

Revenue Information Powers

Part 38, chapter 4

Statement of Practice SP- GEN/1/99

This document should be read in conjunction with the following sections of the Taxes Consolidation Act: 900, 901, 902, 902A, 906A, 907, 908, 908A & 909

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Executive Summary:

This Statement of Practice explains the changes in Revenue powers arising from the enactment of section 207 of the Finance Act 1999 and sets out the approach that Revenue will take to these. It deals mostly with information powers. It is supplementary to the more general statement on powers contained in Statement of Practice SP – GEN/1/94 (revised Feb 2006).

Contents: Statement of Practice SP-GEN/1/99

A more recent version of this manual is available.

Contents STATEMENT OF PRACTICE SP-GEN/1/99

1. Introduction	4
2. Overall Approach to the Use of Powers	4
3. Revenue Internal Arrangements	5
4. Summary of Finance Act 1999 Powers	6
5. Information held by Financial Institutions	6
5.1 Section 906A—Notice with consent of a Revenue Commissioner	7
5.2 Section 907—Notice with consent of the Appeal Commissioners	8
5.3 Section 908—Order of a Judge of the High Court	9
5.4 Section 908A—Revenue offence: Order of a Judge of the Circuit or District Court	10
5.5 Approach depends on the circumstances of each case	11
6. Information held by other third parties	11
6.1 Section 902—Notice by authorised officer	12
6.2 Section 902A—Order of a Judge of the High Court	13
7. Access to books, records and information in the possession of the taxpayer	13
7.1 Section 900—Notice by authorised officer	14
7.2 Section 901—Order of a Judge of the High Court	14
8. Powers relating to verification of DIRT returns	14
9. Miscellaneous Other Powers	16
9.1 “On-premises” audit of Banks	16

9.2 District Court search warrant	16
9.3 Statement of affairs	17
10. Review	17

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1. Introduction

The Revenue Powers Chapter of the Taxes Consolidation Act, 1997 (Chapter 4 of Part 38) has been substantially amended by Section 207 of the Finance Act, 1999.

1.1 This Statement of Practice explains the changes in Revenue powers arising from the enactment of section 207 of the Finance Act, 1999 and sets out the approach that will be adopted by Revenue in using these powers. This Statement is supplementary to the more general Statement on powers issued in 1994¹. References in this Statement of Practice to section numbers means sections of the Taxes Consolidation Act, 1997 (as amended), unless otherwise indicated.

1.2 Guidance Notes and Instructions on the use of these new powers, which were prepared for Revenue staff, have been published separately for the information of taxpayers and their advisers. These are available on the Revenue website (www.revenue.ie) or from any Tax Office.

2. Overall Approach to the Use of Powers

Revenue's policy is to maximise voluntary compliance with the tax laws through co-operation.

2.1 The vast majority of taxpayers appreciate that a self-assessment system of tax administration needs to be backed up by appropriate procedures to verify returns and liabilities, and they co-operate fully with Revenue requirements in this regard. This means that in everyday verification situations only basic powers are relied upon, for example, those allowing entry to a business premises to examine books and records. Most taxpayers co-operate voluntarily, even without the formal use of these powers.

2.2 It must be recognised, however, that a small minority seek to evade their obligations and do not co-operate with Revenue. There are, therefore, situations where the use of more exceptional powers proves to be necessary to protect the rights of the generality of taxpayers. Revenue is conscious of its responsibility to use these powers with discretion and in a manner which is even-handed and ensures

¹ SP-GEN/1/94

fairness of procedures, having due regard to the rights, as well as the obligations, of taxpayers who are the subject of these powers. These more exceptional powers will not be focused on smaller cases where the potential tax loss from evasion is unlikely to be significant.

3. Revenue Internal Arrangements

Internal arrangements have been put in place to supplement the statutory protections available to taxpayers and to ensure that powers are used with discretion and in accordance with principles of fairness.

