



STATUTORY INSTRUMENTS.

**S. I. No. 641 of 2011**



RETURN OF PAYMENTS (INSURANCE UNDERTAKINGS)  
REGULATIONS 2011

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RETURN OF PAYMENTS (INSURANCE UNDERTAKINGS)  
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The Revenue Commissioners in exercise of the powers conferred on them by subsections (3) and (4) of section 891B (inserted by the Finance Act 2006 (No. 6 of 2006)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, make the following regulations:

*Citation*

1. These Regulations may be cited as the Return of Payments (Insurance Undertakings) Regulations 2011.

*Interpretation*

2. In these Regulations—

“appropriate Revenue officer” means a Revenue officer designated in writing for the purposes of these Regulations by the Assistant Secretary in the Office of the Revenue Commissioners in charge of the Planning Division at the time of the designation;

“approved retirement fund” has the same meaning as in section 784A of the Principal Act;

“approved minimum retirement fund” has the same meaning as in section 784C of the Principal Act;

“associated company”, in relation to a company that is a specified person, means a company which is itself a specified person and is the specified person’s associated company within the meaning of section 432 of the Principal Act;

“authorised officer” means a Revenue officer authorised by the Commissioners in writing for the purposes of these Regulations;

“books, records or other documents” includes—

- (a) any records used in the business of a specified person, or used in the transfer department of a specified person acting as registrar of securities, whether—
  - (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or
  - (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 16th December, 2011.*

- (b) every electronic means or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced,
- (c) documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic or photostatic process,
- (d) correspondence and records of other communications between a specified person and a person to whom it makes a relevant payment, and
- (e) if applicable, the materials and documents referred to in sections 898F(5) and 898G(6) of the Principal Act;

“Commission investment vehicle” has the same meaning as in section 2 of the National Pensions Reserve Fund Act 2000 (No. 33 of 2000) (as amended by section 2 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009) (No. 7 of 2009));

“Commissioners” means the Revenue Commissioners;

“company” has the same meaning as it has for the purposes of the Corporation Tax Acts;

“electronic means” includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic means of transmission of data and other forms of related technology by means of which data is transmitted, and “electronic”, “electronics”, “electronically” and other cognate words and expressions are to be construed accordingly;

“excepted payment”, in relation to any payment made by a specified person, means a payment made by the specified person which is set out in Schedule 2, but does not include—

- (a) any payment referred to in paragraph 1, 2, 3 or 6 of that Schedule unless the specified person making the payment is satisfied that the person to whom it is making the payment is beneficially entitled to the payment, and
- (b) any payment referred to in that Schedule if the specified person making the payment is unable to identify from its electronic records the payment as a payment referred to in that Schedule;

“financial institution” has the same meaning as in the Principal section;

“insurance undertaking” means—

- (a) an assurance company within the meaning of section 3 of the Insurance Act 1936 (No. 45 of 1936), or

- (b) a person that holds an authorisation within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) in respect of its business which comes within any of the classes I, III, V and VI of Part A of Annex I to those Regulations but excluding pensions business as construed in accordance with subsections (2) and (3) of section 706 of the Principal Act;

“investment” means a policy with an insurance undertaking which has acquired a surrender value;

“investment number” includes a policy number and is the identifier of the payee used by the specified person and includes, in addition to the investment number, any code or codes used generally in the financial services industry to identify a specified person;

“medium term note” means a medium term debt instrument, either in physical or electronic form, relating to money in any currency, which—

- (a) is issued by—
- (i) a financial institution, or
  - (ii) a company that is not a financial institution,
- (b) recognises an obligation to pay a stated amount,
- (c) carries a right to interest, is issued at a discount or at a premium, or provides for a return on the instrument, and
- (d) matures at a time specified in the note;

“money” includes money expressed in a currency other than Euro;

“payee” means any person to whom a relevant payment is made;

“pension scheme” means an exempt approved scheme within the meaning of section 774 of the Principal Act or a retirement annuity contract or a trust scheme to which section 784 or 785 of that Act applies;

“Planning Division” means the division of the Office of the Revenue Commissioners known as Planning Division or any other division of the Revenue Commissioners to which is assigned by the Commissioners the responsibilities given by these Regulations to Planning Division;

“policy” has the same meaning as in section 3 of the Insurance Act 1936;

“Principal Act” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“Principal section” means section 891B of the Principal Act;

“PRSA provider” has the same meaning as in section 787A of the Principal Act;

“relevant payment”, in relation to a payment made by a specified person, means any payment, other than an excepted payment, made in respect of an investment;

“relevant person” has the same meaning as in the Principal section;

“return” means a return made electronically—

- (a) using such technology as may be approved or provided by the Commissioners, and
- (b) in such form or format as may be required by the Commissioners;

“Revenue officer” means an officer of the Commissioners;

“specified person” means a person specified by Regulation 3;

“surrender value” means a monetary value of a policy where it is surrendered by the policyholder to the insurance undertaking;

“tax” has the same meaning as in the Principal section;

“tax reference number” has the same meaning as in the Principal section;

“tax year” means a year of assessment.

