

DAC Exchange of Information – presence and participation of foreign tax officials in administrative enquiries

Part 38-03-32

This document should be read in conjunction with section 891K of the Taxes Consolidation Act 1997 and European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (SI 549 of 2012), as amended.

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1 Introduction

Council Directive 2011/16/EU (the “DAC”) provides for the sharing of taxpayer information between the tax administrations of EU Member States. Under the DAC a tax official from another Member State (a “foreign tax official”) is permitted to be present during administrative enquiries carried out by Ireland’s competent authority on foot of a request for exchange of information. The DAC was amended by Council Directive (EU) 2021/514 (“DAC7”) to extend those provisions. The extension allows the foreign tax official to attend electronically (e.g. via MS Teams) and to participate, where appropriate, in the administrative enquiries.

In Ireland, the provisions relating to presence requests, including participation, are provided for by:

- section 891K TCA 1997; and
- the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (S.I. 549 of 2012), as amended (the “2012 Regulations”).

Section 891K and amendments to SI 549 of 2012, which implement the relevant provisions of DAC 7, came into effect on 1 January 2023.

2 Key definitions

A **nominated officer** may, with the agreement of Revenue:

- Be present while the Irish Competent Authority, under the DAC, carries out **administrative enquiries**; or
- Participate in the **administrative enquiries** carried out by the Irish Competent Authority.

This presence or participation may be in person or via electronic means. Such presence and participation must be in accordance with the arrangements laid down in [section 6](#) of this manual.

A **nominated officer** is a **foreign tax official** that is authorised (see [section 3](#)) to exercise the functions conferred by section 891K, in writing by the Revenue Commissioners, to enable them to participate in the administrative enquiries.

A **foreign tax official** is a tax official from another Member State that is:

- a) authorised in that Member State to act in the capacity of competent authority for the purpose of the DAC, or
- b) authorised in that Member State to assist or represent the competent authority in the performance of their duties.

Administrative enquiries are the enquiries carried out on foot of a request for an exchange of information. These enquiries include any control, check or other action carried out by an **authorised officer** by virtue of Regulation 14 of the 2012 Regulations.

An **authorised officer**, for the purposes of the 2012 Regulations, is a Revenue officer who has been appointed under Regulation 12 of the 2012 Regulations. Such officers can exercise a power conferred under Chapter 4 of Part 38 TCA 1997.

It is normal Revenue practice that an intervention which takes place using **electronic means** is conducted through Microsoft Teams (MS Teams). This is Revenue's agreed approach to the use of electronic means. However, this may, in limited circumstances, be altered at the discretion of Revenue.

Revenue is the competent authority for the purposes of DAC and may delegate the functions to be performed in relation to exchange of information under the DAC to any of its officers. Such persons are referred to as the Irish **Competent Authority**. Every exchange of information under the DAC must be effected by such authorised persons.

3 Application to be present or participate in administrative enquiries

3.1 Overview

A request¹ by another Member State under the DAC for a foreign tax official to be present or to participate in administrative enquiries for the purpose of exchange of information should be sent to the Irish Competent Authority.

It is important to note that another Member State can request that its officials be allowed to participate in administrative enquiries that Ireland is carrying out. It cannot request that Ireland carry out enquiries that would not otherwise be carried out nor can it request that enquiries be carried out in a different format to the manner determined as appropriate by the Irish Competent Authority. That is, upon receipt of the request for exchange of information under the DAC it is the Irish Competent Authority who decides on the appropriate format of the administrative enquiries, if any, to be carried out.

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

[...]

On receipt of a request to be present or participate in administrative enquiries, the Irish Competent Authority will assess whether the request can be approved.

In deciding whether a request can be approved, the Irish Competent Authority will review the information requested and the reasons put forward for the presence request or the request to participate in administrative enquiries.

¹ All requests received must satisfy the conditions of foreseeable relevance – see Regulation 14A of [S.I. No. 549 of 2012](#), as amended by [S.I. No. 706 of 2022](#)

Where having considered the request Revenue deems it appropriate, a request under the DAC can be refused. In such a circumstance, Revenue will inform the requesting Member State as to the reason for the refusal within 60 days.

3.2 Information to be provided in relation to presence or participation

In a situation where presence or participation in administrative enquiries is required, and approved by Revenue, the foreign tax official must be a nominated officer, which means that they must be authorised under section 891K.

3.2.1 Information to be provided for authorisation

For the purpose of authorisation under section 891K, the foreign tax official must provide Revenue with-

1. A copy of their authorisation from their respective Member State to confirm they are authorised under the DAC,
2. A passport sized photograph in colour (black and white will not be accepted),
and
3. A copy of their signature.