3.1 Only officers who have been specifically authorised and who have the necessary expertise will be allowed to use these powers. Furthermore, where an authorised officer seeks to use these powers in any particular situation, there is a requirement that approval be obtained at an appropriate senior level. For example, before using the general power to seek information relevant to a taxpayer's liability from a third party, the authorised officer must obtain the consent of a Regional Director. Where the third party concerned is a financial institution, the relevant legislation² requires the prior consent of one of the three Revenue Commissioners. The arrangements in respect of the use of each of the powers included in section 207 of the Finance Act, 1999 are set out in detail in the Guidance Notes and Instructions referred to in paragraph 1.2 above.

3.2 In addition, Revenue will operate an enhanced internal review procedure where a taxpayer is aggrieved with the manner in which powers are being exercised, or indeed with any other aspect of an audit, investigation or other enquiry. (The present arrangements can, at a taxpayer's request, include a review by a senior Revenue officer unconnected with the audit etc. — usually the Director of Customer Services). In future, taxpayers can opt for the present review arrangements or the new procedure whereby such reviews will be carried out jointly by the Director of Customer Services and an external reviewer who is neither from Revenue nor the wider Civil Service, but who has suitable expertise. A panel of individuals is being put in place to serve as external reviewers for this purpose. The selected individuals will be governed by the Official Secrets Act, 1963, in order to protect taxpayers' confidentiality and all necessary care will be taken to avoid any conflict of interest.

3.3 Revenue is anxious to ensure that its internal review procedures are fair and unbiased — and are publicly seen to be so. Any request for a review under the procedure outlined in paragraph 3.2 will, of course, not affect the taxpayer's normal right of appeal to the Appeal Commissioners against a tax assessment and will not affect the right to refer the matter to the Ombudsman. Further details of this

² S 906A

enhanced internal procedure are set out in a separate Statement of Practice (SP—GEN/2/99) which is available on the Revenue website (www.revenue.ie) or from any Tax Office.

4. Summary of Finance Act 1999 Powers

4.1 The new and updated powers introduced in the Finance Act 1999 fall into the following broad categories:

- Access to information and documents held by financial institutions³;
- Access to information and documents held by other third parties (i.e. third parties other than financial institutions)⁴;
- Access to books, records and information in the possession of the taxpayer⁵;
- Powers relating to the verification of the returns made by financial institutions of deposit interest retention tax (DIRT)⁶;
- Miscellaneous other powers⁷.

4.2 Each of these categories is considered in turn in the following parts 5 to 9.

5. Information held by Financial Institutions

In relation to access by Revenue to taxpayer information or records held by a financial institution, section 207 of the Finance Act, 1999, introduced two new powers (section 906A - access with the consent of a Revenue Commissioner, and section 908A - access by order of a

Circuit or District Court Judge in the case of a Revenue Offence) and amended two existing powers of access via the Appeal Commissioners and the High Court.

The circumstances in which each of these powers can be used and the Revenue procedures for using the powers are explained in this part.

5.1 Section 906A - Notice with consent of a Revenue Commissioner

³ Ss 906A, 907, 9008 and 908A

⁴ Ss 902 and 902A

⁵ Ss 900 and 901

⁶ S 904A

⁷ Ss 905 and 909

5.1.1 Section 906A allows an authorised officer to serve notice on a financial institution requiring it to make available for inspection such books and records or to furnish such information and explanations in relation to a named person as may be specified in the notice.⁸ The requirements contained in the notice must, in the reasonable opinion of the authorised officer, be relevant to the person's liability to any of the taxes or duties under the care and management of the Revenue Commissioners.

5.1.2 However, this power can only be used by an authorised officer in any particular situation with the prior written consent of one of the three Revenue Commissioners⁹. Furthermore the authorised officer must have reasonable grounds to believe that the financial institution is likely to have relevant information. The legislation also requires that a copy of the notice served on the financial institution must be given to the person concerned and provides that the period of notice given to the financial institution by the authorised officer cannot be less than 30 days.

