

# **Third Party Returns Settlements Involving Non-Resident Trustees**

**Revenue**



**Revenue Guidance Note - March 2009**



## Revenue Guidance Note

### Returns by Third Parties in relation to Settlements involving Non-Resident Trustees Section 896A TCA 1997 [as inserted by section 93 Finance (No. 2) Act 2008]

#### I. Introduction

Section 93 Finance (No. 2) Act 2008 inserts a new reporting requirement at section 896A of the Taxes Consolidation Act 1997 and requires returns to be made by Third Parties in relation to settlements involving non-resident trustees. The section obliges the delivery to Revenue of information by a Third Party who, in the course of a trade or profession carried on by that Third Party, has been concerned with the making of a settlement and knows or has reason to believe that, at the time of the making of the settlement –

- (a) the settlor was resident or ordinarily resident in the State, and
- (b) the trustees of the settlement were not resident in the State.

The information to be delivered in respect of each settlement is –

- (i) the name and address of the settlor,
- (ii) the names and addresses of the persons who are the trustees of the settlement, and
- (iii) the date on which the settlement was made or created.

The onus is on the Third Party to deliver the information without any prompting or request from Revenue and the return must be made within the time limits mentioned below.

The return form [**Form 8-S**] may be used for the purpose of making a return.

#### 2. Delivery of Returns & Time Limits

The **delivery of returns & time limit** requirements are as follows –

- in the case of a settlement made in the 5 year period between 24 December 2003 and 23 December 2008, the return is due **on or before 24 June 2009** - however, in order to facilitate return compliance requirements the time limit for delivery of returns is extended to 1 September 2009
- in the case of a settlement made on or after 24 December 2008, the return is due **within 4 months of the date of the making of the settlement**
- the returns should be sent to:

**Office of the Revenue Commissioners  
Special Projects Team  
5th Floor, Lansdowne House  
Lansdowne Road  
Ballsbridge  
Dublin 4**

The returns may be sent electronically by secure email to: **specialprojects@revenue.ie**. Information on how to register for secure email is available at: <http://www.revenue.ie/en/online/secure-email.html>.

The contact numbers for the Special Projects Team are:

**tel: [01] 6329489 & [01] 6329546 and fax: [01] 6329586.**

### 3. Third Parties obliged to make returns

The reporting requirements apply to any person who, in the course of carrying on a trade or profession, has been concerned with the making of a settlement and who knows or had reason to believe, at the time of the making of the settlement, that the settlor was resident or ordinarily resident in the State and the trustees were not Irish resident. A person “concerned with the making of a settlement” would include a Third Party who:

- is engaged or involved in the making of the settlement
- facilitates or arranges the making of the settlement
- provides services to or for a settlor or trustee in the making of the settlement
- is involved in or arranges the transmission of funds in relation to the settlement.

The categories of persons within the scope of the reporting requirements include, but are not limited to, solicitors, accountants, financial institutions, financial intermediaries, financial advisers, tax practitioners, trust service providers and companies.

The responsibility for making the return under section 896A rests with the sole practitioner / trader and in the case of partnerships, with the precedent acting partner and in the case of financial institutions, companies etc, with the secretary.

### 4. Meaning of Settlement, Settlor and Non-Resident Trustee

**Settlement** and **settlor** have the same meanings respectively as set out in section 10 TCA 1997.

Under section 10 TCA 1997 **settlement** includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property.

A **settlor** under section 10 TCA 1997 means any person by whom the settlement was made. A person shall be deemed for the purposes of that section to have made a settlement if the person has made or entered into the settlement directly or indirectly and, in particular (but without prejudice to the generality of the preceding words), if the person has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

A **trustee** is regarded as not resident in the State unless the general administration of the settlement is ordinarily carried on in the State and the trustees or a majority of each class of trustees are for the time being resident in the State.

**Penalties** apply for failure to make a return or the making of a false return under section 896A of the Taxes Consolidation Act 1997.

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**Note:** The legislation at section 896A TCA 1997 also allows for an Authorised Officer to issue a notice in writing to any person, whom the Authorised Officer believes has information relating to a settlement, requiring the furnishing of such information.

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