

## **Guidelines for the application of Section 108A VATCA 2010 -**

**“Notice of requirement to furnish certain information, etc.”**

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## 1. Introduction

Finance (No.2) Act 2013 inserted a new section 108A in the VATCA 2010 which provides that Revenue may serve notice on an accountable person requiring him or her to furnish specified information in relation to taxable supplies made by him or her during a specified period. The specified period during which the notice shall have effect will be a period not exceeding 2 months and will only apply to supplies that are made by the supplier in a period commencing no less than 7 days after the service of the notice. The information specified is information of a kind that the accountable person is likely to have or should be able to provide.

## 2. VAT Invoices - Revenue expectations

**There is a legal obligation on a supplier to issue a VAT invoice to another accountable person in accordance with section 66(1) of the VATCA 2010 and if an invoice is not issued in circumstances where it should have been, this constitutes a Revenue offence.** There is no legal requirement on a customer to identify him or herself to a supplier and, unless he or she requires a VAT invoice for the purposes of deductibility, the customer may not do so. **However**, where a customer is purchasing taxable goods or services where the volume and/or the value of the goods or services, as well as the frequency of the purchases, indicate that the customer is likely to be buying the goods or services for re-sale i.e. he or she is likely to be an accountable person, it is the responsibility of the supplier to issue a VAT invoice.

Where a supplier fails to issue a VAT invoice to another accountable person, he or she shall be liable to a penalty of €4,000 in accordance with section 115 (1)<sup>1</sup> of VATCA 2010, for each instance in which an invoice was not issued.

## 3. Purpose of issuing a Notice under s.108A

The purpose of issuing a notice under the new legislation is twofold (a) to change behaviour by forcing the passive or complicit supplier to fully comply, in appropriate circumstances, with invoicing obligations, and (b) where no VAT invoice is issued, to identify the customers making cash purchases. This provision will assist in tackling shadow economy activity by allowing Revenue to seek further information in relation

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<sup>1</sup> s.115. (1) A person who does not comply with section 64(10)(c)(i), 64(12), 65(3), 86(1), **[91C(3) or (4), 91E(3) or (4)]\*\***, 95(9)(a) or 124(7)(a) or Chapter 2, 3, 6 or 7 of Part 9 or any provision of regulations in regard to any matter to which those sections or Chapters relate shall be liable to a penalty of €4,000.

\*\* with effect from 1<sup>st</sup> January 2015

to supplies made by a business. The requirement to provide the additional information specified in the notice may assist in the identification of supplies into the shadow economy and the operators concerned. Equally, it may result in a positive behavioural change as the supplier will have to consider the risks of making supplies to accountable persons without issuing an invoice.

The provision can be used to oblige the supplier (i) to compile information that he or she is likely to have or should be able to provide in relation to supplies made to such customers or, (ii) to compile a record of specific information in relation to, for example, supplies of specified goods or supplies over a specified value (including details which would identify the customer); and to furnish the information mentioned at (i) and/or (ii) to Revenue.

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

[...]

## 4. Use of the Provision

**This provision should be used only in circumstances where there are reasonable grounds to believe that the information sought will assist in identifying tax evasion or fraud or that it will support existing evidence of tax evasion or fraud.** There are a number of conditions governing the service of a notice:

- It must be for the purpose of the prevention and/or detection of tax evasion.
- There must be reasonable grounds for believing that the additional information to be provided can assist in identifying tax evasion (by the supplier or any other person).
- The additional information requirement must be reasonable and must relate to the supplies made by the person on whom the notice is served.

A sample copy of the notice template to be used can be found at [Appendix A](#).

## 5. Penalty Provisions

A new penalty provision, section 115(8A), provides for a €4,000 penalty where the supplier fails to comply with the notice issued.

## 6. The legislation

The legislation is contained in section 108A of VATCA 2010. Subsection (1) provides that the Revenue Commissioners may serve a notice in writing on an accountable

person requiring that person to provide additional information where there are reasonable grounds to believe that that information could assist in identifying taxable supplies (by that person or any other person) on which tax will not, or is not likely, to be paid. Subsection (2) outlines the information to be specified in the notice.

The information to be included in the notice is as follows:

- I. The date from which the notice has effect.
- II. The type of information to be furnished to Revenue.
- III. The period for which the notice has effect.
- IV. The date by which the information must be furnished to Revenue.
- V. The format in which the information must be furnished to Revenue.
- VI. The penalty for failure to comply with the notice.

