

## **Section 902 Taxes Consolidation Act 1997**

### **Request of an authorised officer: Information to be furnished by a third party**

#### **Powers Manual Part 38-04-04f**

This document should be read in conjunction with section 902 Taxes Consolidation Act 1997

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## 1. Introduction

Sections 902, 902A and 907A Taxes Consolidation Act 1997 (TCA) confer powers on an authorised officer to require a third party other than a financial institution to deliver information etc and to provide books, records and other documents in relation to a taxpayer in certain circumstances.

The power to give notice directly to a third party under section 902 TCA requires the consent of a Principal Officer/Branch or District Manager.

The powers to

- (a) obtain a High Court Order, under section 902A and
- (b) obtain the consent of the Tax Appeals Commission, under section 907A

may be exercised with the consent of a Revenue Commissioner.

This manual deals with the powers conferred by section 902 TCA. Guidance on the use of the powers conferred by sections 902A and 907A are available at [Tax and Duty Manual DM Part 38-04-04g](#) and [Tax and Duty Manual Part 38-04-04h](#)

## 2 Notes on section 902

### 2.1 Definitions

Section 902(1) TCA gives a wide meaning to the terms “**books, records or other documents**” and “**liability**” in relation to a person. The term “**taxpayer**” is also defined to include a person or group/class or persons not known to the officer.

### 2.2 Serving of notice on third party

Section 902(2) provides that notwithstanding:

- any obligation as to secrecy or
- other restriction upon disclosure of information imposed by or under statute or otherwise,

an authorised officer may, for the purpose of enquiring into a liability in relation to a taxpayer, serve on another person (other than a financial institution) a notice in writing requiring that person to do certain things with a specified time.

### 2.3 Precondition

Section 902(3) provides that the authorised officer must have reasonable grounds to believe that the third party is likely to have information relevant to the establishment of a liability in relation to the taxpayer, before serving a notice under this section.

## 2.4 Content of notice

The notice should contain the name of the person whose information the third party is being asked to provide, which may be a person connected with the taxpayer - this is implied by the generality of section 902(2). Care should be taken that the notice only contains sufficient information to enable the third party to comply with the notice and no unnecessary additional information.

Per section 902(2), the notice may require the third party to do either or both of the following:

- (a) To deliver or make available for inspection by the authorised officer such book, records or other documents as are in the other person's power, possession or procurement and as contain or may contain information relevant to a liability in relation to the taxpayer,
- (b) To furnish to the authorised officer such information explanations and particulars as the office may reasonably require and as are relevant to any such liability, and which are specified in the notice. (See [Appendix 1.](#))

As noted in paragraph 2.1 above, a notice can still be issued where the name of the taxpayer is not known, and can include a group or class of persons whose individual identities are not known to the authorised officer.

## 2.5 Meaning of taxpayer

As well as a person or persons not known to the authorised officer, section 902(4) provides that the persons who may be treated as a taxpayer for the purposes of this section include a person whose identity is not known, a company which has been dissolved or an individual who has died.

## 2.6 Taxpayer to be advised of the service of the notice

Where a notice under section 902(2) is served on a third party, the taxpayer shall be advised of the service of the notice and upon whom it is served as soon as is practicable thereafter. Section 902(6) provides that where the identity of the taxpayer is not known at the time of service of the notice, the taxpayer shall be advised of the service of the notice and upon whom it is served as soon as is practicable after the taxpayer's identity becomes known to the authorised officer. (See [Appendix 2.](#))

## 2.7 Access by third party to records

Section 902(7) states the third party must be allowed to inspect and copy any books, records or other documents which he or she has delivered and which are retained by the authorised officer.

## 2.8 Authorised officer may make extracts or copies

Section 902(8) provides that the authorised officer may make extracts from or copies of documents made available.

## 2.9 Professional privilege

Section 902(9) provides that no person is obliged to disclose information:

- a) with respect to which a claim legal professional privilege could be maintained in legal proceedings;
- b) of a confidential medical nature;
- c) professional advice given to a client (other than such advice given as part of a dishonest, fraudulent or criminal purpose).

Where the third party is a person carrying on a profession, only information, explanations or particulars, or books, records or other documents with respect to which a claim to legal professional privilege could be maintained in legal proceedings; or a of a confidential medical nature do not come within the ambit of subsection (9). The provision that a professional is not required to disclose any information or professional advice of a confidential nature other than such advice as given as part of a dishonest, fraudulent or criminal purpose should also be noted.

## 2.10 Reasonable assistance

Section 902(10) provides that 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.

## 2.11 Penalty

A penalty of €4,000 is provided in section 902(11) 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. Section 1078 (Criminal Offences) is not to be treated as applying to such failure or refusal.

# 3 Guidelines for authorised officers

## 3.1 Informing the taxpayer

- The taxpayer should first be given the opportunity either to supply the information required (this may be possible by the taxpayer obtaining the information, etc., directly from the third party) or to provide a mandate authorising the officer to obtain the information from the third party – unless the officer has good reasons to believe that this may defeat the purpose of the enquiry.
- The taxpayer should, if appropriate, be informed briefly by reference to the facts why the information is being sought.

- When the taxpayer is given the opportunity to supply the information s/he should be advised of the authorised officer's power to serve a notice on the third party.
- If the taxpayer refuses to co-operate and it would not defeat the purpose of the enquiry to do so, a letter should be sent to the taxpayer advising her/him of the intention to seek, ten days after the date of the letter, consent for the issue of a notice under section 902 and referring to the reasons for taking such action.
- If the taxpayer makes representations within the ten-day period as to why a section 902 notice should not be issued, such representations should be considered fully on their merits.
- If the case is one where the officer believes that advance notice to the taxpayer would defeat the purpose of the enquiry the officer, should proceed as outlined at paragraph 3.2 and include reasons for believing that advance notice would defeat the purpose of the enquiry

### 3.2 Preparation of report

Where no representations are received from the taxpayer within ten days, or where any representations made are not accepted, or where the officer believes advance notice to the taxpayer would defeat the purpose of the enquiry, the authorised officer should send a report of the case to his or her Principal Officer/Branch or District Manager, provided her or she has reasonable grounds to believe:

- that the third party is likely to have information and
- that the information is relevant to the establishment of a liability in relation to the taxpayer and which has not been disclosed to the officer's satisfaction.

### 3.3 Content of report

- The officer should state clearly his or her reasons why he or she believes the criteria set out in paragraph 3.2 are satisfied.
- The officer should specify the books, records or other documents of the third party which he or she wishes to inspect in relation to the taxpayer and/or the information explanations or particulars which he or she wishes the third party to supply and which are relevant to the liability of the taxpayer. This can be a general description as long as it is clear to the third party what is being asked for and in respect of what period.
- The officer should complete a draft of the Form of Notice intended for issue to the third party.
- The information sought should only relate to the period under enquiry.
- The report should set out all relevant facts on a numbered step by step progression including details of any representations made as previously outlined.

- All relevant papers should accompany the submission (tagged as appropriate for ease of reference).

### 3.4 Time limit

A period of not less than 30 days – that is, 30 days or more from the date of service of the notice - must be allowed for compliance with the notice. This must be shown on the notice. A period of thirty days is generally adequate.

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