

Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008 (S.I. No. 136 of 2008)

Guidance Notes for Financial Institutions

These notes are intended to provide guidance for banks, building societies, credit unions and Savings Banks on how to operate certain aspects of the above regulations on the return of interest and other similar payments to Revenue. The notes, by themselves, do not have the force of law, do not affect any person's legal rights nor do they provide, in all instances, a full statement of the law.

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1. INTRODUCTION

Legislative background

- 1.1 Section 891B of the Taxes Consolidation Act 1997 (as introduced by section 125 of the Finance Act 2006) provides for the making of regulations by the Revenue Commissioners, with the consent of the Minister of Finance, to require certain financial institutions, such as banks, investment funds and assurance companies, to make automatic annual returns electronically to Revenue of customers to whom they have made payments of interest and other profit type payments. Regulations under S.I No. 136 of 2008 entitled *Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008* were made on 6 May 2008 and provide for banks, building societies, credit unions and savings banks to report details of interest or similar payments made to customers to the Revenue Commissioners.
- 1.2 The purpose of these Guidance Notes is to set out Revenue's interpretation of certain aspects of the above legislation, which have been raised in consultations with various interested parties. The guidelines do not provide, in all instances, a full statement of the law. However, it is hoped that they will assist with the introduction of the new arrangements in relation to the reporting of interest and similar payments made to certain customers.

Revenue contacts

- 1.3 Where a financial institution requires further information on the issues raised in these guidelines, they may contact the Revenue Commissioners at the following address:

Incentives and Financial Services II Branch,
Corporate Business and International Division,
Stamping Building,
Dublin Castle,
Dublin 2.
Email: CBID-IFS2B@revenue.ie

For issues concerning the secure transfer of data please contact :

Information Management,
Planning Division,
Revenue Commissioners,
1st Floor Bishop's Square,
Redmond Hill,
Dublin 2.
Email: oped-3rdpartyreturns@revenue.ie

2. OVERVIEW

2.1 The substantive provision is contained in Regulation 5, which provides for the making of annual returns to Revenue by “specified persons” who make a “relevant payment” to a “payee” in a tax year. In general, there is an annual reporting threshold of €35 provided for in Regulation 4 and any payment that does not exceed this amount need not be reported. There is, however, an account-splitting provision which requires all first relevant payments of interest in respect of accounts opened on or after 1 January 2008 to be reported on. The return is to be made within the time specified in Regulation 6 and is a return of the aggregate of all such relevant payments in respect of that investment or account made in the tax year. There are also obligations on specified persons to seek and provide tax reference numbers for accounts opened on or after 1 January 2009 and these provisions are contained in Regulation 7. Inspection of the books and records of a financial institution by an authorised Revenue officer in connection with the reporting regime is dealt with in Regulation 8.

Specified Persons

2.2 A specified person is a financial institution that has to make a report under these regulations to Revenue. Such specified persons are outlined in Schedule 1 and relate back to the definition of “financial institution” in section 891B of the Taxes Consolidation Act 1997. The persons required to report include:

- licensed banks which are defined as persons who holds, or have held, a licence under section 9 of the Central Bank Act 1971
- a person referred to in section 7(4) of the Central Bank Act 1971. This would include a building society, credit union and the Post Office Savings Bank
- a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) which has been authorised by the Central Bank of Ireland to carry on business of a credit institution.

Relevant Payment

2.3 The term “relevant payment” defines the payments to be reported, by whom and for what years. This can be summarised as follows:

- 2005 and 2006 (banks, building societies and savings banks): Any payment of interest (the meaning here is limited to the DIRT legislation) from which DIRT has actually been deducted. This is to simplify the reporting requirements from these financial institutions for these years.
- 2007 (banks, building societies and savings banks): Any payment of interest as defined in the regulations, subject to some exceptions (see paragraph 2.4 below). This definition encompasses virtually all payments made or credited in respect of deposits and other similar forms of savings and investments whether held by individuals or others. This

also includes any interest-bearing current accounts. (See also paragraph 4.12 regarding transitional measures for the making of the return for 2007).

- 2008 (banks, building societies and savings banks): Any payment of interest (as outlined above for 2007). In addition, credit unions are required to report interest payments on deposit accounts.
- 2009 onwards (banks, building societies, savings banks and credit unions): Any payments of interest including dividend payments made by credit unions for periods ending after 31 December 2008.

For the purpose of the reporting regulations the tax year is the same as the calendar year.

