

# **INVESTMENT UNDERTAKINGS**

## **GENERAL GUIDELINES FOR CALCULATING TAX DUE AND FOR COMPLETING DECLARATION FORMS**

These notes do not have the force of law and do not affect any person's right of appeal. Nor are they, in all instances, a full statement of the law as it applies, or has applied, to investment undertakings. Investment undertakings should refer to the relevant legislation where appropriate.

Unless stated to the contrary, all statutory references are to the Taxes Consolidation Act, 1997.

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## **1. Introduction**

Chapter 1A, Part 27 – sections 739B to 739H and Schedule 2B Taxes Consolidation Act, 1997, which was introduced by Section 58 of the Finance Act, 2000 provides a gross-roll-up taxation regime for investment undertakings.

The general thrust of the regime is that there is no annual tax on income or gains arising to a fund. However, the fund is responsible to deduct tax in respect of payments made to certain unit holders in a fund. Where tax is deducted by a fund the deduction represents a final liability to Irish tax for unit holders who are individuals. In the case of Irish resident corporates who have suffered tax on payments, other than on redemption, from a fund, the amount that they receive is treated as a net annual payment, grossed up accordingly and taxed, with credit given for the tax withheld by the fund.

## **2. Commencement of “ gross roll-up regime”**

The tax regime applies –

- from 1 April, 2000 to IFSC funds which were in existence on 31 March, 2000; and
- from the date of first issue of units by any fund, IFSC or domestic, where that issue took place on or after 1 April, 2000. Non-IFSC funds (i.e. domestic funds), which were in existence prior to 1 April 2000, do not come within this regime. These domestic funds continue to be taxed annually on a measure of income and gains accruing to the fund.

## **3. Categories of funds to which the “gross roll-up” regime applies**

The “gross roll-up” regime applies to certain categories of collective investment funds that fall within the definition of “investment undertaking”. These are: -

- a unit trust scheme that is or is deemed to be a currently authorised unit trust scheme under the Unit Trusts Act, 1990 but not special investment schemes as defined in section 737 or “exempt unit trusts” as defined in section 731(5)(a). Exempt unit trusts do not come within the terms of the new regime because they are not authorised and are not deemed to be authorised. However, an exempt unit trust can come within the terms of the regime if it becomes authorised;

- undertakings for collective investment in transferable securities (UCITS) authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989;<sup>1</sup>
- certain authorised investment companies within the meaning of Part XIII of the Companies Act, 1990;
- investment limited partnerships within the meaning of the Investment Limited Partnership Act, 1994; and
- certain wholly owned companies of an investment undertaking categorised above.

The “gross roll-up” regime does not apply to offshore funds within the meaning of section 743, as they do not fall within the definition of “investment undertaking”.

#### **4. Deduction of tax by the investment undertaking**

##### **4.0 Registration of the investment undertaking for tax**

All investment undertakings should register for investment undertaking tax by contacting the Large Cases Division of Revenue and providing the following information:

##### **If already registered for another tax -**

The information below can be sent via fax or email to Fax number +353 1 6341977 or by email to John.OBrien2@revenue.ie.

- The current Tax Registration Number
- The full name of the investment undertaking
- Confirmation that the investment undertaking is an investment undertaking as defined in section 739B
- Date of authorisation of the investment undertaking.
- Date the Business Activity commenced
- Name and Address of Responsible Party or Person.

##### **If *NOT* already registered for another tax -**

The information below must be sent by post to Customer Service Unit, Large Cases Division, Setanta Centre, Nassau Street, Dublin 2 (marked “F.A.O. AP in charge”):

- Pages 1 and 2 of Form TR1 or Form TR2
- Name, Address and Contact details of Responsible Party or Person.

##### **4.1 When must the investment undertaking deduct tax ?**

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<sup>1</sup> Chapter 1A, Part 27 TCA 1997 (Investment Undertakings) does not apply to UCIT CCFs which are constituted under contract law where all of the investors are pension funds or investors other than individuals. In such a

In general, tax must be deducted on the occurrence of a chargeable event. Such chargeable events happen: -

- on the making of a regular payment by a fund to a unit holder (e.g. an annual dividend) including where a payment is made on the death of a unit holder;
- on the making of any other payment by a fund to a unit holder (e.g. on redemption of units);
- on the transfer by a unit holder of his or her entitlement to units in a fund including where a payment is made on the death of a unit holder;
- on the appropriation or cancellation of units by a fund to discharge tax payable on a gain arising from a transfer of units by a unit holder;
- on the ending of an 8-year period beginning with the acquisition of a unit in a fund, and each subsequent 8-year period beginning when the previous one ends.

