

Cases where there is serious failure by an Agent/Tax Practitioner to meet the Professional Standards of a Professional Body

Revenue referrals to Professional Bodies

under Section 851A (7) TCA 1997

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1. Background/Context

Paragraph 1.10.5 of the Code of Practice for Revenue Audit and other Compliance Interventions 2015 (published 20/11/15) outlines Revenue policy regarding referrals of agents and tax practitioners to their representative bodies.

Revenue recognises the important role that agents and tax practitioners play in assisting taxpayers with filing requirements, interpretation of legislation and other related matters, and in facilitating tax compliance.

Revenue expects that **all agents and tax practitioners** will, at all times, carry out their professional dealings with Revenue in accordance with the fundamental principles of integrity, courtesy, professional competence and standards, professional behaviour, and take due care to comply with relevant tax law and regulations.

Revenue also expects that any agent/tax practitioner acting on behalf of a taxpayer will provide information and material which, to the best of his or her knowledge, is a true representation of a taxpayer's tax affairs.

Under section 851A TCA 1997, a Revenue officer may disclose taxpayer information to a professional body where he or she is satisfied that the work of an agent (who is a member of that professional body) does not meet the professional standards of a professional body. For agents and tax practitioners that are not members of a professional body, see paragraph 11 below.

This instruction sets out the considerations in relation to such a referral and the procedures to be followed. A referral by Revenue to a professional body will only be considered in the most serious of cases e.g. in cases of significant and/or repeated non-adherence to professional standards. The numbers of such referrals would be expected to be quite low and will be subject to approval by an Assistant Secretary.

It will be a matter for the professional body to examine the referral from Revenue and take any action under its own procedures, where necessary.

2. Key Points of Note

The following key points should be noted:

- Only serious cases will be referred by Revenue to the relevant professional body
- A s851A TCA 1997 report will be made **after** the compliance intervention is finalised and closed

- Revenue's intention to make a section 851A TCA 1997 report to the professional body will not be raised or discussed by the Revenue officer with the agent or taxpayer during the compliance intervention
- Planning Division will issue the section 851A TCA 1997 referral to the professional body based on facts/information supplied by the Region/Division and, as approved by the relevant Assistant Secretary.

3. Required Professional Standards of a Professional Body

All agents and tax practitioners are expected, at all times, to adhere to certain professional standards.

The Irish Taxation Institute and each Professional Accountancy Body under the supervisory remit of the Irish Auditing and Accounting Supervisory Authority (IAASA) set out the professional and ethical standards expected of accountants, auditors, tax agents and tax practitioners. These standards, inter alia, include:

- Professional Behaviour – to comply with relevant laws and regulations and avoid any action that discredits the profession
- Honesty and Integrity – to be straightforward and honest in all professional and business work and relationships. Integrity also implies fair dealing and truthfulness
- Professional Competence and Due Care – carry out professional work with proper regard for technical and professional standards, with due care, competence and diligence and uphold professional standards.

Where serious failure to meet professional standards arises, the relevant professional accountancy bodies are responsible for the investigation of referrals/complaints and are required to process them in accordance with their investigation and disciplinary procedures which are approved by the IAASA. The Irish Taxation Institute has a similar process in place.

Each professional body sets out its own professional and ethical standards required of its members. However, generally speaking, professional standards are commonly understood to incorporate professional behaviour, honesty and integrity, professional competence and due care.

4. Serious Failures by Agents to meet the Professional Standards of a Professional Body

Instances of general non cooperation or failure to cooperate fully by a taxpayer, agent or tax practitioner are outlined in Revenue's internal

[procedures](#) regarding the failure to cooperate fully with a Revenue Compliance Intervention.

Revenue expects that all agents and tax practitioners will at all times carry out their professional dealings with Revenue in accordance with professional standards whether or not they are a member of a professional body. That is the experience in a very significant proportion of Revenue's interventions.

Where the work of an agent or tax practitioner raises concerns for Revenue, the Revenue officer should first consider whether liability to a €4,000 penalty arises under section 1055 TCA 1997 (civil penalty for assisting in making incorrect returns, etc.) – see paragraph 12 below - and/or whether a person (agent/tax practitioner) may have committed a criminal offence under section 1078 TCA 1997 (Revenue offences) – see paragraph 13 below.

If action is to be taken by a Revenue officer under section 1055 or section 1078, then this action should be finalised before consideration of any referral action under section 851A TCA 1997.

In all situations, the compliance intervention [including settlement of any additional liability for tax, duty, interest and penalty (if any)] **must be** finalised first before referring details of the unprofessional behaviour of the agent or tax practitioner to their professional body.

