

## **Section 907A Taxes Consolidation Act 1997**

### **Information from a third party: Application to the Appeal Commissioners:**

This document should be read in conjunction with section 907A 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

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

may be exercised with the consent of a Revenue Commissioner.

This manual deals with the powers conferred by section 907A TCA.

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

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

## 2 Notes on Section 907A TCA

Section 907A(5) TCA provides that, in certain circumstances, an authorised officer may apply to the Appeal Commissioners for their consent to serve a notice on a third party to do either or both of the following;

- (a) to make available for inspection by the authorised officer such books, records or other documents as are in the third party's power, possession or procurement as contain or may (in the authorised officer's reasonable opinion) contain information relevant to a liability in relation to a taxpayer; or
- (b) to furnish to the authorised officer such information, explanations and particulars as the authorised officer may reasonably require as being relevant to any such liability;

and which are specified in the notice.

### 2.1 Definitions of "taxpayer" and "third party" for section 907A TCA

Under section 907A(1) TCA the term "taxpayer" includes a person or group of persons whose identity is not known to the authorised officer. Section 907A(6) TCA provides that the term also covers a company which has been dissolved or an individual who has died.

Section 907A(1) TCA defines "third party" as a person whose identity has been furnished to an authorised officer by a financial institution in compliance with a notice issued under section 907 TCA or an order made under section 908 TCA.

## 2.2 Information on a connected person

By virtue of section 907A(4) TCA, the application to the Appeal Commissioners can relate to information about a person connected with the taxpayer whose tax affairs are under enquiry.

## 2.3 Preconditions

Section 907A(3) TCA provides that, before making an application to the Appeal Commissioners, the authorised officer must be satisfied:

- (a) that there are reasonable grounds for suspecting that the taxpayer or, as the case may be, all or any the taxpayers, may have failed or may fail to comply with any provision of the Acts<sup>1</sup>,
- (b) that any such failure is likely to lead or have led to serious prejudice to the proper assessment or collection of tax, and
- (c) 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.

## 2.4 Consent of a Revenue Commissioner

Section 907A(3) TCA also provides 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 limits

Under section 907A(8) TCA, the notice must be served on the third party within 14 days of receiving the consent of the Appeal Commissioners and must allow the third party up to 30 days to comply with the requirements of the notice.

## 2.6 Professional privilege

Section 907A(7) 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; or
- c) professional advice given to a client (other than such advice given as part of a dishonest, fraudulent or criminal purpose).

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<sup>1</sup> As defined in section 1078(1) TCA, including Customs Acts, excise legislation, Tax Acts, Income Levy, Domicile Levy, Parking Levy, USC, CGT Acts, VATCA, CATCA, Stamp Duty, RPT and LPT legislation.

## 2.7 Penalty

Under section 907A(10) TCA, a penalty of €19,045 is provided for failure or refusal by a person to comply with a notice under 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 with Branch Manager

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

### 3.2 Informing taxpayer about use of the power

If the taxpayer's identity is known, s/he should 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 third party) or to provide a written mandate authorising the officer to obtain the information or records directly from the third party.

The taxpayer should be informed briefly, by reference to the facts of the case, why the information is being sought.

The taxpayer should be advised of the authorised officer's power to apply to the Appeal Commissioners for consent to serve a notice on the third party.

If the taxpayer fails, refuses, or is unable to supply the information or records required, or does not provide a mandate, s/he should, if the authorised officer considers it appropriate, be advised by letter of the intention to seek, ten days after the date of the letter, the consent of a Revenue Commissioner for the issue of a notice under section 907A TCA and of the reasons for taking this action (which will already have been outlined in previous contacts).

If the taxpayer makes representations within that ten-day period as to why a section 907A TCA notice should not issue, 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 907A TCA should be served, and the preconditions set out in paragraph 2.3 above have been complied with, the officer should prepare a detailed report to be forwarded through his or her 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 to satisfy the Appeal Commissioners that there are reasonable grounds for making the application.

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