Excepted payments

2.4 There are certain payments that are not regarded as relevant payments for the purposes of the regulations. These are set out in Schedule 2 of the regulations and can be summarised as follows:

1. Payments made in respect of SSIA's until maturity.
2. Payments where the entity holds a DIRT non-resident declaration made by the person who made the investment. This will be treated as satisfied where a declaration is held at the end of the year.
3. Payments to certain persons where the financial institution is not in possession of a DIRT non-resident declaration. These relate mainly to non-resident entities such as banks, building societies and listed companies or entities in certain circumstances together with bodies listed in Appendix III, para.11.2 of the DIRT Guidance Notes effective from January 2006.
4. Payments in respect of certificates of deposit or commercial paper, which qualifies for the treatment provided for under section 246A of the Taxes Consolidation Act 1997 (interest in respect of wholesale deposits paid gross of tax) where the payment would not already have been included in a return to Revenue under section 891 of that Act.
5. Payments in respect of medium term notes subject to certain conditions as outlined in Appendix III para.11.1 of the DIRT Guidance Notes effective from January 2006.
6. Payments made to certain resident entities i.e. to other banks, building societies, Post Office Savings Bank, NTMA, Central Bank, the Investment Compensation Company and the Pension Reserve Fund.
7. Payments made in respect of a debt on a security issued by a bank and listed on the stock exchange.
8. Payments by branches outside the State.

Any payment referred to in 1, 2, 3 or 6 above will only be an excepted payment if the financial institution is satisfied that the person to whom the payment is made is beneficially entitled to the payment while any payment referred to in 4 above will not be excluded if the financial institution is unable to identify the payment as falling within that category.

3. REPORTING OBLIGATIONS

- 3.1 Regulation 5 is the core of the new reporting regime. The financial institution that has to make the return is called a specified person in the regulations. The specified person is required to report certain details about a payee to whom they make a relevant payment. Certain details are also required in relation to the relevant payments being reported. Each separate investment (account) on which interest is paid must be reported separately. If there are no relevant payments made by a financial institution, there is no requirement to make a return for that year.

Reporting Threshold

- 3.2 The requirement to apply a threshold to any relevant payment to be reported is set out in Regulation 4. All accounts and investments that pay interest of more than €635 in aggregate in a year are to be reported and the amount to be included is the full amount rather than just the excess. This limit applies to each account or investment that a customer holds with a financial institution. In the case of joint accounts, the threshold applies to the aggregate payments on the account rather than the share to which each of the parties involved is entitled. Once the threshold is exceeded, a report will then be required for each party irrespective of the individual entitlements (see also paragraph 3.7 on joint accounts). If the payments are in a foreign currency both the threshold and the amount of such payments should be based on the rate of exchange applying at the year-end.

This threshold is subject to an anti account-splitting provision requiring interest paid or credited on all new accounts opened on or after 1 January 2008 to be reported in the first year that any such relevant payment is made. The report in such cases should show the aggregate payments made in that year regardless of the amounts involved.

Information relating to a specified person

- 3.3 The following information should be included in the report:
- The name of the specified person (i.e. the financial institution making the report)
 - The address of its registered office
 - The tax reference number of the financial institution, and
 - Contact details

Information relating to the payee

- 3.4 The payee is the person to whom the relevant payment is made. This is generally the customer of the financial institution, including a child, whose name appears on the account. What actually has to be reported to Revenue in such cases will depend on whether the payee is an individual and whether the account was opened on or after 1 January 2009 (see paragraph 4.1).

The following is a general summary of the details to be reported for each payee:

- Name of the payee,
- If the payee is an individual, the residential address as recorded by the institution and his/her date of birth if on record (there is no requirement for the financial institution to verify this date),
- If the payee is a company or other payee, the registered office (if required by law to maintain this) or, if not on the record, the payee's address as determined for the purposes of section 32 of the Criminal Justice Act 1994 (the Money Laundering provisions),
- Relevant payment details (see paragraph 3.5),
- Tax reference number data:-
 - For companies and charities there is a requirement to report the tax reference number or the charity number in all instances for all years (this requirement does not apply to other entities e.g. Pension Schemes).
 - If the payment is in respect of an account or investment opened on or after 1 January 2009, the payee's tax reference number (including the PPSN if an individual) or the charity number if a charity, or in the absence of these numbers, an indicator to that effect (see section 4 for obligations in this regard),
- All other relevant indicators i.e.
 - First relevant payments (for accounts opened on or after 1 January 2008),
 - No verified tax reference number (for account opened on or after 1 January 2009)
 - DIRT deducted
 - Joint accounts together with the apportionment between the joint account holders if applicable,
 - Non-beneficial owner

As a general point, the information that is required to be reported is what is held in a defined field on the computer system of the financial institution making the report. This, in particular, will apply to the date of birth data reporting requirements. The address field is what is held in the computer system when the report is being made.