5.1.3 Although there is no statutory requirement to do so, authorised officers will, before issuing a notice, advise the taxpayer concerned of the intention to issue a notice. This may initially be done verbally, for example during the course of an audit, but in any event will always be done by way of a letter. The taxpayer, thereby, will be afforded an opportunity to make representations as to why the notice should not be served. In practice the person will normally, as part of the audit, investigation or other enquiry process, have been given the opportunity to supply the required information himself or herself, or to provide a mandate to allow the authorised officer to obtain from the financial institution the records and information required. During the period after a notice has been served, and before the notice period has expired, it is open to either the taxpayer or the financial institution, or both, to make representations to the authorised officer as to why the notice should not be enforced or the notice period extended.

5.1.4 The notice served on the financial institution will contain a statement to the effect that the notice is served as part of the audit/enquiry programme of the Revenue Commissioners, that the programme sometimes involves obtaining access to information and records held by third parties, and that it should not be taken from the serving of the notice that the person to whom it relates has not complied with tax obligations.

⁸ Where the taxpayer is an individual, this may include material in relation to the taxpayer's spouse and minor children; in the case of any other taxpayer, this may include material in relation to persons connected with the taxpayer as defined by section 10.

⁹ Each of the Revenue Commissioners is of Secretary-General rank.

5.1.5 Authorised officers will, in so far as possible¹⁰, advise the taxpayer of the reasons why a notice is proposed to be issued to a financial institution in respect of his or her tax affairs. This will be done by giving reasons:

- in the letter indicating an intention to issue a section 906A notice (referred to in paragraph 5.1.3 above); or
- with the copy of the notice given to the taxpayer at the time the notice is issued to the financial institution (this copy, referred to in paragraph 5.1.2 above, is required to be issued by law).

5.2 Section 907 — Notice with consent of the Appeal Commissioners

Section 907 (and section 908) powers apply to a wider range of situations than section 906A but their use is likely to be confined to situations where serious evasion is suspected which requires in-depth investigation.

5.2.1 Under section 907, an authorised officer may apply to the Appeal Commissioners for consent to serve a notice on a financial institution requiring it to make available for inspection such books and records or to furnish such information and explanations as are specified in the notice and as are relevant to a tax liability of:

- a named taxpayer¹¹; or
- a person whose identity is not known to the authorised officer; or
- a group or class of persons whose individual identities are not known to the authorised officer; or
- a named person by or in respect of whom a non-resident declaration has been made to the financial institution under the deposit interest retention tax legislation¹².

5.2.2 An authorised officer cannot make an application to the Appeal Commissioners under section 907 without the consent in writing of a Revenue Commissioner and without being satisfied that:

¹⁰ It may not always be possible to give detailed reasons for example where the reasons arise from information supplied on a confidential basis.

¹¹ Where the taxpayer is an individual, this may include material in relation to the taxpayer's spouse and minor children; in the case of any other taxpayer this may include material in relation to persons connected with the taxpayer as defined by section 10.

¹² Chapter 4 Part 8 Taxes Consolidation Act, 1997.

- there are reasonable grounds to suspect that the taxpayer (or one or more of a group of taxpayers) may have failed or may fail to comply with any provision of the Tax and Customs Acts; and
- such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax (having regard to the amount of the liability that arises or might arise from such failure);and
- the information and documents to which the application relates is likely to be relevant to the proper assessment or collection of tax.

5.2.3 The legislation provides that the hearing of the application by the Appeal Commissioners shall, with any necessary modifications, be procedurally the same as if it were the hearing of an appeal against an income tax assessment. Normally, therefore, the taxpayer (where identified) and the financial institution may appear or be represented.

5.2.4 Where the Appeal Commissioners, after considering all the circumstances, determine that there are reasonable grounds for the application, they may give their consent to the service of a notice on the financial institution. Where consent is given, the authorised officer must serve notice on the financial institution within 14 days from the time such consent is given. The notice to the financial institution must state that the consent of the Appeal Commissioners has been given and that the financial institution should comply with the requirements of the notice within 30 days from the date of service.