## 7. Information that may be required by service of notice

There are a number of conditions that must be met:

- The information, explanations or particulars that may be requested must relate to his or her taxable supplies.
- The notice cannot be used to require a supplier to provide additional information, explanations or particulars in relation to supplies that have already been made. **It can only apply to supplies that are made by the supplier in a period commencing no less than 7 days after the service of the notice.**
- The type of information, etc, that is required must be clearly specified. It must be of a kind that is not unreasonable to expect the supplier to have or to be able to provide.
- It may be appropriate in some instances to restrict the information being sought from a supplier. For example, the caseworker may seek information on customer transactions above a certain monetary value, or for purchases exceeding a certain volume. The obligation to provide the information must not impose a disproportionate burden on the supplier.

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

[...]

## 8. The period for which the notice has effect

The notice can only take effect on or after 7 days following the date the notice has been served. It can have effect for a period of no longer than 2 months. The duration of the notice will be determined on a case-by-case basis taking into account the volume of information needed and the burden imposed on the supplier.

## 9. The procedure for the issue of a notice

Authorisation to serve a section 108A Notice will be at Branch Manager level. In all instances, the caseworker should prepare a submission to the Branch Manager making the case for the issue of a section 108A notice and attaching a copy of the Notice. When the notice has been signed by the Authorised Officer, it should be:

- Issued by registered post, or
- Hand delivered by a Revenue official and a confirmation of delivery form should be completed. A template confirming delivery of the Notice can be found at [Appendix B](#).

## 10. The procedure for acceptance of the information required

The Revenue official must acknowledge receipt of the information from the supplier in writing. A template acknowledging receipt of the information requested can be found at [Appendix C](#). If all information requested has not been submitted, this should be set out in writing and the supplier should be asked for an explanation for the omission. If this explanation is not acceptable, the caseworker should seek direction from his or her line management on the imposition of a penalty.

Note: The information requested must be provided to the Revenue Commissioners no less than 14 days from the end of the period specified in the notice.

## Appendix A

This is a sample template which can be amended as required

### Notice for Additional Information Requirement

#### Section 108A VATCA 2010

Name:

Address:

VAT Registration Number:

Date of service of Notice:

Effective date of Notice:

Dear Sir or Madam,

Notice is hereby given under Section 108A of the Value-Added Tax Consolidation Act 2010 that the Revenue Commissioners require you to furnish to them additional information in relation to supplies made by you during the period for which this Notice has effect. A copy of the relevant legislation is attached for your information.

Your attention is drawn to the penalty of €4,000 for failure to comply with a Notice served under Section 108A.

- A. The notice has effect for the period \_\_\_\_\_
- B. The notice has effect in relation to the supplies or categories of supplies specified hereunder.
- (i) \_\_\_\_\_
- (ii) \_\_\_\_\_
- C. The additional information required in relation to each supply specified at B. above is as follows:
- (i) \_\_\_\_\_
- (ii) \_\_\_\_\_
- (iii) \_\_\_\_\_

The information at C. above should be furnished to \_\_\_\_\_  
(name, address or e-mail) on or before \_\_\_\_\_ in \_\_\_\_\_ format.

Yours faithfully,

Authorised Officer

## Appendix B

### Confirmation of delivery

#### Notice for Additional Information Requirement Section 108A VATCA 2010

A Notice for Additional Information Requirement Section 108A VATCA 2010 has been delivered as per the details in the table below:

<b>Name</b>	
<b>Address</b>	
<b>VAT Registration Number</b>	
<b>Date of service of Notice</b>	DD/MM/YYYY
<b>Effective date of Notice</b>	DD/MM/YYYY
<b>Information to be furnished to</b>	Enter Revenue Officers name, address or email
<b>Information to be furnished on or before</b>	DD/MM/YYYY
<b>Requested format</b>	
<b>Delivery of the Notice for Additional Information Requirement Section 108A VATCA 2010 is confirmed.</b>	
<b>Signature (Revenue Officer)</b>	
<b>Date</b>	DD/MM/YYYY



## Appendix C

### Acknowledgement of receipt of information

#### Notice for Additional Information Requirement Section 108A VATCA 2010

<b>Name</b>	
<b>Address</b>	
<b>VAT Registration Number</b>	
<b>Date of service of Notice</b>	DD/MM/YYYY
<b>Effective date of Notice</b>	DD/MM/YYYY

Dear Sir or Madam,

A Notice under Section 108A of the Value-Added Tax Consolidation Act 2010 issued to you on

DD/MM/YYYY.

I wish to acknowledge receipt of the information as specified in the notice.

Your co-operation in this matter is appreciated. If you have any further queries in relation to this matter please contact [Insert Revenue Officer's name] at email [insert email address] or by phone [insert Revenue Officers Phone number].

Yours faithfully,

Revenue Officer