**Note:** A chargeable event also arose on 31 December, 2000 in relation to all unit holders of a fund that either commenced on or after 1 April, 2000 or was an existing IFSC fund on 31 March, 2000. In the case of investors in IFSC funds, the fund was not required to deduct tax but the investors themselves were liable for the tax. (*See paragraph 4.3.4*)

#### ***4.1.1 Personal Portfolio Investment Undertaking***

A personal portfolio investment undertaking (PPIU) is defined broadly as an undertaking where, the selection of the property of the undertaking was, or can be influenced by the unit holder or certain connected persons. A PPIU only arises where the undertaking has individual Irish investors in the undertaking. A fund will not be regarded as a PPIU if the opportunity to select the property concerned is widely available to the public at the time the property is actually available for selection by the investor. This wide availability must be evidenced in marketing or promotional material published by the fund. To ensure that the exceptions cannot be exploited and the additional charge (23% up to 31 December 2008; 26% between 1 January 2009 and 7 April 2009; and, 28% with effect from 8 April 2009) avoided, some additional requirements apply.

These additional requirements are that –

- the fund must deal with everyone interested in selecting the property on a non-discriminatory basis, and

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situation the profits that arise to the UCIT CCF will be treated for tax purposes as arising to the investors.

- where the property to be selected is primarily land and buildings and the fund is seeking to raise a pre-determined amount in investments each investment made by the individual is limited to 1% of the amount being sought by the fund.

The wording of section 739BA(2) referring to ‘in relation to an investor’ applies on an investor by investor basis and the provisions do not operate to taint the investment undertaking itself and all its unit holders merely because one or more of the investors was involved in the selection of the property.

The provisions of subsection (2) of section 739BA essentially apply where the investor or a person connected with the investor or acting on behalf of the investor is able to select some or all of the assets in which the fund invests. If a fund is a PPIU under this rule, subsections (4), (5) and (6) of section 739BA of the TCA 1997 provide for some exceptions. These include a case where, at the time that the property was available to be selected, the opportunity to select was available to the public.

In looking at availability to the public, Revenue would not take the view that a manager or director of a fund who invests in the fund and who might have had a role in selecting assets for the fund comes within the provisions so long as the fund is a public one and the director’s or manager’s holding in it is comparable with the investment held by other unit holders in the fund. If this was not the case, then the holding by the director/manager could be regarded as a holding in a PPIU.

## **4.2 Exceptions to the requirement to deduct tax**

Tax need not be deducted by an investment undertaking in the following circumstances: -

### **4.2.1 *Switching units***

Tax is not required to be deducted on an exchange of units by a unit holder between sub-funds of an umbrella fund where no payment is made to the unit holder. A similar treatment applies for switching between different classes of units/shares of a fund.

#### ***4.2.2 Units in a recognised clearing system***

Tax is not required to be deducted if units are held in a recognised clearing system. The Revenue Commissioners have designated the following systems for clearing units as recognised clearing systems: -

- Clearstream Banking AG (formerly Deutsche Borse AG)
- Clearstream Banking SA (formerly Cedel Banking SA)
- CREST
- Euroclear
- National Securities Clearing Corporation
- Sicovam SA
- SIS Sega Intersettle AG
- Netherlands Centraal Instituut voor Giraal Effectenverkeer B.V. (NECIGEF)
- Monte Titoli
- Deutsche Bank AG, Depository and Clearing System
- Central Moneymarkets Office
- Depository Trust Company of New York
- The Canadian Depository for Securities Ltd
- VPC AB (Sweden)
- Japan Securities Depository Center

It should be noted that where an Irish resident individual acquires units in an investment undertaking which are held in a recognised clearing system, that investor will be subject to exit tax as set out in the follow table:

Where the chargeable event occurs -	<b>Before 1<sup>st</sup> January 2009</b>	<b>Between 1<sup>st</sup> January 2009 and 7<sup>th</sup> April 2009</b>	<b>On or after 8<sup>th</sup> April 2009</b>
<b>Relevant payment</b> (i.e. regular payment made annually or at shorter intervals)	standard rate of income tax (currently 20%)	standard rate of income tax (currently 20%) plus 3%	25%
<b>Non-regular payment</b>	standard rate of income tax (currently 20%) plus 3%	standard rate of income tax (currently 20%) plus 6%	28%
<b>Disposal</b>	standard rate of income tax (currently 20%) plus 3%	standard rate of income tax (currently 20%) plus 6%	28%

*Further details regarding the rate of tax applicable - for example, in the case of a personal portfolio investment undertaking (PPIU) or in cases where the details of the payment or disposal are not correctly included in a timely tax return by the individual to his/her own tax district - are included at section 4.3.3 below.*

#### **4.2.3 The transfer of units between spouses**

The transfer by a unit holder of his/her entitlement to units in a fund will not give rise to a chargeable event where the transfer is between husband and wife or between spouses where the transfer is by virtue of an order made following the granting of a divorce or a judicial separation recognised as valid in the State.