*Specified person*

3. A person who is a member of a class of relevant persons described in Schedule 1 is specified as a specified person for the purposes of—

- (a) section 891B of the Principal Act, and
- (b) these Regulations.

*Return of payments*

4. (1) Subject to this Regulation, every specified person who makes a relevant payment in respect of an investment shall, as respects the tax year 2011 and each subsequent tax year, make and deliver to the appropriate Revenue officer, within the time specified in Regulation 5, a return of the aggregate of all such relevant payments in respect of that investment made in the tax year concerned by that specified person.

(2) The return referred to in paragraph (1) shall include—

- (a) as respects the specified person, the details set out in paragraph (3),
- (b) as respects each payee to whom the specified person makes a relevant payment, the details set out in paragraph (4), and
- (c) as respects the relevant payment, or the aggregate of the relevant payments, made by the specified person to the payee, the details set out in paragraph (5).

- (3) The details relating to the specified person are—
- (a) the specified person’s name,
  - (b) the address of the specified person’s registered office, and
  - (c) the specified person’s tax reference number.
- (4) The details relating to the payee are—
- (a) the payee’s name,
  - (b) (i) in the case of an individual—
    - (I) his or her address—
      - (A) as established for the purposes of Chapter 3A of Part 38 of the Principal Act, if applicable, or
      - (B) as determined for the purposes of section 32 of the Criminal Justice Act 1994 (No. 15 of 1994) or Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No. 6 of 2010), as appropriate,

but if neither (A) nor (B) applies, the address on record, and
    - (II) his or her date of birth if on record,
  - (ii) in the case of a company or other payee required by law to maintain a registered office, the registered office of the company or other payee if on record, or
  - (iii) in any other case or if the registered office referred to in clause (ii) is not on record, the payee’s address as determined for the purposes of section 32 of the Criminal Justice Act 1994 or Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as appropriate,
- and
- (c) (i) in the case of any relevant payment made in respect of an investment made on or after 1 January 2013—
    - (I) the payee’s tax reference number, or, in the case of a charity, the reference number assigned to that person by the Commissioners and known as the charity (CHY) number, or
    - (II) in the absence of such a number, an indication to that effect,

or

- (ii) in the case of any other relevant payment—
  - (I) where the payee is a company, the tax reference number if available to the specified person,
  - (II) where the payee is a charity, the reference number assigned to that charity by the Revenue Commissioners and known as the charity (CHY) number, or
  - (III) in the absence of such a number, an indication to that effect.
- (5) The details relating to the relevant payment or the aggregate of the relevant payments, as the case may be, are—
  - (a) either—
    - (i) the investment number associated with the investment relating to the relevant payment or the aggregate of the relevant payments, as the case may be, or
    - (ii) where there is no investment number associated with the investment, information capable of identifying the investment giving rise to the relevant payment or the aggregate of the relevant payments, as the case may be,
  - (b) the amount of the relevant payment or the aggregate amount of the relevant payments, as the case may be, made to the payee, and
  - (c) where a payment referred to in paragraph 3 of Schedule 2 is not an excepted payment by reason of paragraph (b) of the definition of “excepted payment”, an indication to that effect.
- (6) (a) In the case of an investment made by 2 or more persons jointly, this Regulation shall apply as if each person’s entitlement to a portion of the relevant payment were itself a relevant payment, and for this purpose the amount of each person’s entitlement shall be—
  - (i) in a case where the specified person knows the respective entitlements of each of the parties to the payment, the amount of the person’s entitlement, or
  - (ii) in any other case, be an amount equal to the relevant payment.
- (b) Where this paragraph applies, the information to be returned under this Regulation in accordance with subparagraph (a) shall include—
  - (i) an indication that the relevant payment is part of an investment made by 2 or more persons jointly and whether the amount of the relevant payment is derived from clause (i) or (ii) of subparagraph (a), and
  - (ii) if known, the number of persons who are party to the investment.