5.3 Section 908 — Order of a Judge of the High Court

5.3.1 Under section 908, an authorised officer may apply to a judge of the High Court for an order requiring a financial institution to make available for inspection such books and records or to furnish such information and explanations as are specified in the order. The application to the judge may be made in respect of matters which are relevant to the tax liability of the same categories of named and unnamed persons as are set out in paragraph 5.2.1 which deals with an application for consent of the Appeal Commissioners. The power under section 908 differs from that in section 907 in that a judge of the High Court can order the freezing of assets and can afford anonymity to an authorised officer where it is considered in the public interest to do so.

5.3.2 As with an application to the Appeal Commissioners, an authorised officer cannot make an application to a judge of the High Court under section 908 without the consent in writing of a Revenue Commissioner and without being satisfied that the conditions set out in paragraph 5.2.2 are present.

5.3.3 Whereas an application to a judge of the High Court will normally be made on an *ex parte* basis, grounded on an affidavit of the authorised officer, it is a matter for the judge to decide whether notice is to be given to the person or persons concerned, so as to allow such person(s) an opportunity to make representations to the court in relation to the application. Where the judge is satisfied that there are reasonable grounds for the application, the judge may make an order requiring the financial institution to make available for inspection by the authorised officer such books and records or, as the case may be, to furnish such information and explanations as may be specified in the order. The order may be subject to such conditions as may be considered proper by the judge.

5.3.4 The judge, on the application by the authorised officer, may make a further order freezing the assets or moneys of the person(s) to whom the order relates for such period as the judge may consider proper.

5.3.5 Unlike the Appeal Commissioners' procedure in section 907, there are no time limits laid down in legislation for compliance with the Court order; the period of time will be set by the judge. Every hearing of an application under section 908 will be held in private session.

5.4 Section 908A — Revenue offence: Order of a Judge of the Circuit or District Court

The power of access to information in a financial institution under section 908A differs from the powers in sections 906A, 907 and 908 in that its use is focused on the investigation of Revenue offences with a view to prosecution. The section makes provision for the production in evidence in court proceedings of copies of entries in the books of a financial institution.

5.4.1 Under section 908A, where an authorised officer has reasonable grounds for suspecting —

that a Revenue offence (within the meaning of section 1078), 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 the possession of a financial institution which is likely to be of substantial value to the investigation of the offence, the officer may, with the consent in writing of a Revenue Commissioner, apply to a judge of the Circuit Court or of the District Court to make an order authorising the officer to inspect and take copies of any entries in the books and records of the financial institution for the purposes of investigating the offence.

5.4.2 If the judge is satisfied, on the basis of the information given on oath by the authorised officer, that the officer has reasonable grounds for suspicion in relation to the offence, the judge may make an order authorising the inspection and copying of records of the financial institution. The legislation also provides for the manner in which copies of entries in the books of a financial institution can be received in evidence in legal proceedings.

5.5 Approach depends on the circumstances of each case

Where in any case it is considered appropriate to gain access to documents and information held in financial institutions, the choice of power adopted will depend on the circumstances of the case.

Generally, the section 906A power will be used except in cases where:

- there is a suspicion of non-compliance by a known taxpayer leading to serious prejudice to proper tax assessment or collection; or
- there is such suspicion involving unidentified persons or classes of persons, or involving individuals who have made non-resident declarations for the purposes of deposit interest retention tax; or
- a court order freezing an account with a financial institution is considered appropriate; or
- a Revenue offence is being investigated with a view to initiating legal proceedings.

6. Information held by other third parties

Under section 902, an authorised officer can require a third party (other than a financial institution) to deliver or make available for inspection books and records, or to furnish information and explanations relevant to the liability of another person (the taxpayer). Section 902A gives power to the authorised officer to apply to a judge of the High Court for an order requiring a third party to supply such material or information.

The circumstances in which these two powers can be used and the Revenue procedures for using the powers are explained in more detail below.