5. Definition of Agent/Professional Body

Section 851A TCA 1997 outlines that “agent” means a member of a professional body.

A “professional body” means –

- (a) an accountancy body that comes within the supervisory remit of the Irish Auditing and Accountancy Supervisory Authority,
- (b) the Irish Auditing and Accounting Supervisory Authority (IAASA), or
- (c) the Irish Taxation Institute.

A Prescribed Accountancy Body (PAB) is any accountancy body that comes within the supervisory remit of IAASA. There are currently nine PABs each of which has its own formal system for dealing with referrals/complaints relating to its members/member firms, including, where necessary an investigation and disciplinary process.

The nine PABs designatory letters for their members are:

Accountancy Body	Full Name	Designatory Letters
ACCA	Association of Chartered Certified Accountants	ACCA or FCCA
AIA	Association of International Accountants	AAIA or FAIA
CIMA	Chartered Institute of Management Accountants	ACMA or FCMA
CIPFA	Chartered Institute of Public Finance and Accountancy	CPFA
ICAEW	Institute of Chartered Accountants in England & Wales	ACA or FCA
ICAI	Institute of Chartered Accountants in Ireland	ACA or FCA
ICAS	Institute of Chartered Accountants of Scotland	CA
ICPAI	Institute of Certified Public Accountants in Ireland	CPA or FCPA

The Irish Taxation Institute is not within the supervisory remit of the IAASA so referrals for ITI members will be made only to the Irish Taxation Institute. Membership of the Irish Taxation Institute is based on individual membership – they do not operate membership by firms so any referral will be made in relation to a named individual only.

The Irish Taxation Institute designatory letters for their members are:

Institute	Full Name	Designatory Letters
ITI	Irish Taxation Institute	AITI Chartered Tax Adviser (CTA) and/or FITI

Where an agent/tax practitioner is a member of two, or more, professional bodies that come within the scope of section 851A TCA 1997, referral of the agent/tax practitioner will be made to all the relevant professional bodies concerned.

6. Section 851A Referrals to Professional Bodies - role of Planning Division

Where a Revenue officer is satisfied that the work of an agent or tax practitioner does not meet the professional standards of a professional body a report/referral will be made by **Planning Division** direct to the Prescribed

Accountancy Body of which the accountant/auditor/firm/tax practitioner is a member or to the Irish Taxation Institute. A copy of each PAB report in relation to accountancy/auditing bodies will be sent to the Irish Auditing and Accountancy Supervisory Authority.

The facts/information for the report will be provided by the Revenue officer/audit manager dealing with the agent or tax practitioner and signed off by the Regional Assistant Secretary.

The Planning Division report /referral to the PAB, ITI or IAASA will confirm that:

'A Revenue officer is satisfied that the work of an agent does not meet the professional standards of a professional body'.

In addition, details of the facts of the case that gave rise to the Revenue decision, as outlined by the Revenue officer dealing with the case, will be supplied to the professional body.

The Revenue officer initiating the referral must have an objective basis to ground their decision to ask their Assistant Secretary to approve the referral of an agent/tax practitioner to the professional body in question. The Revenue officer is required to satisfy himself/herself that, on the basis of objective evidence before him/her, the standards expected generally of a professional do not appear to have been met in a significant way in one or more instances in the matter at hand and therefore, there are grounds to warrant an investigation into the behaviour of the agent/tax practitioner in question by its professional body.

7. Agents/Tax Practitioners who are members of the legal profession

Section 851A TCA 1997 does not currently apply to agents/tax practitioners who are members of the legal profession.

Further information in this regard will be provided in due course.

8. Issues outside the scope of Section 851A TCA 1997 referrals

The referral of a report under section 851A TCA 1997 is not appropriate where the matter that gives rise to the report is:

- Frivolous, vexatious or not made in good faith
- Not relevant to Revenue e.g. disputes over fees where no other relevant professional standard issues are present

- A matter that does not relate to the tax or duty compliance position of the taxpayer.

9. Time Limits etc. for reports / referrals under Section 851A (7) TCA 1997

While there are no specific time limits in the Tax Acts for making a report to a Prescribed Accountancy Body, the Irish Taxation Institute or to IAASA, a report should be sent to Planning Division within 2 months of the completion of the Revenue Compliance Intervention.

All information (as outlined in paragraph 10 below) including complete documentation must be provided to Planning Division in support of the report.