Relevant Payment details

- 3.5 The details here relate to the relevant payment, or the aggregate of the relevant payments if more than one was made, on the account or investment during the year. These are:

- The account number of the investment, which should also include the sort code if it is part of the account number. If there is no account number, information capable of identifying the investment must be provided. This would generally be the serial or other identifying number. Sub-accounts should be treated as one account.
- The branch identifier (e.g. a sort code) even if it is included in the account number.
- The amount of the payment, or payments where more than one. This is the gross amount disregarding any DIRT or other tax that has been deducted.
- Where DIRT has been deducted for all or part of the year, an indication that such a deduction has been made.

Type of Payments to be reported on

- 3.6 The payment to be reported will be any return on an investment in the nature of interest or any amount paid in consideration of the making of an investment, including building society and credit union dividends. All such payments are regarded as interest for the purposes of the regulations and any reference to interest in these guidance notes should be regarded as including all these items unless they are specifically excluded.

Where interest is posted to an account less frequently than annually, then DIRT is calculated in accordance with section 260 TCA 1997. However, notwithstanding this, the interest to be reported in such instances is the amount that is actually paid or credited to the account in any particular year. Accordingly, interest accrued but not paid or credited to an account should not be reported for that tax year.

Exceptionally, interest on an investment may accrue on one account but be posted to another account. In such cases the account number to be reported is the one on which the interest has accrued.

In the instance where sub-accounts of an account exist then all payments for the sub-accounts and the account itself should be aggregated when making a report for a year or when considering whether the €35 threshold has been exceeded (sub-accounts here relates only to situations where the financial institution has control over the movement of funds between these accounts without reference to the account holder – otherwise it is a separate account).

Joint accounts/investments

- 3.7 Where an investment is made by two or more people (i.e. a joint account) then the threshold of €35 will apply to the aggregate payments made on the account in a year rather than to the share to which each of the parties involved is entitled. Once the threshold is exceeded, a report is then required for each party to the joint account irrespective of the individual entitlement (even if €35 or less). If the

entitlement is not known then the financial institution should attribute the full payment to each account holder.

The following details are to be included in the return for each party:

- Where the financial institution is aware of that person's entitlement that amount should be shown. Otherwise, it should treat everyone as entitled to the total payment(s) and report on that basis.
- An indicator as to whether the amount shown is the total for the account or just that person's respective entitlement.
- An indicator that it is a joint account/investment.
- The number of persons who are party to the investment if known.

It is acceptable to report only the year-end parties to an account even if other parties were account holders in the course of the year. In the case of client accounts what is to be reported is the name of the customer as it appears on the account in the computer record and all that customer's related details.

In the case where there is a joint account held by parties some of whom are resident and some of whom are non-resident all parties should be reported except where the non-resident parties are already being reported under the EU Savings Directive legislation requirements in Chapter 3A TCA 1997 or under the interest payments made by companies to non-residents reporting requirements in section 891A TCA 1997.

The customer in the case of a joint account, which is a client account, is the party that appears on the computer system of the financial institution concerned as the account holder and this is the person who is to be reported.

Partnership account

- 3.8 For accounts opened by partnerships, it will be sufficient to report only the partner details that are recorded on the computer system of the financial institution concerned. It is sufficient also to only report the tax reference number of the partnership in such cases.

The names and addresses to be returned for such an account are those recorded on the computer records of the financial institution concerned for that partnership account.

Non-beneficial owners / Intermediaries

- 3.9 There will be instances where payments are made to persons who are not, necessarily, the beneficial owner. Examples of these are accounts held on a nominee basis or denominated as "trust", "executor" or other similar accounts. In such

instances the return should only include the details for the person shown on the account and include an indicator to this effect if known. It is not necessary to give separate details of the beneficial owner.