6.1 Section 902 — Notice by authorised officer

6.1.1 Section 902 allows an authorised officer to serve notice on any person (a third party other than a financial institution) requiring the third party to deliver or to make available for inspection such books and records or information and explanations in relation to a named person (a taxpayer) as may, in the authorised officer's reasonable opinion, be relevant to the taxpayer's liability to tax.

6.1.2 The authorised officer must have reasonable grounds to believe that the third party is likely to have such information. The legislation also requires that a copy of the notice to the third party must be given to the taxpayer concerned and provides that the third party must be given at least 30 days to comply with the terms of the notice. Under Revenue's internal procedures, the authorised officer must obtain the consent of his or her Regional Director before serving a notice.

6.1.3 Section 902 cannot be used to require a person carrying on a profession to disclose any information, explanations and particulars relating to a client, or to make available for inspection any books, records or documents relating to a client other than such as pertain to the payment of fees or other financial transactions, or are otherwise material to a tax liability in relation to a client. There is an absolute exclusion for professional advice of a confidential nature given to a client.

6.1.4 Although there is no statutory requirement to do so, authorised officers will, before issuing a notice, advise the taxpayer concerned of the intention to issue a notice. This may initially be done during the course of an audit but in any event will always be done by way of a letter. The taxpayer, thereby, will be afforded an opportunity to make representations as to why the notice should not be served. In practice the person will normally, as part of the audit, investigation or other enquiry process, have been given the opportunity to supply the required information himself or herself, or to provide a mandate to allow the authorised officer to obtain from the third party the records and information required. During the period after a notice has been served, and before the notice period has expired, it is open to either the taxpayer or the third party, or both, to make representations to the authorised officer as to why the notice should not be enforced or the notice period extended.

6.1.5 The notice served on the third party will contain a statement to the effect that the notice is served as part of the audit/enquiry programme of the Revenue Commissioners; the programme sometimes involves obtaining access to information and records held by third parties; and it should not be taken from the serving of the notice that the person to whom it relates has not complied with tax obligations.

6.1.6 Authorised officers will, in so far as possible¹³, advise the taxpayer why a notice is being issued to a third party in respect of his or her tax affairs. This will be done by giving reasons:

in the letter indicating an intention to issue a section 902 notice (referred to in paragraph 6.1.4 above); or
with the copy of the notice given to the taxpayer at the time the notice is served on the third party (this copy, referred to in paragraph 6.1.2 above, is required to be issued by law).

6.1.7 Where books, records or documents of the third party are retained by the authorised officer, the legislation provides that, during the retention period, the third party may have access to those books etc. and may take copies of them.

6.2 Section 902A — Order of a Judge of the High Court

As is the case where the third party is a financial institution, an authorised officer may, in similar circumstances, apply to a judge of the High Court for an order directing any other third party to provide or make available for inspection books and records, and furnish information relevant to a taxpayer's tax liability. Essentially the same conditions and procedures will apply as are outlined in paragraph 5.3 (where the third party is a financial institution) except that there is no provision to freeze money or other assets of the taxpayer held by the third party. The same professional privilege exclusions apply as are set out in paragraph 6.1.3 above.

7. Access to books, records and information in the possession of the taxpayer

Sections 900 and 901 give to an authorised officer the power to seek material and information from a taxpayer himself or herself in relation to his or her own tax affairs. The section 900 power, which will be the more usual route chosen, permits

¹³ It may not always be possible to give detailed reasons, for example, where the reasons arise from information supplied on a confidential basis.

Revenue to seek the information directly from the taxpayer, while the section 901 power requires an order of a judge of the High Court.

7.1 Section 900 — Notice by authorised officer

7.1.1 Section 900 provides that a notice cannot be issued under section 900 unless the taxpayer has been given a reasonable opportunity to make the information, documents etc. available.

7.1.2 Under the section an authorised officer may, by notice, require a taxpayer to either deliver or make available for inspection books and records or to furnish information and explanations, where the officer is of the opinion that those books, records or information and explanations are relevant to the taxpayer's liability to any of the taxes or duties under the care and management of the Revenue Commissioners. The time given to a taxpayer to comply with a statutory notice under this section cannot be less than 21 days.