Upon receipt of the information listed at points 1 to 3 above, Revenue will arrange for a written authorisation, as defined in section 891K(2), to be issued. This written authorisation designates the foreign tax official as a nominated officer.

3.2.2 Written authorisation

The original letter will be retained by Revenue and a copy will be provided to the nominated officer. The written authorisation must be produced to the taxpayer at the commencement of the enquiry, and at any other time throughout the enquiry when requested to do so.

The written authorisation will contain:

- The name of the foreign tax official and a statement that he or she is a nominated officer,
- A photograph and signature of that official,
- Particulars of that official's authorisation under section 891K,
- The duration of the written authorisation,
- The name of the person who is the subject of the enquiry,
- A hologram showing the logo of the Office of the Revenue Commissioners,
and
- The facsimile signature of a Revenue Commissioner.

Notwithstanding the fact that the authorisation will contain a defined duration, Revenue may, at any time, revoke the authorisation where it is considered appropriate to do so.

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The signature of the foreign tax official will be accepted by electronic means to allow for the preparation of the authorisation document. This, along with the other items listed in [section 3.2.1](#) above must be received through the normal EOI secure system.

Where the presence or participation of the foreign tax official is conducted through electronic means, an electronic copy of the authorisation will issue from the Irish Competent Authority to the Competent Authority of the jurisdiction of the foreign tax official. The foreign tax official can produce this authorisation to the person under enquiry by showing it on screen. The authorisation can be confirmed by the Irish authorised officer as they will retain the original of the authorisation so issued.

4 Functions of a nominated officer

The functions of the nominated officer are limited to;

1. Being present in the offices where the Irish Competent Authority performs its functions,
2. Being present during administrative enquiries carried out by the Irish Competent Authority, and
3. Participation in administrative enquiries carried out by the Irish Competent Authority.

The participation mentioned at point 3 above can be either through physical presence or through the use of electronic means such as MS Teams. However, the use of electronic means is subject to approval by Revenue and will only be used when deemed appropriate.

Participation in administrative enquiries can include–

- Reviewing books, records or other documents, as defined in section 900(1), directly related to the administrative enquiries and the requested information, or
- Requesting reasonable assistance in relation to those enquiries and the requested information.

For the purpose of requesting reasonable assistance from a taxpayer or a person acting on behalf of the taxpayer, a nominated officer may interview individuals present.

A nominated officer may not seek – either through reviewing records or interviewing individuals – to obtain any information through participating in the administrative enquiries that they would not be entitled to under the request for exchange of information under the DAC. Where the participation exceeds the scope of the

original request, the nominated officer will not be permitted to proceed with the participation.

The DAC, as amended, does not provide scope for a foreign tax official to perform any functions that would exceed the procedural arrangements in place in Ireland. Appendix One outlines the procedural arrangements in place in Ireland and provides the scope of exchange of information requests. This applies to both physical and electronic presence and participation.

Where during the course of the enquiries other functions or Powers are deemed necessary, such as those contained in Chapter 4 of Part 38 TCA 1997, the application of those functions or Powers will be carried out by the Revenue official only.

As provided for in Article 11(2) of the DAC, any refusal to cooperate with the foreign tax official by the person under enquiry, or any person acting under their authority, is deemed to be a refusal to cooperate with a Revenue official. In this instance normal procedures relating to failure to cooperate with a Revenue official shall apply.

5 Role of Revenue staff

5.1 International Tax Division

EOI Branch, ITD is the central liaison office with principal responsibility for contacts with other Member States under the DAC. In this regard, EOI Branch will coordinate all requests for exchanges of information. Further guidance can be found in [TDM 35-01-01a](#) .

5.2 Corporate Services Division ("CSD")

CSD has responsibility for the coordination, issuing and recording of all authorisations. In this regard, all requests for authorisation under section 891K must be dealt with through CSD Authorisations section. All requests for authorisation should be submitted with Principal Officer approval by email to CSD-Authorisations@revenue.ie and must include all information required to ensure the authorisation can be processed.

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[...]

5.3 Other divisions

Where a request for an exchange of information under the DAC is received by a Division other than ITD (EOI Branch), that Division is advised that all such requests are required to be submitted through formal channels to the Irish central liaison office.

Where the request results in a written authorisation issuing to a nominated officer under section 891K, the Irish authorised officer should hold a copy of the authorisation for the duration of the enquiry.

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[...]

