

## ]37-00-02] Confidentiality of Taxpayer Information

### Section 851A Taxes Consolidation Act 1997

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#### 1. Introduction

Section 851A Taxes Consolidation Act 1997 formalises taxpayer confidentiality and reassures taxpayers that their personal and commercial information disclosed to Revenue for tax purposes is protected against unauthorised disclosure by Revenue to third parties.

#### 2. Some important definitions

**“Service provider”** means “any person engaged or formerly engaged by or on behalf of the Revenue Commissioners, or any person employed by such person, for the purposes of carrying out work relating to the administration of any taxes or duties under the care and management of the Revenue Commissioners...”

Some examples of service providers are external legal, tax and IT experts, auctioneers/valuers and call centre providers that may be engaged by Revenue from time to time.

**“Taxpayer Information”** means personal information relating to one or more persons obtained by Revenue, or a service provider engaged by Revenue, for the purposes of tax and duty legislation or which is prepared from information so obtained. It also includes information obtained by a Revenue officer or service provider purportedly for authorised purposes. Taxpayer information does not include information that does not directly or indirectly reveal the identity of a taxpayer to whom the information relates.

#### 3. Disclosure of taxpayer information

3.1 Subsection (2) provides that taxpayer information is confidential and may only be disclosed under a provision in section 851A or under any other statutory provision which specifically allows the disclosure of such information. This reference to other statutory provision is very wide and includes TCA 1997 provisions but also includes provisions in any other Revenue or ‘non-Revenue’ legislation.

##### *3.2 Office of the Director of Corporate Enforcement.*

[Section 18 \(as amended\) of the Company Law Enforcement Act 2001](#) is a statutory

provision which specifically allows a Revenue officer to disclose information to the Office of the Director of Corporate Enforcement (ODCE) , that in the opinion of the Revenue officer –

- (i) relates to the commission of an offence under the Companies Acts or non-compliance otherwise with those Acts or with the duties and obligations to which companies and their officers are subject; or
- (ii) is information that could materially assist the ODCE in investigating—
  - (I) whether an offence under the Companies Acts has been committed or whether there has been non-compliance otherwise with those Acts or with the duties and obligations to which companies and their officers are subject; or
  - (II) without prejudice to the generality of clause (I), in a case where the making of an application for a disqualification order in relation to a particular person in accordance with section 160(2)(h) of the Act of 1990 is contemplated, whether and to what extent the matters mentioned in section 160(3A) of that Act apply in the circumstances concerned.

Section 18 (as amended) also –

- permits a Revenue officer to give or produce evidence relating to taxpayer information (2) in connection with any proceedings initiated by the ODCE under the Companies Acts
- permits the ODCE to use information, that may be given in relation to any specific circumstance mentioned above, in relation to any other of those circumstances, e.g. information given by a Revenue officer in relation to what may be considered a particular offence under the Companies Act may be used by the ODCE in investigating other non-compliance with the Companies Act.

Revenue entered into a [Memorandum of Understanding](#) with the ODCE in 2004 which set down protocols to be followed in relation to the disclosure of information under the Company Law Enforcement Act of 2001. All requests for information by the ODCE and all information provided by Revenue to the ODCE is to be routed through the appropriate Liaison Officers.

More detailed instructions to be followed by Revenue staff in relation to requests for information from the ODCE and to the giving of information to the ODCE are contained in '[Collection Manual - Guidelines for the Exchange of Information between the Office of the Director Of Corporate Enforcement \(ODCE\) and the Revenue Commissioners in accordance with the Company Law Enforcement Act, 2001](#)'

### ***3.3 Official Assignee in Bankruptcy***

[Section 18A of the Bankruptcy Act 1988](#) provides, in relation to a person adjudicated bankrupt, that Revenue must, where requested by the Official Assignee or by a trustee in bankruptcy (appointed under Part V of the Bankruptcy Act 1988), provide any information held by it in relation to the carrying on of any trade or

profession or relating to any matter in respect of which a return is required to be made to Revenue and to which the bankrupt is or was a party.

