

Section 900 Taxes Consolidation Act 1997
Power to call for the production of books, information
etc.

Part 38-04-04a

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1 Introduction

Scope of the Section: This power is for use where the authorised officer has formed an opinion that the taxpayer has relevant books, records or other documents, as defined, or is in a position to supply information, explanations or particulars, relevant to the establishment of his or her tax liability but fails to produce them on being requested to do so.

The power is in relation to books, records and other relevant documents not including Returns required to be delivered under other provisions of the Acts.

2 Notes on Section

2.1 Definitions

Definitions are given for an “authorised officer”, “books, records or other documents”, “liability” and “tax”. [Subsection (1)]

2.2 Serving of Notice

An authorised officer may serve on a person a notice in writing requiring the person to do either or both of the following:

to deliver or make available for inspection such books, records or other documents as are in that person’s power, possession or procurement as contain or may contain information relevant to a liability in relation to the person,

to furnish to the officer in writing or otherwise such information, explanations and particulars as the officer may require and as are relevant to any such liability and as are specified in the notice. [Subsection (2)]

2.3 Precondition

A notice may not be served without first giving the person a reasonable opportunity to deliver or make available the books etc. or to furnish the information etc. [Subsection (3)]

2.4 Professional Privilege

No person is obliged to disclose information:

With respect to which a claim to legal professional privilege could be maintained in legal proceedings;

Of a confidential medical nature;

Professional advice given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

[Subsection (4)]

2.5 Reasonable Assistance

Where in compliance with a notice under this section a person makes available for inspection by an authorised officer books, records or other documents, the person shall afford the officer reasonable assistance, including information in relation to the use of all electronic or other automatic means by which the books etc. in non-legible form are capable of being reproduced in legible form. *[Subsection (5)]*

2.6 Making copies or extracts

The authorised officer can take copies or extracts from the books, records or other documents made available by virtue of a notice served under this section.

[Subsection (6)]

2.7 Penalty

A penalty of €4,000 is provided for the refusal or failure by a person to comply with a notice under this section or for failure to give the assistance provided for in this section. *[Subsection (7)]*

3 Seeking co-operation of Taxpayer

The co-operation of the taxpayer in accessing the relevant books, records or other documents or explanations etc. should first be sought in accordance with subsection (3). This should, where possible, be done formally by writing to the taxpayer requesting him or her to deliver or, as the case may be, make available the books etc. required, within 21 days of the date of the letter. The books/information etc. sought in that letter should be those which (if the taxpayer does not respond) it is intended to require by way of a section 900 notice. In the letter it should be set out why the books/information etc. are required and that if co-operation is not forthcoming a notice under section 900 will be issued.

3.1 Advising taxpayer of offence of concealing or destroying documents

It should also be pointed out in the letter to the taxpayer that it is an offence [under section 1078 (2) (hh) of the Taxes Consolidation Act, 1997] for a person, who has been given an opportunity, in accordance with section 900(3), to deliver or make available books, records or other documents, to knowingly or wilfully falsify, conceal, destroy or otherwise dispose of the said books, records or documents or to permit them to be so treated. A detailed note should be kept of any non-written request to the taxpayer to furnish books/information etc.

3.2 Content of report for Principal Officer / District Manger

If the request is ignored, the authorised officer should send a detailed, numbered point by point report, of the matter to his or her Principal Officer / District Manager together with the file and the relevant papers, tagged as appropriate for ease of reference.

The officer should set out the books etc. which he/she requires the taxpayer to deliver or make available for inspection or, as the case may be, the information, explanation or particulars which he/she reasonably requires.

The officer should explain why he or she believes that the taxpayer is in a position to furnish the books\information etc. and why the officer considers that they are relevant to establishing the taxpayer's liability.

The officer should attach a completed draft form of the notice he or she intends sending to the taxpayer.

3.3 Professional Privilege.

Note that books, records or other documents with respect to which a claim to legal professional privilege could be maintained in legal proceedings; or of a confidential medical nature do not come within the ambit of the section. Neither is a professional required to disclose professional advice of a confidential nature given to a client other than where such advice is given as part of a dishonest, fraudulent or criminal purpose.

