

Reporting Obligations 2

Reporting Obligations

Auditor only

- S392, Companies Act 2014
- Section 393, Companies Act 2014
- S1079 Taxes Consolidation Act 1997

All accountants in practice

- Section 59 Criminal Justice Act 2001,
- Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013

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• Section 19, Criminal Justice Act 2011

Reporting Obligations

Auditor only

- Accounting records and H4 procedure reporting to Company Registration Office ^{\$392, Companies Act 2014}
- Category 1 and 2 offences (indictable offences) reporting to ODCE \$393, Companies Act 2014
- Tax evasion, 6 month letter procedure reporting to Revenue S1079 of the TCA

All accountants in practice

- Any financial Crime to Garda, Section 19, Criminal Justice Act 2011
 - Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013 Anti Money Laundering reported to Garda and Revenue

Section 19, Criminal Justice Act 2011

All financial crime to Garda
 Garda
 Garda
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Accounting Records and the H4 procedure

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Accounting Records

When sections 281 to 285 of the Companies Act 2014 is breached (requirement to keep proper accounting records)

- Section 392 requires the auditor to:
 - Send opinion by registered post to client
 - "..are taking necessary steps.." no H4
 - Are not taking necessary steps file H4
- Timing of your formation of opinion
- Limitation of scope V's disclaimer V's adverse opinion
- Tax settlements, frauds and revision of accounts

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A tense moment

"are taking necessary steps.."

1990 CCABI guidance: "are" is future tense

ODCE opinion "are" is past and future tense

Unless records are recreated in accordance with sections 281 to 285 you must file a H4

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Category 1 and 2 offences (Indictable offences)

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Section 393 of the Companies Act 2014

"Where, in the course of, and by virtue of, their carrying out an audit of the financial statements of the company, information comes into the possession of the statutory auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has may have* committed a category 1 or 2 offence, the statutory auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with particulars of the grounds on which they have formed that opinion."

 \ast As amended by the Companies (Accounting) Act 2017

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Extract from Companies Act 2014 List of all category 1 and 2 offences.

Category 1 Offences 5286 Not keeping adequate accounting records which result in insolvent liquidation or which last 3 or more years, the amount involved exceeds €1m or 10% of net assets. 5722 Fraudulenttrading See full checklist on web site. www.accaglobal.com/technicalireland Category 2 Offence Management and Governance S68 Invite the public to subscribe for shares/Offers of securities to the public S82 financial assistance for purchase of own shares \$87 concealing unpaid share capital from creditors 5101 Personation of a shareholder S102 Acquisition of own shares (share buyback) not in accordance with Act S132 undischarged bankrupl acting as director or secretary or involved in promotion. formation or management of a company 5239 (248) loans to directors Accounting and audit S286 Not keeping adequate accounting records (company and director) 5291 not showing a true and fair view on financial statements, financial statements non-compliant with GAAP or Act, financial statements that do not have statement of compliance with GAAP and Act S292 non-compliance with IFRS, not making a statement of compliance with IFRS. 5294 same as 291 but for GAAP Group companies S295 Same as 291 but for IFRS Group companies \$324 director's party to approving accounts that are not true and fair and compliant 5324 If balance sheet at AGM or as filed in CRO is unsigned by directors ©ACCA Think Ahead ACCA 16/10/2017

Reporting Category 1 and 2 offences Common offences

- Illegal loans directors or connected companies*
- False statement to CRO (audit exemption)
- Financial statements not true and fair
- Revision of accounts
- Not holding an AGM
- Accounting records not kept
- illegal share support*
- knowingly or recklessly making a statement to an auditor, which is materially misleading, false or deceptive

* Can be made "legal" using a summary approval procedure, see Chapter 7 of the Companies Act 2014

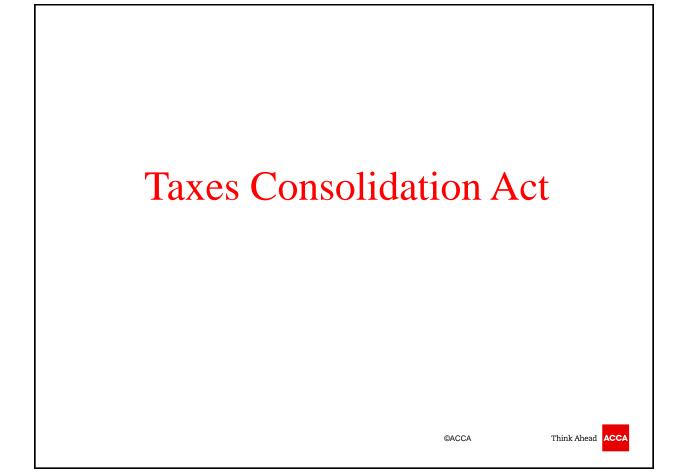
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Solutions – Directors Loans / connected company loans

Was it really a "loan" Normal trading activities Directors bonus 9.9% form a group (golden share) Resign as auditor/audit exemption Audit exemption