(7) Where a specified person makes a relevant payment to a payee it knows is the beneficial owner of the payment, the information to be returned under this Regulation in respect of that payment shall include an indication that the person in receipt of the payment is the beneficial owner of the payment.

(8) Returns made under this Regulation for a tax year shall be sent to the appropriate Revenue officer at the office of Planning Division.

*Time by which returns are to be made*

5. Returns under these Regulations shall be made not later than—

- (a) as respects returns made for the tax year 2011, 30 September 2012, and
- (b) as respects returns made for the tax year 2012 and each subsequent tax year, 31 March in the tax year immediately following the year for which the return is to be made.

*Obligation to obtain and to provide tax reference numbers*

6. (1) Subject to paragraph (2), as respects any investment made on or after 1 January 2013—

- (a) a specified person shall make all reasonable efforts to obtain from a person who makes the investment (in this Regulation referred to as the “customer”) that person’s tax reference number, if any, and
- (b) the customer shall provide to the specified person that customer’s tax reference number, if any.

(2) Paragraph (1) shall not apply as respects any investment under which a payment mentioned in Schedule 2 will be made.

(3) The provisions of this Regulation apply as respects the manner in which the obligations set out in paragraph (1) are to be fulfilled.

- (4) (a) Any application or other form (including a form to be completed electronically) given or provided to a customer by a specified person, or a person acting for a specified person, for the purpose of making an investment with the specified person shall require the customer to record the tax reference number, if any, of the beneficial owner at an appropriate location on the form.
- (b) Where a customer is making an investment with a specified person and the customer is not required to complete a form for the purposes of making the investment, the specified person, or any person acting for the specified person, shall request the customer to provide the customer’s tax reference number, if any. Any form or other record (including any electronic form or other record) used by the specified person, or the person acting for the specified person, to record personal or other details relating to the customer shall include provision for the recording of the customer’s tax reference number on the form at an appropriate location on the form.

(5) (a) A specified person shall verify a customer's tax reference number by reference to any document on which is printed, in addition to the customer's tax reference number—

(i) the customer's name and address as established for the purposes of Regulation 4(4),

(ii) the customer's name and address of employment or self employment, or

(iii) the customer's name and the name of the customer's employer,

other than on a document which, in the opinion of the specified person or an employee of the specified person, appears to have been altered in such a way as to cast doubt on the veracity of the tax reference number quoted on the document.

(b) A specified person shall retain a copy of the document used to verify the tax reference number of a customer entered on any application or other form used in connection with an investment by the customer for a period of 5 years after the relationship between the specified person and the customer has ended.

(6) Where a customer, at the time of the making of an investment, fails to provide a tax reference number or a document verifying a tax reference number, the obligation of a specified person under this Regulation to obtain or verify, as the case may be, the customer's tax reference number shall be regarded as fulfilled if—

(a) the specified person has made, in respect of the investment made by that customer, a report under Chapter 4 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, or

(b) where for any reason such a report has not been made by the specified person, the specified person includes in the return to be made under Regulation 4 an indication to the effect that no tax reference number, or document verifying the tax reference number, has been provided by the customer.

(7) Where an investment is made by 2 or more persons, this Regulation shall apply as if each party to the investment made a separate investment in that person's own right.

(8) The specified person shall use the tax reference number obtained under this Regulation only for the purpose of including it in the return to be made under Regulation 4 and for no other purpose.

*Inspection of books, etc., and provision of information and assistance*

7. (1) Any Revenue officer may by notice in writing require a specified person to furnish him or her within such time, not being less than 14 days, as may

be provided by the notice, with such information (including copies of any relevant books, records or other documents) as he or she may reasonably require for the purpose of determining whether information contained in a return under these Regulations by the specified person is correct and complete.

(2) Where an authorised officer in exercising or performing his or her powers and duties under subsection (6) of the Principal section has reason to believe that information—

(a) included in a return was not correct and complete, or

(b) not included in a return was incorrectly not so included,

then the authorised officer may make such further enquiries as are necessary to establish whether or not the information concerned was, in fact, not correct and complete or incorrectly not so included.

(3) An authorised officer may require a specified person or an employee of a specified person to produce books, records or other documents and to provide information, explanations and particulars and to give all assistance which the authorised officer may reasonably require for the purpose of the powers and duties conferred on him or her by subsection (6) of the Principal section and, as the case may be, enquiries under paragraph (2).

(4) An authorised officer may require an associated company in relation to a specified person or an employee of such an associated company to produce books, records or other documents and to provide information, explanations and particulars and to give all assistance which the authorised officer may reasonably require for the purpose of the powers and duties conferred on him or her by subsection (6) of the Principal section and, as the case may be, enquiries under paragraph (2).