7.1.3 The taxpayer is required to give the authorised officer reasonable assistance, including assistance with regard to access to data stored electronically. The authorised officer is empowered to make extracts from or copies of all or any part of the books and records made available for inspection.

7.1.4 The same professional privilege exclusions apply as are set out in paragraph 6.1.3 above.

7.2 Section 901 — Order of a Judge of the High Court

Books, records, information and explanations can also be sought from a taxpayer, in relation to his or her own tax affairs, by an authorised officer under section 901. Under this section the authorised officer can apply to a judge of the High Court for an order directing the taxpayer to supply the required material or information. Again, the same professional privilege exclusions apply as are set out in paragraph 6.1.3 above.

8. Powers relating to verification of DIRT returns

8.1 Under Chapter 4 of Part 8 of the Taxes Consolidation Act, 1997, “relevant deposit takers” (banks, building societies and other financial institutions) are required to deduct deposit interest retention tax (DIRT) from interest paid on deposit accounts. No deduction of DIRT is required from interest on certain accounts (including interest paid to non-resident depositors who have made the required declaration) where the financial institution satisfies itself that under the terms of the legislation no such deduction is required. A return of the DIRT deducted and payment of that tax are required to be made to the Collector General for each year of assessment. A payment on account of that tax is also required during the year.

8.2 Section 904A empowers an authorised officer to enter any premises or place of business of a “relevant deposit taker” for the purpose of auditing DIRT returns. The authorised officer may check the procedures in place to ensure compliance with the legislation and may check a sample of accounts which have been classified as exempt from DIRT to determine whether —

- the procedures in place have been observed in practice;
- the procedures are adequate;

the deposit taker has the required declarations;
the deposit taker has information in its possession which can reasonably be taken to indicate that one or more of such accounts is or may be liable to DIRT.

8.3 If, in the course of the audit, the authorised officer has reason to believe that interest on a deposit account should have been, but was not, subjected to DIRT, further enquiries can be made as are necessary to establish whether there is a tax liability in relation to any person.

8.4 The authorised officer may require a deposit taker or an employee of a deposit taker to produce books, records or other documents and to furnish information, explanations and particulars and to give assistance which the authorised officer reasonably requires for the purposes of the audit.

8.5 Where the account of a depositor has been selected for checking in accordance with paragraph 8.2 above, the financial institution will be given the opportunity of so advising the depositor before the checking commences. Where a depositor is to be subject to the further enquiries outlined in paragraph 8.3 above, appropriate advance notice will be given to the depositor by Revenue.

9. Miscellaneous other powers

9.1 “On-premises” audit of Banks¹⁴

Prior to 1999, the basic power available to a Revenue authorised officer to enter a business premises for the purpose of examining business records did not apply to a premises where a banking business was carried on. This prohibition was removed in the Finance Act 1999. Revenue are extending their current programme of “desk-audits” of financial institutions to systematically use this new power.

9.2 District Court search warrant¹⁵

An authorised officer may apply to a judge of the District Court for a search warrant to enter premises (if need be by force) and remove records which are material to the proper assessment and collection of tax, or which may be required for the purpose of any legal proceedings instituted by the Revenue Commissioners or any criminal proceedings. Before making an application to the judge, the authorised officer must have reasonable grounds for suspecting that there is serious tax evasion and that records which are material to countering such evasion are likely to be kept at the premises or place in question. This use of this power will be confined to officers involved in in-depth investigations. Before using the power, the approval of an Assistant Secretary is required.

9.3 Statement of affairs

Section 909 empowers an inspector of taxes to require a taxpayer to submit a statement of affairs. This section has been amended so that the statement must include details of policies of insurance taken out in respect of assets of the taxpayer.

10. Review

The Revenue Commissioners are committed to careful monitoring of the use of these powers and to periodic reviews of how they are operating.

¹⁴ S 905 as amended

¹⁵ S 905 as amended