Time limits for the delivery of returns

3.10 The schedule for submission of the returns is as follows:

<u>Tax Year of Payment(s)</u>	<u>Due Date</u>
2005 (1 January 2005 to 31 December 2005)	15 September 2008
2006 (1 January 2006 to 31 December 2006)	15 September 2008
2007 (1 January 2007 to 31 December 2007)	31 October 2008
2008	31 March 2009
2009 onwards	31 March of the following year

All returns are to be made electronically. Any issues in regard to the delivery of information should be addressed to:

Information Management,
Operations Policy and Evaluation Division,
Revenue Commissioners,
Ardilaun House,
St. Stephens Green,
Dublin 2.
Email: oped-3rdpartyreturns@revenue.ie

4. OTHER OBLIGATIONS

Obligation to seek tax reference numbers (including PPSNs) when opening new accounts on or after the 1 January 2009

- 4.1 Regulation 7 sets out the need for financial institutions to make all reasonable efforts to seek a tax reference number from any customer who opens a new account on or after the 1 January 2009. It is permissible for a financial institution to defer the seeking of the tax reference number until 1 July 2009 where its systems are not in a position to securely capture this data. In these circumstances, there will be no requirement for financial institutions to retrospectively seek tax reference numbers. It is important to note that the customer in this instance is the person in whose name the account is held and not the beneficial owner of the funds. While there is a requirement in Regulation 7 (4)(a) to seek the tax reference number of the beneficial owner of the funds (if known), this is only to apply where the customer and the beneficial owner are one and the same person. Application forms for opening new accounts should provide for the tax reference number. The tax reference number collected can only be used for the purpose of making a report to Revenue (see paragraphs 4.9 and 4.10 as regards penalties for any breaches of this provision). However, reference can be made on the account opening application form to ask the customer, if a company, whether the tax reference number provided can be used to apply for DIRT exemption. Only Irish Tax reference numbers should be reported. If the entity opening the account does not have a tax reference number no entry should be made in that field on the return. There is no requirement to obtain tax reference numbers for excepted payments (listed in paragraph 2.4).
- 4.2 There is a need to seek documentation from the customer to verify the tax reference number and a copy of such documentation should be retained (see paragraph 4.5 regarding acceptable documentation). The verification documentation is also acceptable to verify the address for money laundering purposes provided this would otherwise be acceptable and provided the customer agrees to this.
- 4.3 When a new account is opened on or after 1 January 2009, the documents used to verify the tax reference number must be held for 5 years after the relationship between the financial institution and the customer has ended (see paragraph 4.5 on verification of tax reference numbers). They can be stored in electronic format and paragraph 4.4 outlines storage and search guidelines. There are no penalties where a customer does not supply a tax reference number. The obligations of a financial institution will be regarded as fulfilled if an indication to that effect is included in the return or where a financial institution makes a suspicious transaction report under section 57 of the Criminal Justice Act 1994 provided all the surrounding circumstances suggest that such an approach is necessary (see paragraph 4.11 on suspicious transaction reporting).

Storage of tax reference number data

- 4.4 All tax reference number data (including the PPSN) may be stored at customer level. However it should not be possible to search using the tax reference number as the search criteria or part of the search criteria.

In addition, the tax reference number should not be shown as part of the customer's standard data. However, occasions where it can be shown include

- (a) at account opening,
- (b) if the tax reference number is being corrected,
- (c) during verification of the tax reference number,
- (d) where a scanned image of either the account opening form (or similar documentation) or the tax reference number verification documentation is being viewed, and
- (e) areas involved in reporting.

Subject to the above, a financial institution may retain tax reference number and related documentation in its computer records and there is only a need to get such data once. This tax reference number and verification documentation can be used again by a financial institution when opening another new account for the same customer in the future.

Tax reference number verification

- 4.5 The following documentation (original or copy) may be used to verify the tax reference number as required under regulation 7(5)(a):

- P60
- P45
- P21 Balancing Statement
- Payslip (where employer is identified by name or tax number)
- Drug payment scheme card
- European health insurance card
- Tax Assessment
- Tax Return Form
- PAYE Notice of Tax Credits
- Child Benefit Award Letter /Book
- Pension Book
- Social Services card

In addition, any printed documentation issued by the Revenue Commissioners or by the Department of Social and Family Affairs which contains the person's name, address and tax reference number will also be acceptable.

There is no expiry period for any of the above documentation.

Existing procedures for corporate bodies (i.e. companies, charities) for DIRT-exemption purposes may continue to apply and the tax reference number given should be treated as verified for the purpose of the reporting regulations.

All tax reference numbers (verified and unverified) should be included in the return. If the system can readily identify whether the tax reference number is verified or not, the indicator should be set if unverified.

