

Duties of relevant person in relation to certain revenue offences. FA95 s172 1079.—(1) In this section—

“the Acts” means—

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts,
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Act, 1972 , and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act, 1976 , and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and to the management of that duty,

and any instruments made thereunder and any instruments made under any other enactment and relating to tax;

“appropriate officer” means any officer nominated by the Revenue Commissioners to be an appropriate officer for the purposes of this section;

“company” means any body corporate;

“relevant person”, in relation to a company and subject to subsection (2), means a person who—

(a) (i) is an auditor to the company appointed in accordance with section 160 of the Companies Act, 1963  
, or

(ii) in the case of an industrial and provident society or a friendly society, is a public auditor to the society for the purposes of the Industrial and Provident Societies Acts, 1893 to 1978, and the Friendly Societies Acts, 1896 to 1977,

or

(b) with a view to reward, assists or advises the company in the preparation or delivery of any information, declaration, return, records, accounts or other document which he or she knows will be or is likely to be used for any purpose of tax;

“relevant offence” means an offence committed by a company which consists of the company—

(a) knowingly or wilfully delivering any incorrect return, statement or accounts or knowingly or wilfully furnishing or causing to be furnished any incorrect information in connection with any tax,

(b) knowingly or wilfully claiming or obtaining relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which there is no entitlement,

(c) knowingly or wilfully issuing or producing any incorrect invoice, receipt, instrument or other document in connection with any tax, or

(d) knowingly or wilfully failing to comply with any provision of the Acts requiring the furnishing of a return of income, profits or gains, or of sources of income, profits or gains, for the purposes of any tax, but an offence under this paragraph committed by a company shall not be a relevant offence if the company has made a return of income, profits or gains to the Revenue Commissioners in respect of an accounting period falling wholly or partly in the period of 3 years preceding the accounting period in respect of which the offence was committed;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) For the purposes of paragraph (b) of the definition of “relevant person”, a person who but for this subsection would be treated as a relevant person in relation to a company shall not be so treated if the person assists or advises the company solely in the person's capacity as an employee of the company, and a person shall be treated as assisting or advising the company in that capacity where the person's income from assisting or advising the company consists solely of emoluments to which Chapter 4 of Part 42 applies.

(3) If, having regard solely to information obtained in the course of examining the accounts of a company, or in the course of assisting or advising a company in the preparation or delivery of any information, declaration, return, records, accounts or other document for the purposes of tax, as the case may be, a person who is a relevant person in relation to the company becomes aware that the company has committed, or is in the course of committing, one or more relevant offences, the person shall, if the offence or offences are material—

(a) communicate particulars of the offence or offences in writing to the company without undue delay and request the company to—

(i) take such action as is necessary for the purposes of rectifying the matter, or

(ii) notify an appropriate officer of the offence or offences,

not later than 6 months after the time of communication, and

(b) (i) unless it is established to the person's satisfaction that the necessary action has been taken or notification made, as the case may be, under paragraph (a), cease to act as the auditor to the company or to assist or advise the company in such preparation or delivery as is specified in paragraph (b) of the definition of “relevant person”, and

(ii) shall not so act, assist or advise before a time which is the earlier of—

(I) 3 years after the time at which the particulars were communicated under paragraph (a), and

(II) the time at which it is established to the person's satisfaction that the necessary action has been taken or notification made, as the case may be, under paragraph (a).

(4) Nothing in paragraph (b) of subsection (3) shall prevent a person from assisting or advising a company in preparing for, or conducting, legal proceedings, either civil or criminal, which are extant or pending at a time which is 6 months after the time of communication under paragraph (a) of that subsection.

(5) Where a person, being in relation to a company a relevant person within the meaning of paragraph (a) of the definition of “relevant person”, ceases under this section to act as auditor to the company, then, the person shall deliver—

(a) a notice in writing to the company stating that he or she is so resigning, and

(b) a copy of the notice to an appropriate officer not later than 14 days after he or she has delivered the notice to the company.

(6) A person shall be guilty of an offence under this section if the person—

(a) fails to comply with subsection (3) or (5), or

(b) knowingly or wilfully makes a communication under subsection (3) which is incorrect.

(7) Where a relevant person is convicted of an offence under this section, the person shall be liable—

(a) on summary conviction, to a fine of £1,000 which may be mitigated to not less than one-fourth part of such fine, or

(b) on conviction on indictment, to a fine not exceeding £5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both the fine and the imprisonment.

(8) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (7) (a), and the reference in subsection (2) (a) of section 13 of the Criminal Procedure Act, 1967, to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

(9) Notwithstanding any other enactment, proceedings in respect of this section may be instituted within 6 years from the time at which a person is required under subsection (3) to communicate particulars of an offence or offences in writing to a company.

(10) It shall be a good defence in a prosecution for an offence under subsection (6) (a) in relation to

a failure to comply with subsection (3) for an accused (being a person who is a relevant person in relation to a company) to show that he or she was in the ordinary scope of professional engagement assisting or advising the company in preparing for legal proceedings and would not have become aware that one or more relevant offences had been committed by the company if he or she had not been so assisting or advising.

(11) Where a person who is a relevant person takes any action required by subsection (3) or (5), no duty to which the person may be subject shall be regarded as having been contravened and no liability or action shall lie against the person in any court for having taken such action.

(12) The Revenue Commissioners may nominate an officer to be an appropriate officer for the purposes of this section, and the name of an officer so nominated and the address to which copies of notices under subsection (3) or (5) shall be delivered shall be published in Iris Oifigiúil.

(13) This section shall apply as respects a relevant offence committed by a company in respect of tax which is—

(a) assessable by reference to accounting periods, for any accounting period beginning after the 30th day of June, 1995,

(b) assessable by reference to years of assessment, for the year 1995-96 and subsequent years of assessment,

(c) payable by reference to a taxable period, for a taxable period beginning after the 30th day of June, 1995,

(d) chargeable on gifts or inheritances taken on or after the 30th day of June, 1995,

(e) chargeable on instruments executed on or after the 30th day of June, 1995, or

(f) payable in any other case, on or after the 30th day of June, 1995.