4 Action by Principal Officer / District Manger

The Principal Officer / District Manager may request further information or action or may indicate that the case is not suitable for the proposed action, or that section 901 is more appropriate.

When the Principal Officer / District Manager is satisfied that the case is suitable for the issue of the formal notice he or she will agree the content of the notice and return the papers to the officer.

5 Action by Authorised Officer on receipt of Approval

The officer should arrange to have the notice in the form agreed delivered by hand to, or left for, the taxpayer in accordance with section 869(1)(b) Taxes Consolidation Act, 1997. The period given for compliance with the notice must not be less than 21 days. A copy of the notice and a formal note recording the date of service of the notice should be retained on file.

If the taxpayer complies with the notice in making books etc. available for inspection and they are in non-legible form he/she must, in accordance with subsection (5) of section 900, also afford the officer reasonable assistance etc. in relation to the use of all the electronic means by which those books etc. are capable of being reproduced in legible form.

5.1 Who to contact for Assistance.

If any difficulties are encountered the officer should contact the Principal Officer / District Manager in the first instance..

5.2 Failure to Co-operate.

If the third party fails to co-operate, a full report should be sent to the Principal Officer / District Manager who may consult with the Revenue Solicitor for advice on how to proceed.

6 If the taxpayer has not complied with the formal notice

The Principal Officer / District Manager will, if appropriate, recommend that the case be referred to the Revenue Solicitor for the issue of a warning letter with a view to initiating proceedings for the recovery of the penalty of €4,000 as provided for in subsection (7).

The Principal Officer may also refer suitable cases to the Revenue Solicitor for the initiation of criminal proceedings as appropriate under Section 1078 (2)(g) : for failure without reasonable excuse to comply with a provision requiring the production of books, records etc. ; or Section 1078 (2)(hh): for knowingly or wilfully falsifying, concealing or destroying books, records etc. which the person has been required to deliver under Section 900

The Principal Officer / District Manager may also consult with Revenue Solicitor and may advise that action under section 901 should be pursued (i.e. seeking a High Court Order for production of the books etc).

7 Appendix 1: Warning Letter

[Headed paper]

Re: Section 900 Taxes Consolidation Act, 1997

I am writing to you, in accordance with sub section 3 of section 900 of the Taxes Consolidation Act, 1997, to give you an opportunity to produce or make available to me within the next 21 days the following books, documents and information which I require to enable me to complete my audit /enquiry/investigation etc [delete/amend /add as appropriate]:

It is an offence to knowingly or wilfully falsify, conceal or destroy or otherwise dispose of any books, records or other documents which are requested or required to be delivered or made available for inspection under section 900.

8 Appendix 2: Notice Under Section 900 TCA 1997

Notice under Section 900 Taxes Consolidation Act, 1997

I, _____, being an officer of the Revenue Commissioners authorised by them to exercise the powers conferred by section 900 of the Taxes Consolidation Act, 1997, hereby give you notice that I require you, within __ days of the date of this notice:

- (a) to deliver to me at the address below/to make available for inspection by me* , such books, records or other documents, and/or*
- (b) to furnish to me in writing such information, explanations and particulars as are set out in the schedule hereunder.

Failure or refusal to comply with this notice will render you liable to civil penalties. Furthermore it is a criminal offence

- (a) to fail without reasonable excuse to furnish all books, documents, records and information as specified in this notice and / or
- (b) knowingly or wilfully to falsify, conceal or destroy or otherwise dispose of any books, records or other documents required to be delivered or made available by this notice.

If there are particular circumstances making it impossible or impracticable for you to comply with this notice within the time given please advise me accordingly in writing as soon as possible.

* Delete as appropriate

Schedule

(a) *Books, records and other documents required to be delivered or* made available are as follows:*

(b) *Information, explanations and particulars required to be furnished are as follows:*

Failure or refusal to comply with this notice will render you liable to penalties. Furthermore it is an offence to knowingly or wilfully falsify, conceal or destroy or otherwise dispose of any books, records or other documents required to be delivered or made available for inspection under the said section 900 TCA '97

* Delete whichever is not appropriate