

Section 902A Taxes Consolidation Act 1997

Application to the High Court:

Information from Third party (other than Financial Institution)

Powers Manual - Part 38-04-04g

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

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1 Introduction

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

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

- (a) obtaining a High Court Order – section 902A
- (b) obtaining the consent of the Tax Appeals Commission – section 907A
- (c) giving notice directly to a third party – section 902 (consent of a Principal Officer only required)

depending on the nature of the case.

This manual deals with Powers conferred by Section 902A only. Guidance on the use of Powers conferred by Section 902 or 907A are available here. [Section 902 – TDM Part 38-04-04f](#) and [Section 907A – TDM Part 38-04-04\(h\)](#)

1.1 When to use 902A

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

2 Notes on Section

2.1 Definition: Taxpayer

The term “taxpayer” is defined as meaning any person including a person whose identity is not known to the authorised officer and a group or class of persons whose individual identities are not so known. It also covers a company which has been dissolved and an individual who has died. [subsections (1) and (5)]

2.2 Application to High Court

An authorised officer can make an application to a High Court Judge for an Order requiring a third party (other than a financial institution) to do either or both of the following:

- (a) to deliver or to make available for inspection by the officer such book, records or documents in the third party’s power, possession or procurement as contain information relevant to the liability of a taxpayer;
- (b) to furnish the officer with such information, explanations and particulars as the officer may reasonably require and which are relevant to that liability; and which are specified in the application.[subsection (2)]

Section 902A also provides that:

- (1) an officer may request the Court to direct that the existence of the disclosure order is not made known to the taxpayer;
- (2) 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 Written consent of a Revenue Commissioner

The written consent of a Revenue Commissioner to make the application is a requirement of the section [subsection(3)]

2.4 Reasonable Grounds

The officer must be satisfied –

- (a) That there are reasonable grounds for suspecting that the taxpayer may have failed or may fail to comply with any provision of the Acts,
- (b) That any such failure is likely to lead or to have led to serious prejudice to the proper assessment or collection of tax having regard to the amount of a liability in relation to the taxpayer that arises or might arise,
- (c) That, in a case where the application includes a request 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 which is likely to be contained in the books etc. or which is likely to arise from the books etc. is relevant to the proper assessment or collection of tax [subsection (3)]

[The submission to the Revenue Commissioner requesting consent will have to demonstrate that these conditions are satisfied]

2.5 The High Court Order

If the Judge is satisfied that there are reasonable grounds for the application being made, the Judge may, subject to such conditions as are specified, make an order requiring the third party –

- (a) to deliver to the authorised officer or to make available for inspection by the officer such books, records or other documents as may be specified in the order, and
- (b) to furnish to the authorised officer such information, explanations and particulars as may be specified in the Order. [subsection (4)]

2.6 Professional Privilege

No person is obliged to disclose information:

- a) with respect to which a claim to 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).

2.7 In Camera Hearing

The hearing of an application under the section is to be held in camera (i.e. with only the parties involved being present). [subsection (7)]

3 Guidelines for Authorised Officers

3.1 Approval Required

The authorised officer must obtain the approval of the Assistant Secretary through the Principal Officer/District Manager. The written consent of a Revenue Commissioner is required before making an application to the High Court.

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[...]

3.3 Consultation Phase

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

3.4 Preconditions

The officer should ensure that the preconditions outlined in paragraph 2.4 are satisfied in the case.

3.5 Report of an authorised officer

Where the authorised officer forms an opinion that an application under Section 902 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 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 so as to satisfy the High Court that there are reasonable grounds for making the application.

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[...]

6.1 How to record the use of 902A

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