

## **Use of and access to taxpayer information**

### **Section 851B Taxes Consolidation Act 1997**

#### **Part 37-00-03**

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## Table of Contents

1 Introduction.....	3
2 Definitions .....	3
3 Data protection safeguards for taxpayer information .....	3
4 Processing and profiling taxpayer information .....	4
5 Right of access by the taxpayer to information.....	4
6 Restriction of taxpayer’s right of access.....	4
7 Refusal of access requests under section 851B (5) TCA .....	5
8 Data protection enquiries .....	5

## 1 Introduction

Section 851B Taxes Consolidation Act 1997 (TCA) governs Revenue's automated processing of taxpayer information and taxpayers' rights in respect of such processing, compatible with Regulation (EU) 2016/679 of the European Parliament and of the Council, the General Data Protection Regulation (GDPR).

The section ensures that processing, including automated processing, of taxpayer information carried out by Revenue has a clear legal basis that is compatible with the GDPR. It sets down the rights of taxpayers with regard to safeguarding, use of, retention and accuracy of their information, and provides for rights of individual taxpayers to access their information and to confirmations in respect of the processing and profiling of their information.

## 2 Definitions

"The Acts" are defined for section 851B TCA as they are in section 851A TCA, and include the Tax Acts, the Customs Acts, Parts 18A to 18D TCA, statutes relating to excise, the CGT Acts, the VAT Acts, the CATCA, Stamp Duty legislation and LPT legislation.

The definition of "processing" sets out the operations that Revenue may carry out on taxpayer data.

"Profiling" is defined as a form of processing which includes processing by automated means.

"Tax" includes any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

"Taxpayer information" is also as defined in section 851A and 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 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 Data protection safeguards for taxpayer information

Section 851B (2) TCA provides for the appropriate data protection safeguards in respect of taxpayer information. It puts the data protection principles that Revenue operate on a statutory footing.

These data protection and safeguarding principles are that taxpayer information shall be:

- (a) processed lawfully and fairly;
- (b) collected for one or more specified, explicit and legitimate purposes and not processed in a manner that is incompatible with such purposes;

- (c) adequate, relevant and not excessive in relation to the purposes for which it is processed;
- (d) accurate and, where necessary, kept up to date; every reasonable step shall be taken to ensure that taxpayer information that is inaccurate, having regard to the purposes for which it is processed, is erased or rectified without delay;
- (e) kept in a form which permits identification of individuals the subject of the information for no longer than is necessary for the purposes for which the taxpayer information is processed;

and

- (f) processed in a manner that ensures appropriate security, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures.

## 4 Processing and profiling taxpayer information

Section 851B (3) provides the legal basis for Revenue to process and to use profiling and analytics on taxpayer information for the purposes specified in the subsection. Article 22(2)(b) of the GDPR sets out that automated decision making, including profiling, of personal data must be authorised by law. This subsection authorises the processing, including profiling (which can be by automated means) of taxpayer information where it is necessary to do so (“where required”) for the specific purposes of carrying out Revenue’s functions and obligations as set out in detail in the 5 sub-paragraphs of section 851B (3).

## 5 Right of access by the taxpayer to information

Section 851B (4) provides the right of access by taxpayers (data subject) to their information, subject to section 851B (5).

Section 851B (4)(a) provides for a right to confirmation whether the taxpayer information of which the individual is the subject has been processed and to access that information.

Section 851B (4)(b) provides a right to confirmation whether the taxpayer information of which the individual is the subject has been profiled, the right to information on the basis for that profiling and to access the outcome of that profiling.

## 6 Restriction of taxpayer’s right of access

Section 851B (5) TCA provides for the circumstances in which the access and confirmation rights under section 851B 4(a) and (b) are to be restricted.

Confirmation or access under section 851B (4) may be denied where it “would, or is likely to, cause prejudice to”:

- “(a) the administration, assessment, collection and recovery of tax;
- (b) any enquiry or investigation into a liability or liabilities in relation to tax under the Acts or a liability to foreign tax within the meaning of section 912A TCA;

[Section 912A permits the use of Revenue information powers to obtain information for tax authorities in other territories for the purposes of complying with our international obligations.]

- (c) the investigation or prevention of an offence under the Acts;
- (d) the implementation and administration of customs controls.”

Section 851B (5)(e) provides for the right to be restricted in the circumstance where the information was given in confidence or on the understanding that it would be treated as confidential. This is a circumstance encountered not infrequently in the acquisition of information by Revenue from members of the public. This restriction is in accordance with Article 23 of the GDPR which permits the restriction of the data subject’s rights.

Finally, section 851B (5)(f) provides that confirmation and access is restricted where it would be contrary to any other express provisions imposed by the Acts or any other enactments.

## 7 Refusal of access requests under section 851B (5) TCA

Section 851B (6) provides for challenge against refusals of requests under section 851B (5) by providing that such refusals must be in writing and must set out the grounds for refusal. This provision is to facilitate the taxpayer in challenging the decision under data protection law.

## 8 Data protection enquiries

If you have any enquiries concerning data protection in Revenue, please contact the Data Protection Unit:

Email: [dataprotection@revenue.ie](mailto:dataprotection@revenue.ie)

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