(5) An authorised officer may make extracts from or copies of all or any part of the books, records or other documents or other material made available to him or her or require that copies of books, records or other documents be made available to him or her in exercising or performing his or her powers under subsection (6) of the Principal section and, as the case may be, under this Regulation.

#### *Delegation*

8. The Commissioners may nominate, in writing, any of their officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by them.

*Regulation 3.*

## SCHEDULE 1

An assurance company (within the meaning of section 891B of the Principal Act) being an insurance undertaking.

*Regulation 2.*

## SCHEDULE 2

1. Where the specified person is in possession of the declaration required by section 730E(2) (declarations relating to life policies of non-residents) of the Principal Act, to be made by the person who made the investment, any payment made by the specified person to that person in respect of that investment.

2. Where the specified person is not in possession of the relevant declaration as referred to in paragraph 1 of this Schedule, to be made by the person who made the investment, any payment made by the specified person to the following persons and bodies in respect of that investment:

- (a) persons in respect of whom the specified person is in possession of a written approval from the Commissioners under section 730D(2A) of the Principal Act and which has not been withdrawn;
- (b) a bank which is not resident for the purposes of tax in the State;
- (c) a building society which is not resident for the purposes of tax in the State but which is resident for the purposes of tax in another Member State;
- (d) a company or any other entity quoted on a recognised stock exchange in a territory outside the State where the specified person making the payment is satisfied that the company or entity is not resident for the purposes of tax in the State;
- (e) those bodies listed in Appendix III, paragraph 11.2, of the document entitled "Deposit Interest Retention Tax Guidance Notes for Deposit Takers" made available by the Commissioners to deposit takers and effective from January 2006 or listed in a corresponding list in any subsequent version of that document, where the bodies concerned are resident for the purposes of tax in a territory with which an agreement under section 826 (agreements for relief from double taxation) of the Principal Act has been entered into and where the specified person is satisfied—
  - (i) that the bodies concerned are not resident for the purposes of tax in the State, and
  - (ii) at the time the investment is made, that the investment will be for a period of less than 3 months.

3. Any payment made by reason of death or disability on a policy but only in respect of the amount of such payment which equates to the excess of the value of the policy or, as the case may be, the interest therein, immediately after the date of death or disability over the surrender value of the policy immediately before that time.

4. Any payment made in respect of any commercial paper issued by a specified person which qualifies for the treatment provided for by section 246A (interest in respect of wholesale debt instruments) of the Principal Act.

5. Any payment made in respect of any medium term note but only where either of the following conditions apply in respect of the medium term note concerned:

- (a) the conditions set out in Appendix III, paragraph 11.1, of the document entitled “Deposit Interest Retention Tax Guidance Notes for Deposit Takers” made available by the Commissioners to deposit takers and effective from January 2006;
- (b) the same or corresponding conditions set out in any subsequent version of that document.

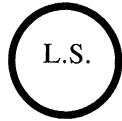
6. Any payment made to—

- (a) a pension scheme,
- (b) an approved retirement fund or an approved minimum retirement fund,
- (c) a PRSA provider,
- (d) a resident bank, a building society, a credit union, or the Post Office Savings Bank,
- (e) the National Treasury Management Agency or the State acting through the National Treasury Management Agency,
- (f) the National Asset Management Agency,
- (g) the National Pensions Reserve Fund Commission, a Commission investment vehicle, or the State acting through the National Pensions Reserve Fund Commission or through a Commission investment vehicle.

7. Any payment made in respect of a debt on a security issued by a specified person and listed on a stock exchange.

8. Any payment made in respect of an investment held by a specified person outside the State.

The Minister for Finance consents to the making of the foregoing Regulations.



GIVEN under my Official Seal,  
12 December 2011.

MICHAEL NOONAN,  
Minister for Finance.

GIVEN this 13th day of December 2011.

MICHAEL O'GRADY,  
Revenue Commissioner.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation).*

These Regulations, which give partial effect to the provisions of section 891B of the Taxes Consolidation Act 1997 (inserted by section 125 of the Finance Act 2006), are made by the Revenue Commissioners, with the consent of the Minister for Finance, and provide for the automatic annual reporting by assurance companies of any payments made by them in the year 2011 and subsequent years in respect of investment policies.

The details to be reported include the name, address, date of birth (if an individual) and amount of the payment. For new investments made on or after 1 January 2013 the details to be reported will also include the tax reference number or, in the absence of the number, a special marker indicating that this was not provided.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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