

Section 908 Taxes Consolidation Act 1997

Application to the High Court seeking order requiring Information: Financial Institutions

Powers Manual - Part 38-04-04d

This document should be read in conjunction with section 908 of the Taxes
Consolidation Act 1997

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1. Introduction

Sections 906A, 907 and 908 TCA 1997 all confer Powers on an authorised officer to require a financial institution to provide information etc. or access to books, records or other documents in relation to a taxpayer, in certain circumstances.

The power may be exercised with the consent of a Revenue Commissioner by:

- (a) giving notice directly to the financial institution – 906A,
- (b) obtaining the consent of the Appeal Commissioners – 907, or
- (c) obtaining a High Court Order 908,

depending on the nature of the case.

This manual deals with the Powers conferred by Section 908 only. Guidance on the use of Powers conferred by Section 906A and Section 907 are available here. [Section 906A – TDM Part 38-04-04c](#) and [Section 907 – TDM Part 38-04-04e](#)

The definition of Financial Institutions covers all deposit taking and credit institutions including Banks, Building Societies, Credit Union, Savings Banks, Industrial and Provident Societies, Friendly Societies etc.

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[...]

2 Notes on Section

2.1 High Court Order

Section 908 provides that, in certain circumstances, an authorised officer may apply to a High Court Judge for an Order requiring a financial institution to do either or both of the following:

- (a) to make available for inspection by the officer such books, records or other documents of the financial institution as contain or may contain information relevant to a liability in relation to a taxpayer (as defined);
 - (b) to furnish to the officer, explanations and particulars as the officer may reasonably require and which are relevant to any such liability;
- and which are specified in the application. [subsection (2)]

2.2 Non-disclosure Order

Section 908 also provides that:

- (a) an officer may request the Court to direct that the existence of the disclosure order is not made known to the taxpayer
- (b) where such a request is made the officer must have reasonable grounds for suspecting that the disclosure order would lead to serious prejudice to the proper assessment or collection of tax. [subsection (2A)]

2.3 Freezing Order

The application may also seek a “Freezing Order” in relation to the accounts of the taxpayer held by the financial institution. [subsection (8)]

2.4 Definitions: Meaning of Taxpayer

The term “taxpayer” includes a person or a group of persons whose identity is not known to the authorised officer as well as a person who has made a non-resident declaration for DIRT. It also covers a company which has been dissolved or and individual who has died. [subsections (1) and (6)]

2.5 Connected Person

The authorised officer may make such an application in respect of matters relating to a person who is connected with the taxpayer whose liability is under enquiry. [subsection (4)]

“Connected Person” has the same meaning as in section 10 of the TCA 1997 but an individual, other than in the capacity of trustee of a settlement, shall be connected with another individual only if the other individual is the spouse, civil partner, minor child of the individual, or minor child of the civil partner of the first named individual. [Definition in section 906A(1)]

2.6 Anonymity

There is a provision to seek, in the public interest, the approval of the Judge to delete the name of the authorised officer from affidavits in appropriate cases and for preserving the authorised officer’s anonymity in the event of the officer being examined in court. [subsection (9)]

2.7 Preconditions/Consent

Before making the application the officer must be satisfied;

- (a) that there are reasonable grounds for suspecting that the taxpayer(s) may have failed or may fail to comply with any provision of the Tax Acts;
- (b) that any 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 liability that arises or might arise from such failure; and
- (c) that in a case where the application includes a request for non-disclosure of the order made under subsection (2A), the officer has reasonable grounds for suspecting that such disclosure would lead to serious prejudice to the proper assessment or collection of tax; and

- (d) that the information sought is likely to be contained in the books, records, or other documents of the financial institution and is relevant to the proper assessment or collection of tax. [subsection (3)]

[The authorised officer's submission requesting the consent will have to demonstrate these grounds to the satisfaction of the Revenue Commissioners]

2.8 Consent

An application may not be made without first obtaining the consent in writing of a Revenue Commissioner who will have to be satisfied that the preconditions listed at 2.7 have been met. [subsection (3)]

2.9 Reasonable Assistance

Where in compliance with a notice under this section, a financial institution make available for inspection by an authorised officer, books, records or other documents, it must afford the officer reasonable assistance including providing 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 and any other data equipment etc. [subsection (6A)]

2.10 Authorised officer may make extracts or copies

The authorised officer may make extracts from or copies of books, records or other documents made available for inspection by the officer. [subsection (6B)]

3 Guidelines for Authorised Officers

3.1 Consultation Phase

Before consideration is given to using this power the authorised officer should consult with his/her Principal Officer/District Manager.

3.2 Informing Taxpayer

In the case of a named taxpayer the person should normally be given the opportunity either to supply the information or records required (this may be possible by the taxpayer obtaining the information or records from the financial institution) or to provide a written mandate authorising the officer to obtain the information or records directly from the financial institution

3.3 Report of an authorised officer

Where the authorised officer forms an opinion that an application under Section 908 is warranted the officer should prepare a detailed report to be forwarded through his or her Principal Officer/District Manager, to the Assistant Secretary, setting out how the preconditions as outlined in paragraph 2.7 above are satisfied and detailing,

on a step by step basis, the background to the proposed application and the key elements upon which the officer will be relying to satisfy the High Court that there are reasonable grounds for making the application.

3.4 Preparation of Report

The officer should prepare a detailed report to be forwarded to his or her Principal Officer/District Manager (as appropriate). The report should set out how the preconditions are satisfied and detail, on a step by step basis, the background to the application and the key elements upon which the officer will be relying to satisfy the Judge that there are reasonable grounds for making the order sought.

In particular the report should show that the following key elements of subsection (3) of the section exist:

- that the officer is satisfied that there are reasonable grounds for suspecting that the failure of the taxpayer to comply is likely to lead to serious prejudice (re the liability to tax of the taxpayer or the group or class or any of them) and
- that the information which is likely to be contained....or to arise... is relevant to the proper assessment or collection of tax.

Consideration should be given to the period for which the information is required. Consideration should also be given as to whether a freezing order should be included.

If copies of cheques are required they should only be sought for such periods as are deemed necessary for the enquiry. It may be appropriate in some cases to require that all records held by the financial institution in relation to all its dealings with the taxpayer for the period in question be made available for inspection.

This will include, for example, details of loan collateral, investment services, foreign currency services, safe keeping of securities, etc.

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