

## Procedures for requiring security from taxable persons

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## 1. Introduction/Background

Section 99 of the Value Added Tax Consolidation Act 2010 (VATCA 2010) allows the Revenue Commissioners to require a trader to submit security in certain circumstances where a refund has been claimed. Section 109 of VATCA 2010 allows the Revenue Commissioners to require a trader to submit security for any VAT that might become due, where the Revenue Commissioners feel that this is needed to protect its interest. The legislation allows the Revenue Commissioners to require security in two distinct scenarios:

- Security under [section 99 \(3\)\(a\) VATCA 2010](#) –this can be required where a trader submits a claim for a VAT refund. Where there are grounds to believe that VAT will not be paid on future supplies based on the previous compliance history of the trader and/or principals/directors of the company, security to the value of that refund should be sought before the refund is made. The amount of the security required cannot exceed the amount of the VAT refund claimed.
- Security under [section 109 VATCA 2010](#) – this can be required at point of registration or at any stage during the lifecycle of the business. VAT Bonds should be sought in cases where it is clear that such action is necessary for the protection of the Revenue Commissioners. Obvious examples are (a) phoenix cases where liabilities were left unpaid previously or (b) new traders setting up businesses to trade in products known to be prominent in carousel fraud chains.

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## 5. Taxpayer's Obligations

- 5.1 The taxpayer is obliged to submit the VAT Bond within the time period stated
- 5.2 The taxpayer may contact the Authorised Officer (Principal Officer) in writing at any time to request further information on the requirement to provide a VAT Bond or the sum specified in the VAT Bond. The Authorised Officer should reply to the taxpayer outlining the reasons for the VAT Bond or the value of the sum specified.
- 5.3 The legislation confers the taxpayer's right to lodge a formal Appeal against the requirement to provide security within 30 days of the original request for a VAT Bond – See Section 6 below.

## 6. Appeals

A specific right of appeal to the Tax Appeals Commission exists within [section 109\(2\) VATCA 2010](#).

## 7. Non-payment of Security

- 7.3 In accordance with [Section 115\(7\) of the Value-Added Tax Consolidation Act 2010](#) if the trader continues to trade in the absence of the payment of the VAT Bond, s/he will be liable for a penalty of €4,000 in respect of each and every supply thereafter. Where there is no agreement with the taxpayer on the amount of the penalty or where an 'agreed' penalty is not paid, the Notice of Opinion and Court Application procedures apply. In such cases, it will be a matter for the Court to determine the amount of the penalty due.
- 7.4 Where the Court has made a determination that a taxpayer is liable to a penalty, the Court may also make an order as to the recovery of that penalty and without prejudice to any other means of recovery, that penalty may be collected and recovered in like manner as an amount of tax. Please refer to [Section 1077B of the Tax Consolidation Act 1997](#)

## 8. Types of VAT Bonds acceptable to the Revenue Commissioners

- 8.1 The typical VAT Bond to be requested by the Revenue Commissioners is by way of a guarantee from a financial institution that in the event of a tax debt arising for the taxpayer, the financial institution will guarantee to make a payment to the Revenue Commissioners for an amount which is covered in the VAT Bond.
- 8.2 If the taxpayer is unable to obtain a VAT Bond as outlined in Paragraph 8.1 above, then the Revenue Commissioners' office will accept a Bank Draft for an equivalent sum.

## 9. Cancellation of security

### 9.1 Cancellation of Security by Financial institution

- i. Section 99 VATCA 2010 security

A guarantee of security provided under this section cannot be cancelled by a financial institution within 12 months of the date of commencement of the guarantee or until VAT equivalent to the value of the refund (value of the guarantee) has been paid by the taxpayer to the Revenue Commissioners, whichever is the earlier. The guarantor must ensure that three months' notice in writing has been provided to the Revenue Commissioners.

Where cancellation occurs, following a review of the case, if security is deemed to remain a requirement, the taxpayer should be contacted to arrange an alternative form of security. If a requirement to hold security is no longer necessary, the taxpayer should be informed of this.

Please note that failure to provide the alternative form of security is subject to the same conditions as an initial request for security.

ii. Section 109 VATCA 2010 security

A guarantee of security provided under this section cannot be cancelled by a financial institution within 12 months of the date of commencement of the guarantee. The guarantor must ensure that three months' notice in writing has been provided to the Revenue Commissioners.

Where cancellation occurs, following a review of the case, if security is deemed to remain a requirement, the taxpayer should be contacted to arrange an alternative form of security. If a requirement to hold security is no longer necessary, the taxpayer should be informed of this.

Please note that failure to provide the alternative form of security is subject to the same conditions as an initial request for security.

## 9.2 Cancellation of Security by Taxpayer

i. Section 99 VATCA 2010 security

Security provided under this section (e.g. withholding of VAT refund) cannot be cancelled within one year of the date of the commencement of the VAT Bond or until VAT equivalent to the amount of the refund has been paid to the Revenue Commissioners, whichever is the earlier. All such cancellation requests by the taxpayer are subject to review by the Revenue Commissioners.

ii. Section 109 VATCA 2010 security

Security provided under this section (e.g. Bank Draft) cannot be cancelled within one year of the date of commencement of the VAT Bond. All such cancellation requests by the taxpayer are subject to review by the Revenue Commissioners

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