

Section 908 Taxes Consolidation Act 1997

Application to the High Court seeking Order requiring information: financial institutions

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 Taxes Consolidation Act 1997 (TCA) all confer powers on an authorised officer to require a financial institution to provide information 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 – section 906A,
- (b) obtaining the consent of the Appeal Commissioners – section 907, or
- (c) obtaining a High Court Order section 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 in:

[Section 906A – Tax and Duty Manual Part 38-04-04c](#) and
[Section 907 – Tax and Duty Manual 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.

2 Notes on Section 908 TCA

2.1 High Court Order

Section 908(2) TCA provides that, in certain circumstances, an authorised officer may apply to a judge of the High Court 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**.

2.2 Non-disclosure Order

Section 908(2A) provides that:

- (a) an officer may request the judge 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 is likely to lead to serious prejudice to the proper assessment or collection of tax.

2.3 Freezing Order

Section 908(8) provides that an authorised officer may also seek a “Freezing Order”, which is a further order prohibiting transfers of or dealings with money or assets in the accounts of the taxpayer held by the financial institution.

2.4 Meaning of taxpayer for section 908

Section 908(1) TCA provides that 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. Section 908(6) provides that “taxpayer” also covers a company which has been dissolved or an individual who has died.

2.5 Connected person

Section 908(4) TCA provides that 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 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. [This definition is in section 906A(1) TCA for the purposes of section 908.]

2.6 Anonymity

Section 908(9) allows an authorised officer 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.

2.7 Consent of a Revenue Commissioner

Section 908(3) TCA provides that an application for a High Court Order may not be made without first obtaining the consent in writing of a Revenue Commissioner who will have to be satisfied that all the preconditions set out in paragraph 2.8 below have been met.

2.8 Preconditions

Section 908(3) also provides that 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;
- (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 is likely to 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.

The authorised officer's submission requesting the consent will have to demonstrate these grounds to the satisfaction of a Revenue Commissioner.

2.9 Reasonable assistance

Section 908(6A) provides that where, in compliance with a notice under this section, a financial institution makes 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, records and documents in non-legible form are capable of being reproduced in legible form, and any other data equipment, apparatus or material.

2.10 Authorised officer may make extracts or copies

Section 908(6B) provides that the authorised officer may make extracts from or copies of books, records or other documents made available for inspection by the officer.

3 Guidelines for authorised officers

3.1 Consultation phase

Before consideration is given to using this power, the authorised officer should consult with her/his Principal Officer/Branch or 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/Branch or District Manager, to the Assistant Secretary, setting out how the preconditions outlined in paragraph 2.8 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

In particular, the report should show that the following key conditions of section 908(3) TCA are met:

- the officer is satisfied 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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