

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

### **Application to the High Court: Information from third party other than a financial institution**

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 (TCA) 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 to give notice directly to a third party under section 902 TCA requires the consent of a Principal Officer/Branch Manager. The powers to obtain

- (a) a High Court Order under section 902A TCA, and
- (b) the consent of the Appeal Commissioners under section 907A TCA

may be exercised with the consent of a Revenue Commissioner.

This manual deals with powers conferred by section 902A TCA.

The Tax and Duty Manual on section 902 TCA is [Part 38-04-04f](#). The Tax and Duty Manual on section 907A TCA is [Part 38-04-04h](#).

## 2 Notes on Section 902A TCA

### 2.1 Definition of taxpayer

Section 902A(1) TCA defines the term “a taxpayer” 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. Section 902A(5) TCA provides that “a taxpayer” also covers a company which has been dissolved and an individual who has died.

### 2.2 Application to High Court

Section 902A(2) TCA provides that 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 make available for inspection such books, records or documents as are in the third party’s power, possession or procurement and as contain information relevant to the liability of a taxpayer,
- (b) to furnish the authorised 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.

Section 902A(2A) TCA provides that an officer may request the Court to direct that the existence of the disclosure order is not made known to the taxpayer. 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 Written consent of a Revenue Commissioner

Section 902A(3) TCA requires the written consent of a Revenue Commissioner to make the application.

### 2.4 Reasonable grounds

Section 902A(3) TCA provides that the authorised officer must be satisfied that—

- (a) there are reasonable grounds for suspecting that the taxpayer may have failed or may fail to comply with any provision of the Acts,
- (b) 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) in a case where the application includes a request 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) the information which is likely to be contained in the books, etc. or which is likely to arise from the information, explanations, etc. is relevant to the proper assessment or collection of tax.

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

### 2.5 High Court Order

If the judge is satisfied that there are reasonable grounds for the application being made, section 902A(4) TCA provides that 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 authorised officer specified books, records or other documents, and
- (b) to furnish to the authorised officer specified information, explanations and particulars.

## 2.6 Professional privilege

Section 902A(6) TCA states that 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

Section 902A(7) TCA provides that the hearing of an application under the section is to be held in camera (that is, with only the parties involved being present).

# 3 Guidelines for authorised officers

## 3.1 Approval required

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

## 3.2 Consultation

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

## 3.3 Preconditions

The officer should ensure that the preconditions outlined in paragraph 2.4 (the “reasonable grounds” for making the application) are satisfied in the case.

## 3.4 Report of an authorised officer

Where the authorised officer forms an opinion that an application under section 902A TCA is warranted the officer should prepare a detailed report to be forwarded through their Principal Officer/Branch 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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