

Think Ahead

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Reporting Obligations 2

Recorded online

September 2017

16/10/2017 ACCA Ireland

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
- Section 19, Criminal Justice Act 2011

Reporting Obligations

Auditor only


- Accounting records and H4 procedure reporting to Company Registration Office S392, Companies Act 2014
- Category 1 and 2 offences (indictable offences) reporting to ODCE S393, 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
- Anti Money Laundering reported to Garda and Revenue Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 and 2013
- All financial crime to Garda Section 19, Criminal Justice Act 2011

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

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

Category 1 and 2 offences (Indictable offences)

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Reporting Category 1 and 2 offences

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.”

* As amended by the Companies (Accounting) Act 2017

Reporting Category 1 and 2 offences

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Reporting Category 1 and 2 offences

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Reporting Category 1 and 2 offences

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

Category 1 Offences:

S286 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.

S722 Fraudulent trading

Category 2 Offence

Management and Governance

S66 Invite the public to subscribe for shares/Offer of securities to the public

S82 financial assistance for purchase of own shares

S87 concealing unpaid share capital from creditors

S101 Personation of a shareholder

S102 Acquisition of own shares (share buyback) not in accordance with Act

S132 undischarged bankrupt acting as director or secretary or involved in promotion, formation or management of a company

S239 (248) loans to directors

Accounting and audit

S286 Not keeping adequate accounting records (company and director)

S291 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

S294 same as 291 but for GAAP Group companies

S295 Same as 291 but for IFRS Group companies

S324 director's party to approving accounts that are not true and fair and compliant

S324 if balance sheet at AGM or as filed in CRO is unsigned by directors

16/10/2017

See full checklist on web site.
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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

Taxes Consolidation Act

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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 -

Reporting to the Revenue

Communicate particulars of material offences in writing to the company without delay and request that the matter is rectified within 6 months

In the event that the offences have not been rectified, the relevant person must cease to act as auditor, or to advise


Inform Revenue of Resignation under this section

Reporting to the Revenue

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

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)

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

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!

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.

S59 Criminal Justice (Theft & Fraud Offences) Act 2001


In practice

- Dual report made under this and AML
- The report goes to a different section of Garda
- Tipping off is not illegal under this legislation

Anti-Money Laundering

The Requirements in Ireland

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Criminal Justice Act 2011



Criminal Justice Act 2011

“White Collar” Crime Act

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



Criminal Justice Act 2011

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.

Criminal Justice Act 2011

- 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

Criminal Justice Act 2011

Offences

- 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

Criminal Justice Act 2011

Offences

- 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

Criminal Justice Act 2011

Offences

- 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

Criminal Justice Act 2011

Offences

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

Criminal Justice Act 2011

Offences

- 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

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.	<p>A requirement for a holder of a banking licence to keep certain books and records</p> <p>A holder of a banking licence must make certain returns to the Central Bank</p> <p>The requirement for a bank licence holder to maintain certain specified capital ratios</p> <p>The requirement to hold a deposit with the Central Bank by holders of bank licences in certain circumstances</p> <p>The maintenance of accounts in relation to clearances with the Central Bank in certain circumstances</p>	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 1989 .	<p>Inserted by Central Bank and Financial Services Authority of Ireland Act 2003.</p> <p>Relates to payment or receipt of excess commissions</p>	£10,000 or imprisonment for a term not exceeding three years

More Information

www.accaglobal.com/technicalireland

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