Section 907 Taxes Consolidation Act 1997

Information from a financial institution: Application to the Appeal Commissioners

This document should be read in conjunction with section 907 Taxes Consolidation Act 1997

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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.

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1 Introduction

Sections 906A, 907 and 908 Taxes Consolidation Act 1997 (TCA) 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 TCA

(b) obtaining the consent of the Appeal Commissioners – section 907 TCA, or

(c) obtaining a High Court Order – section 908 TCA

depending on the nature of the case and whether the identity of the taxpayer(s) is known.

This manual deals with the powers conferred by section 907 TCA only. Guidance on the use of powers conferred by section 906A TCA and section 908 TCA are available here:

Section 906A – Tax and Duty Manual (TDM) Part 38-04-04c and

Section 908 – TDM Part 38-04-04d

The definition of financial institution covers all deposit taking and credit institutions including banks, building societies, credit unions, savings banks, industrial and provident societies, friendly societies, etc.

2 Outline of Section 907 TCA

Section 907(2) TCA provides that, in certain circumstances, an authorised officer may make an application to the Appeal Commissioners for their consent to the service of a notice on a financial institution requiring it to do either or both of the following:

(a) to make available for inspection by the authorised officer books, records, or other documents of the financial institution as contain or may contain information relevant to a liability in relation to a taxpayer.

(b) to furnish to the authorised officer such information, explanations or particulars as the officer may reasonably require and which are relevant to any such liability;

and which are specified in the application.

2.1 Meaning of Taxpayer

Section 907(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. By virtue of section 907(6) TCA "taxpayer" also includes a company which has been dissolved or an individual who has died.

2.2 Connected Person

Section 907(4) TCA provides that the authorised officer may make such an application in respect of matters in relation to a person who is connected with the taxpayer whose liability is under enquiry.

"Connected Person" has the same meaning as in section 10 TCA but section 906A(1) TCA provides, for the purposes of sections 906A, 907 and 908 TCA, that 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.

2.3 Preconditions

Section 907(3) TCA provides that, before making the application the authorised 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 Acts as defined in section 1078(1) TCA:

(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 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.

2.4 Consent

Section 907(3) TCA states that 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 above preconditions have been met.

2.5 Time Limit

Section 907(7) TCA provides that the notice must be served on the financial institution within 14 days of receiving the consent of the Appeal Commissioners and must allow the financial institution up to 30 days to comply with the requirements of the notice.

2.6 Reasonable Assistance

Section 907(7A) TCA provides that the financial institution, in complying with a notice served on it, is required to give the authorised officer reasonable assistance in accessing information which may be stored electronically or by other automatic means. The authorised officer is entitled to make copies of or extracts from the documentation made available for inspection by the financial institution.

2.7 Extracts or copies

Section 907(7B) TCA allows the authorised officer to make extracts from or copies of books, records or other documents made available for inspection by the financial institution.

2.8 Penalty

A penalty of €19,045 is provided for in section 907(9) TCA for the failure or refusal by a financial institution to comply with a notice under this section or to afford reasonable assistance to an authorised officer as required by this section. A further penalty of €2,535 is provided for each day on which a failure or refusal continues after the expiry of the period specified in the notice.

3 Guidelines for Authorised Officers

3.1 Consultation

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

3.2 Informing Taxpayer

If the taxpayer's identity is known, similar action should be taken to inform the taxpayer as are laid out in paragraph 3.1 of TDM 38-04-04c on the use of section 906A TCA (Section 906A – TDM Part 38-04-04c). This should normally be followed before seeking the consent of a Revenue Commissioner under this section.

The taxpayer should normally be given the opportunity either to supply the information or records required (possibly 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.

The taxpayer should be informed briefly, by reference to the facts of the case, why the information is sought. The taxpayer should be advised of the authorised officer's power to serve a notice on the financial institution, subject to the consent of a Revenue Commissioner.

If the taxpayer fails, refuses, or is unable to supply the information or records required, or does not provide a mandate, the authorised officer should (if s/he considers it appropriate) advise the taxpayer by letter of the officer's intention to seek, ten days after the date of the letter, consent from a Revenue Commissioner to apply to the Appeal Commissioners under section 907 TCA and of the reasons for taking this action as already explained above.

If the taxpayer makes representations within that ten-day period as to why notice should not be served, such representations should be considered fully on the merits of the case and the taxpayer advised accordingly.

3.3 Report of the Authorised Officer

Where an authorised officer forms an opinion that a notice under section 907 TCA should be served and the conditions set out in paragraph 2.3 above have been satisfied with, the officer should prepare a detailed report to be forwarded through her or his Principal Officer/Branch Manager to the Assistant Secretary. The report should set out how the preconditions are satisfied and detail 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 Appeal Commissioners that there are reasonable grounds for making the application.

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