Knowledge defence no longer available

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Reporting to the Revenue

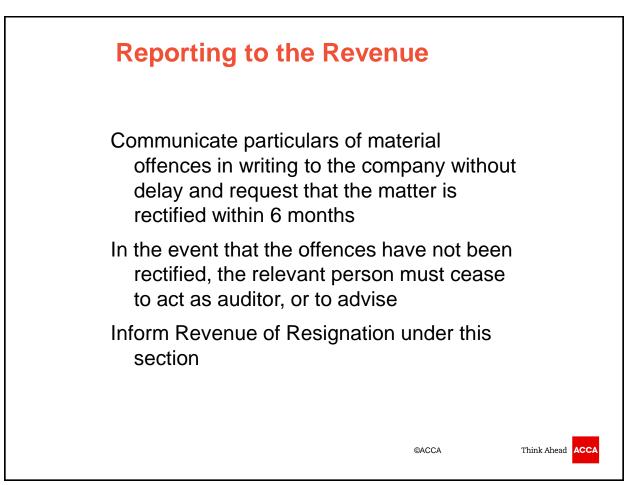
Under the Taxes Consolidation Act 1997-Section 1079

an auditor,

with a view to reward,

assists or advises the company in the preparation of a document likely to be used for any purpose of tax-must -

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Reporting to the Revenue

Legislation is almost redundant as any offences will also be reported under AML

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Criminal Justice (Theft & Other Fraud Offences) Act 2001

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S59 Criminal Justice (Theft & Fraud Offences) Act 2001

BACKGROUND

Anybody involved in preparing accounts must report an instances of **suspected** fraud or theft to the Garda.

Everybody covered (except Schedule E employees)

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S59 Criminal Justice (Theft & Fraud Offences) Act 2001

What type of clients

The term "firm" Includes: partnership a corporate body unincorporated body self-employed individual a charity a credit union a pension scheme

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S59 Criminal Justice (Theft & Fraud Offences) Act 2001

Offences covered

- Theft
- Making gain or loss by deception
- Obtaining services by deception
- Unlawful use of computer
- False accounting
- Suppression of documents
- ...and lots more obscure laws!

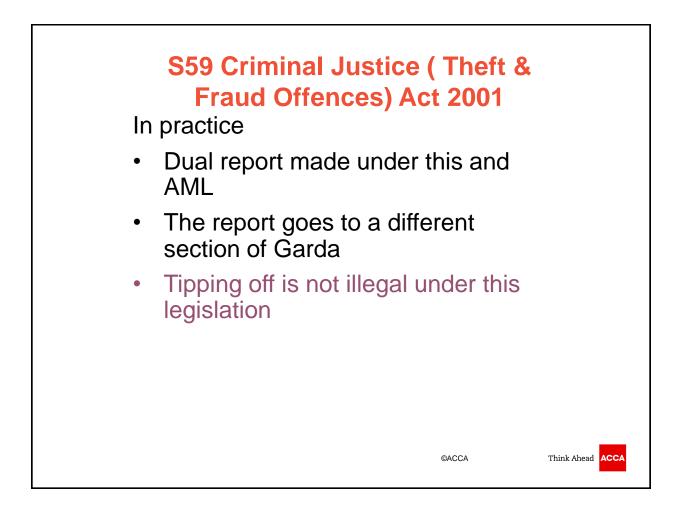
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S59 Criminal Justice (Theft & Fraud Offences) Act 2001

False Accounting

- where a person, intending to make a gain for oneself or another, or to cause loss to another, does any one of the following :
- destroys or otherwise falsifies accounts or documents for accounts ;
- fails to complete accounts or documents
- furnishes false or misleading accounts or documents. Falsifying accounts or documents arises where misleading or false entries are made or where relevant particulars are omitted.

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Anti-Money Laundering The Requirements in Ireland

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"White Collar" Crime Act

- August 2011
- Section 19
- Report information
- Knows or believes
- Material in assisting
- Prevention
- Relevant offence



19.—(1) A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—

(a) preventing the commission by any other person of a relevant offence, or

(*b*) securing the apprehension, prosecution or conviction of any other person for a relevant offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

- Any person
- "As soon as practical"
- Employees covered as well
- Protection for whistle blowers (S20)
- "Reasonable cause"
- Arrest without a warrant if information withheld
- 130 offences listed

- Under the Central Bank Act
 - Banking offences
 - Keeping proper books
 - Excess commissions
 - Insurance Act
- Investment intermediary Act
 - False statement to auditors
 - Books of account
 - Client money rule breaches

- National Asset Management Agency Act 2009
 - False information to NAMA
- Companies Acts
 - Financial assistance for purchase of own shares
 - fraud
 - Failure to disclose to a liquidator

- Companies Acts
 - Not preparing T&F accounts
 - Non disclosure of subsidiaries
 - Failure to take steps to ensure T&F accounts
 - False statement on accounts
 - Failure to provide information to auditor
 - Destruction of company documents
 - False statement on accounts

- Money Laundering
 - Any AML offence
 - Actual money laundering
 - Not doing CDD
 - Not reporting
 - Tipping off

- Theft and fraud
 - Theft, false accounting and suppression of documents
 - Possession of false or forged documents
 - Destruction of documents relevant to a Garda investigation

Criminal Justice Act 2011 - list of reportable offences

Reference	Description	Maximum Penalty for non-compliance
An offence under section 58 of the Central Bank Act 1971 insofar as it relates to a contravention of section 17, 18, 23, 24 or 25 of that Act.	A requirement for a holder of a banking licence to keep certain books and records A holder of a banking licence must make certain returns to the Central Bank The requirement for a bank licence holder to maintain certain specified capital ratios The requirement to hold a deposit with the Central Bank by holders of bank licences in certain circumstances The maintenance of accounts in relation to clearances with the Central Bank in certain circumstances	on conviction on indictment, to a fine not exceeding five thousand pounds,
An offence under section 37 (6) or 41 (1) of the Insurance Act <u>1989</u> .	Inserted by Central Bank and Financial Services Authority of Ireland Act 2003, Relates to payment or receipt of excess commissions	£10,000 or imprisonment for a term not exceeding three years

More Information

www.accaglobal.com/technicalireland

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