10. Referral of a case from District/Region to Planning Division

Where a Revenue officer is satisfied that the work of an agent or tax practitioner does not meet the professional standards of a professional body, a report should be prepared and the following information should be sent to Planning Division:

- i. The name and address of the agent/tax practitioner/firm
- ii. Date compliance intervention finalised and a copy of the finalised audit/compliance intervention report
- iii. The name of the professional body of which the agent/tax practitioner/firm is a member.

The best way to find out which professional body the accountant/agent/tax practitioner/firm is a member of is to ask the agent/accountant/tax practitioner/firm directly. If an accountant is also a registered auditor their membership body details can be found on the Companies Registration Office website.

<https://search.cro.ie/auditors/>

Some professional bodies have a 'member search' facility on their website – see CPA Ireland below:

<http://portal.cpaireland.ie/memberdirectory.aspx>

Alternatively, PABs can be contacted to enquire whether the accountant/auditor/agent/firm/tax practitioner is a member of their

body. Contact details for each body are listed in this instruction at Appendix 2.

- iv. A 'Report – Serious Failure to meet Professional Standards' outlining reasons why it is the Revenue officer's contention that the work of the agent/tax practitioner does not meet the professional standards of a professional body. A full synopsis of the issues is required.
- v. Comprehensive details of the nature of the behaviour giving rise to the referral
- vi. Any other relevant information.

If complete information is not included in the report/referral, the case may be returned to the Revenue officer for re-referral.

The report/referral to Planning Division must be made to Office of the Revenue Commissioners, Compliance & Risk Management Branch, Planning Division, Bishop's Square, Redmond's Hill, Dublin 2 and must be signed off by the relevant Assistant Secretary.

11. Agents/Tax Practitioners who are not members of a Professional Body

Some agents/tax practitioners are not members of a professional body. They may have previously been a member and membership has lapsed or they may never have been a member of a professional body.

In such instances where the work of an agent or tax practitioner raises concerns for Revenue, please refer to the potential actions set out in paragraphs 12 and 13 below.

12. Section 1055 TCA 1997 – penalty for assisting in making incorrect returns etc.

Any person who deliberately assists in or induces the making or delivery for any purposes of income tax or corporation tax of any incorrect return, account, statement or declaration shall be liable to a penalty of €4,000.

13. Section 1078 TCA 1997 – Revenue offences

Any person who knowingly aids, abets, assists, incites or induces another person to make or deliver any incorrect return, statement, or accounts in connection with any tax shall be liable to a penalty of €5,000 (summary prosecution) or a maximum of €126,970 (on indictment) or to a term of imprisonment, or both.

APPENDIX 1 – Extract from Section 851A (7) TCA 1997

Revenue expects that all agents and tax practitioners will, at all times, carry out their professional dealings with Revenue in accordance with the professional standards of their professional body.

Under Section 851A TCA 1997, a Revenue officer may disclose [taxpayer information] to a professional body where he or she is satisfied that the work of an agent does not meet the professional standards of a professional body. The information received by a professional body may only be used for the purposes of any investigation by the professional body.

‘Professional body’ means –

- a) An accountancy body that comes within the supervisory remit of the Irish Auditing and Accounting Supervisory Authority,
- b) The Irish Auditing and Accountancy Supervisory Authority, or
- c) The Irish Taxation Institute

Taxpayer Information

‘Taxpayer information’ means information of any kind and in any form relating to one or more persons that is-

- a) obtained by a Revenue officer for the purposes of the Acts, or
- b) prepared from information so obtained,

but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates

**APPENDIX 2 – Contact details to establish whether an accountant/auditor/agent/
firm/tax practitioner is a member of their professional body**

Professional Body	Full Name	Contact details
ACCA	Association of Chartered Certified Accountants	https://www.acca-business.org/pls/ecommerce/edoml001.p_find_firm
AIA	Association of International Accountants	http://www.aiaworldwide.com/find-an-international-accountant
CIMA	Chartered Institute of Management Accountants	http://www.cimaglobal.com/Members/Find-a-practising-accountant/
CIPFA	Chartered Institute of Public Finance and Accountancy	https://www.cipfa.org/members/members-directory
ICAEW	Institute of Chartered Accountants in England & Wales	http://www.icaew.com/en/members/local-support-and-services/contact-members
ICAI	Institute of Chartered Accountants in Ireland	https://www.charteredaccountants.ie/en/Members/Member-Search/
ICAS	Institute of Chartered Accountants of Scotland	https://www.icas.com/find-a-ca
ICPAI	Institute of Certified Public Accountants in Ireland	http://portal.cpaireland.ie/memberdirectory.aspx
ITI	Irish Taxation Institute	http://taxinstitute.ie/AboutTax/AboutAITICharteredTaxAdviserCTA/SearchCTADetails.aspx