

Guidelines for the application of Section 108B of VAT Consolidation Act 2010 –

“Notice of requirement to issue a document”

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1. Introduction

Finance Act 2014 inserted a new section 108B in the VAT Consolidation Act 2010 (VATCA) which provides that Revenue may serve notice on an accountable person requiring him or her, for a specified period, to issue a document which is in the same format as a VAT invoice in respect of all supplies for which a VAT invoice is not issued. The specified period will be a period not exceeding 2 months.

Like section 108A which was introduced in Finance (No. 2) Act 2013, this measure can be used to address non-compliance with invoicing rules and to tackle fraud and shadow economy activity.

2. VAT Invoices - Revenue expectations

There is a legal obligation on a supplier to issue a VAT invoice to another accountable person in accordance with section 66(1) of the VATCA 2010 and if a VAT invoice is not issued in circumstances where it should have been, this constitutes a Revenue offence. There is no legal requirement on a customer to identify him or herself to a supplier and, unless the customer requires a VAT invoice for the purposes of deductibility, she or he may not do so. However, where a customer is purchasing taxable goods/services where the volume and/or the value of the goods/services, as well as the frequency of the purchases, indicate that the customer is likely to be buying the goods/services for re-sale i.e. she or he is likely to be an accountable person, it is the responsibility of the supplier to issue a VAT invoice. Where a supplier fails to issue a VAT invoice to another accountable person, she or he shall be liable to a penalty of €4,000 in accordance with section 115(1) of VATCA 2010, for each instance in which a VAT invoice was not issued.

3. Purpose of issuing a Notice under section 108B

To assist in the prevention and detection of tax evasion, the Revenue Commissioners may issue a notice to a supplier under section 108B of VATCA 2010. The purpose of issuing a notice under the new legislation is twofold:

- (a) to change behaviour by forcing the passive or complicit supplier to fully comply, in appropriate circumstances, with invoicing obligations, and
- (b) where no VAT invoice is issued, to identify the customers making cash purchases.

For each taxable supply made during the specified period, the supplier must issue either:

- (a) a VAT invoice in accordance with section 66(1)(a) or
- (b) a document, at the time of the supply, which contains all of the same information that is required by Regulation 20(2) of the VAT Regulations 2010 to be included on a VAT invoice issued in accordance with section 66(1)(a). This

document is referred to hereafter in this instruction as a “section 108B document”.

The issue of a simplified invoice (in accordance with section 66(1)(b)) does not exclude a supplier from the obligation to issue a section 108B document. The requirement to issue either a full VAT invoice or a section 108B document will ensure that the supplier’s records will contain information which may assist in the identification of supplies into the shadow economy and the traders concerned. Equally, it should result in a positive behavioural change as the supplier will have to consider the risks of making supplies to accountable persons without issuing an invoice.

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

[...]

4. Use of the Provision

This provision should be used only in circumstances where Revenue has reasonable grounds to believe that the issue of the notice will assist in preventing tax evasion by increasing compliance with invoicing obligations and identifying evidence of tax evasion or fraud.

A sample copy of the notice template to be used can be found at Appendix A.

5. Penalty Provisions

Section 115(8B) of VATCA 2010, provides for a €4,000 penalty in all cases where the supplier fails to comply with the notice issued.

6. The legislation

The legislation is contained in section 108B of VATCA 2010. Subsection (1) provides that the Revenue Commissioners may, where they have reasonable grounds to believe that it will assist in the prevention and detection of tax evasion, serve a notice in writing on an accountable person requiring that person, for a specified period, to issue, at the time of the supply, a document (similar to a VAT invoice) in respect of each supply for which a VAT invoice is not issued. The document must contain all of the particulars required by regulations as if it were a VAT invoice issued in accordance with section 66(1)(a). The document should also contain a reference to section 108B of the VATCA 2010, unless it is otherwise identifiable by the supplier as a section 108B document.

Subsection (2) provides that the document may be issued as if it were a VAT invoice using a sequential number from a series of numbers used for identifying invoices,

subject to the supplier keeping a record of the numbers in the series which relate to section 108B documents.

Subsection (3) provides that a notice served under section 108B must specify the period for which a notice can have effect. The period cannot exceed 2 months and cannot commence earlier than 7 days from the date of issue of the notice. The notice must also inform the person on whom it is served of the consequences of failure to comply with the terms of the notice.

7. The period for which the notice has effect

The notice can only take effect on or after 7 days following the date the notice has been served. It can have effect for a period of no longer than 2 months. The exact duration of the notice will be determined on a case-by-case basis. Where Revenue believes it is necessary and proportionate, a further notice or notices may be issued.

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[...]

9. Action required by the supplier

Where a section 108B notice is issued, a supplier must continue to issue VAT invoices in accordance with section 66(1) to accountable persons. In relation to any supply for which a full VAT invoice in accordance with section 66(1)(a) is not issued, a section 108B document must be issued. If a simplified invoice in accordance with section 66(1)(b) is issued in respect of a supply, then a section 108B document must also be issued in respect of that same supply. The name and address of the customer will be required to fulfil the requirements of the section 108B document.

What format should the section 108B document take?

The supplier can choose how to issue the document. It must contain all of the information required on a VAT invoice and it must be identifiable by the supplier as a section 108B document. The document can be issued as if it were a VAT invoice using the normal invoicing system of the business but with the inclusion of a reference to section 108B of the VATCA. Alternatively, if the document is issued without the reference to section 108B but using a number from a series of invoice numbers, a separate record of the numbers relating to section 108B documents must be retained.

The purpose of providing a choice to the supplier is to ensure that compliance with a section 108B notice imposes as little cost and administrative burden on the supplier as possible. As the issue of a section 108B document neither imposes an obligation nor bestows an entitlement on the customer, it is immaterial whether the customer

is made aware of whether the document is a VAT invoice or a section 108B document.

Section 108B documents and related records are subject to the record-keeping requirements in section 84 of VATCA 2010.

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[...]

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13. Appendix A

This is a sample template which can be amended as required

Notice requiring the issue of document under section 108B

of the VAT Consolidation Act 2010

Name	
Address	
VAT Registration Number	
Date of service of Notice	
Effective date of Notice	

Dear Sir/Madam,

Notice is hereby given under Section 108B of the Value-Added Tax Consolidation Act 2010 that the Revenue Commissioners require you, in relation to each taxable supply of goods or services made by you for which an invoice in accordance with Section 66(1)(a) of the Value-Added Tax Consolidation Act 2010 is not issued, to issue a document which contains all of the particulars that are required by Regulation 20(2) of the Value-Added Tax Regulations 2010 to be included on an invoice issued in accordance with section 66(1)(a).

This notice has effect for the period _____ -

A copy of the relevant legislation is attached for your information. Your attention is drawn to the penalty of €4,000 for failure to comply with a notice served under Section 108B.

A document issued pursuant to a notice served under a section 108B is subject to the record-keeping requirements in section 84 of the VAT Consolidation Act 2010.

Yours faithfully,

Authorised Officer