Any request for information received from the Official Assignee or a trustee in bankruptcy should be directed to: [insolvency@revenue.ie](mailto:insolvency@revenue.ie) in the Office of the Collector-General.

#### **4. Unauthorised disclosure**

Subsection (3) provides that a Revenue Officer, service provider or other person to whom taxpayer information is disclosed who knowingly –

- provides taxpayer information to anyone,
- allows taxpayer information to be provided to anyone,
- allows anyone to have access to taxpayer information, or
- uses taxpayer information other than in the course of administering or enforcing the tax and duty legislation,

is guilty of an offence and liable to a fine of €3,000 if summarily convicted or €10,000 if convicted on indictment.

#### **5. Criminal and legal proceedings**

Subsection (4) provides, subject to subsection (5), that a Revenue officer or service provider is not required to give or produce evidence relating to taxpayer information in connection with any legal proceedings.

Subsection (5) allows the disclosure of information in criminal proceedings or legal proceedings relating to the administration or enforcement of the tax and duty legislation, including proceedings before the Appeal Commissioners.

Subsection (6) allows a Revenue officer who has information that leads him or her to suspect that a criminal offence may have been committed to report the matter and provide relevant information to the relevant investigating authority. The investigating authority may use any such information solely for the purposes of detection or investigation of the matter reported to it.

Disclosure of taxpayer information is also allowed in relation to proceedings initiated by the ODCE (see section 3.2 (above)).

#### **6. Specifically authorised disclosures**

Subsection (7) allows the disclosure of taxpayer information to any of the bodies specified in the definition of “professional body” in subsection (1) where a

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Revenue officer is satisfied that the work of the member of the particular body does not meet the professional standards expected of its members by that body. The bodies include the various taxation and accounting bodies and also the Law Society (the latter body was added by section 72 Finance Act 2015), i.e. the professions dealing with a person's tax affairs.

Subsection (8) specifies a number of circumstances in which a Revenue officer may disclose information, including taxpayer information:

- (a) When authorised by the Freedom of Information Acts, provided the information is not taxpayer information.
- (b) Under the Tribunal of Enquiry (Evidence) Acts 1921 to 2002.
- (c) Disclosure of taxpayer information to a taxpayer to whom that information relates.
- (d) With the agreement of the taxpayer to whom the taxpayer information relates.
- (e) Information provided to a personal representative, but only in his or her capacity of personal representative.
- (f) Specifically authorised information in relation to a charity.
- (g) Disclosure of taxpayer information to the Department of Finance for the sole purpose of formulating or evaluating fiscal policy.
- (h) Disclosure of taxpayer information to another taxpayer where such information is required to establish the tax liability of that other taxpayer.
- (i) Where the information disclosed is not taxpayer information.
- (j) Where the disclosure of taxpayer information is specifically authorised by any other statutory provision.
- (k) Disclosure of taxpayer information to a service provider engaged by Revenue solely for the purpose for which it was engaged.
- (l) Disclosure of information to the Minister for Agriculture, Food and the Marine in relation to the failure by a registered farm partnership to continue to meet the conditions for entry on the register of farm partnerships or succession farm partnerships. This provision was added by Finance Act 2015 (section 19).

Subsection (8A) allows the disclosure of specified taxpayer information relating to a company in receipt of tax relief in relation to the production of a 'qualifying film' under section 481 TCA 1997. Such disclosure is required to meet Ireland's EU State Aid obligations under the 'Communication from the EU Commission on State Aid for films and other audiovisual works'. The specified information is to be published on the Revenue website. This subsection was amended by Finance Act 2015 (section 17) to allow for the disclosure of additional information required by EU State Aid rules.

Subsection (9) clarifies the right of a Revenue Commissioner, a Revenue officer or a service provider, in the course of carrying out their work, to disclose taxpayer information to another Revenue Commissioner or Revenue officer.

Subsection (10) provides that, in relation to an offence under subsection (3), the penalty of €3,000 to apply on summary conviction (paragraph (i)) is to apply instead of the lower penalty applied by section 13 of the Criminal Procedure Act 1967.