,
- Information in support of the application under section 908E TCA 1997,
- Order under section 908E TCA 1997.

5.3.1 Authorisation to exercise the powers under section 908E TCA 1997

Section 908E is regarded as a non-routine power and requires the officer to have a separate written authorisation from those referenced on his/her Revenue Identity Card.

5.3.2 Information in support of the application under section 908E TCA 1997

Information in support of the application for the purposes of section 908E should be outlined in a clear and concise manner, and should include:

- The reasonable grounds for suspecting that the person has documents and/or information relevant to the investigation which they has failed to provide without a reasonable excuse, and which may constitute evidence of benefit to the investigation,

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- Any other relevant information in support of the application e.g. details of the offences which are suspected of being committed, details of the quantum of liability involved,
- The name of the authorised officer making the application,
- The name and address of the third party concerned.

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5.3.3 Order under section 908E TCA 1997

This is the document which the judge will sign if satisfied that there are reasonable grounds for making the order. Where questions are being posed to the third party, they should be well phrased and comprehensive.

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5.4 Approval

Once reviewed by the Revenue Solicitor's Division, the case officer should send the information in support of the application (including a copy of the authorised officer's section 908E power) and order to the relevant Assistant Secretary for consideration via their Principal Officer.

Following approval from the relevant Assistant Secretary, an application can then be made to the relevant District Court judge.

Note: This manual is a work in progress. Most but not all of the content is current. Content may not reflect up-to-date position. Current version subject to review and

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