The address on the account does not have to match the address contained in the documentation that is used to verify the tax reference number. The format of a tax reference number is seven numbers followed by one or, in some instances, two letters (check characters).

Existing tax reference numbers already supplied for other tax purposes

- 4.6 Tax reference number data for individuals should only be reported for new accounts opened on or after 1 January 2009. Under no circumstances should the tax reference number be provided for individuals for accounts that were opened prior to 1 January 2009. In the circumstances where an existing account, for example a current account which was opened prior to 1 January 2009, commences to pay interest there is no requirement for the financial institution to seek or report a tax reference number for such an account.

Where an existing customer opens a new account on or after 1 January 2009 the tax reference number can be stored at customer level but it can only be included in a report for accounts opened on or after 1 January 2009 - not for pre-2009 accounts.

Under no circumstances should a tax reference number that was collected for other tax purposes (such as the opening of a SSIA account, DIRT-exempt accounts for over 65s/incapacitated or TRS) be used in connection with these current regulations. Tax reference numbers collected in such circumstances should only be used for the purposes for which they were intended.

Intermediaries and tax reference numbers

- 4.7 The regulations require that an intermediary who acts for a financial institution, but who does not hold deposits themselves, should seek the tax reference number from a customer when opening a new account – a customer is any person who makes an investment with a financial institution and is the person to whom the funds will be given when the account is closed. In such circumstances the intermediary should pass on the tax reference number information to the financial institution.

Change of account number

- 4.8 In general, a change of account number will be regarded as a new account. However, where an account number changes in the process of the bank upgrading its Information Systems or in other necessary circumstances, it is not to be treated as a new account. Therefore, in such circumstances, there is no need to seek tax reference number details. In addition, the €635 threshold rule can be applied as if the account number had not changed.

Penalties

- 4.9 Section 891B (7) TCA 1997 contains a number of penalty provisions which relate to the specified person (i.e. the financial institution). In general penalties are applied in three broad categories of issues, which are:
- Failure to deliver a return or when an incorrect or incomplete return is made,
 - Failure to comply with the requirements of the regulations, or
 - Non-compliance with a Revenue officer in the exercise or performance of that officer's powers or duties.
- 4.10 Particular attention is drawn to the need to ensure that no misuse of any data collected for reporting purposes by a financial institution occurs. This is of particular importance in the context of the PPSN data that will be collected on and after 1 January 2009 and, in this context, it is important to note the provisions of Regulation 7(8) which states that a specified person shall only use the tax reference number obtained under the regulation for the purpose of including it in a return to be made under Regulation 5 and for no other purpose. If, Revenue auditors detect abuses in the exercise of their powers under Regulation 8 to inspect the books and other records of a financial institution, then the provisions of Section 891B (7) TCA 1997 will be applied as required.

Suspicious Transaction Reporting

- 4.11 Under money laundering regulations, designated bodies and persons must report to An Garda Síochána and the Revenue Commissioners **any suspicion** that a money laundering offence has been, or is being, committed in relation to their business (including the laundering of the proceeds of tax evasion).

Transitional measures and section 891/894 TCA 1997

- 4.12 A specified person may have included payments made in 2007 or 2008 (or in part of those years) in a return under section 891 of the Taxes Consolidation Act 1997 (as applied by section 894) which, would, but for Regulation 9, also have to be included in a return made under these regulations. While subsection (9) of section 891B of the TCA 1997 makes it clear that a return under section 891 is not required where a payment is included in a return under these regulations to avoid double reporting, a specified person may include the payment twice if it is more convenient to do so because of systems development issues. This will be acceptable for 2007 even after the signing of the regulations on 6 May 2008 provided such a report is made to Revenue by 31 October 2008 and provided it is in a suitable electronic format.

A specified person making a relevant payment can satisfy its legal requirements under section 891B of the TCA 1997 for 2007 by filing a combination of returns

under section 891 and 891B of the TCA 1997 provided that the return under section 891 is submitted electronically to Revenue by 31 October 2008. Any difficulties encountered by financial institutions in this regard should be referred to Revenue as outlined at paragraph 4.13 below.

Revenue office for receipt of returns

4.13 The annual return is to be made electronically to Revenue as follows:

Information Management,
Operations Policy and Evaluation Division,
Revenue Commissioners,
Ardilaun House,
St. Stephens Green, Dublin 2.
Email: oped-3rdpartyreturns@revenue.ie