#### **4.2.4 Certain resident entities**

Tax is not required to be deducted if units are held by the following entities and the fund is in possession of an appropriate declaration at the time that the chargeable event occurs (*see paragraph 8.2 below*). The entities are: -

- pension schemes;
- life assurance companies;
- another investment undertaking;
- special investment schemes;

- exempt unit trusts as defined in section 731(5)(a);
- charities;
- qualifying management companies, as defined in section 739B(1), as substituted by section 31(1)(a), Finance Act 2010;
- approved retirement funds, approved minimum retirement funds<sup>1</sup>;
- a PRSA administrator;
- a credit union within the meaning of section 2 of the Credit Union Act 1997;
- companies that are within the charge to corporation tax in the case of money market funds;
- The National Asset Management Agency;
- the National Pensions Reserve Fund Commission; and
- a securitisation company within the meaning of section 110 TCA 1997.

It should be noted that although these entities are exempted from the deduction of tax at source by the fund in the circumstances outlined above, a liability to tax may nevertheless arise for some of the entities concerned.

#### ***4.2.5 The Courts Service***

Where funds which are held under the control or subject to the order of any Court are used to acquire units in an investment undertaking, payments from the investment undertaking to the Courts Service in respect of these units can be made without deduction of the exit tax. In addition the Courts Service will not be subject to exit tax in respect of a transfer of units resulting solely from the changing of investment managers. However, the Courts Service will be required to operate the exit tax when they allocate those payments to the beneficial owners.

#### ***4.2.6 Non-resident unit holders as at 31 March, 2000***

Tax is not required to be deducted in respect of unit holders in IFSC funds that were in existence on 31 March, 2000, where the investor was not resident in Ireland and had invested in the fund on or before 31 March, 2000, provided that: -

- the IFSC fund had made a declaration to the Collector-General, on or before 30 June, 2000, confirming the non-resident status of the unit holders in the fund, and

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<sup>1</sup> The Special Savings Incentive Accounts scheme is no longer in operation.

- the investor's name did not appear on the schedule that was to accompany the declaration to the Collector-General containing the names and addresses of all the Irish resident unit holders in the fund as at 1 April, 2000.

#### ***4.2.7 Non-resident unit holders after 31 March, 2000***

Tax is not required to be deducted in respect of the following non-resident unit holders provided that the fund is in possession of an appropriate non-resident declaration (*see paragraph 8.5 below*):-

- non-resident investors who invest for the first time in an IFSC fund which was in existence as at 31 March, 2000, and
- non-resident investors who invest in a fund set up on or after 1 April, 2000.

#### ***4.2.8 Reconstructions and amalgamations***

Tax is not required to be deducted on the cancellation of units where it is part of a reorganisation of investment undertakings and all of the assets and liabilities of one fund are transferred to another fund in exchange for the issue by that other fund of new units to the unit holders in the old fund (see next paragraph). This exemption also includes exchanges of units in one sub-fund of an umbrella fund for units in a sub-fund of another umbrella fund.

#### **Net Assets**

Revenue acknowledges that while Section 739H provides that “*all of its assets and liabilities*” of the “old undertaking” should transfer across to the “new undertaking”, from a legal perspective this rarely, if ever, would strictly occur in practice. Instead how an amalgamation or reconstruction typically works for legal and practical reasons (which is a feature distinct to common law jurisdictions) is that the net assets are transferred across to the new undertaking (subscription in-kind) with an amount of cash retained by the “old undertaking” to pay off certain liabilities such as termination expenses, outstanding services provider fees, legal/audit fees, etc, of the old undertaking. Should any cash amounts be left over when such expenses are subsequently paid off, then that remainder cash is typically transferred directly to the unit-holders (as existed at the effective date of the reconstruction & amalgamation). As there is no overall gain or loss for the unit-holders and the above is undertaken for legal and practical reasons, Revenue will regard the steps taken above as falling within the conditions as provided in Section 739H.

### **4.3 How much tax is deducted?**

The amount of tax to be deducted is calculated by applying a rate of tax to the gain arising on a chargeable event. There are special rules for calculating the amount of the gain and the rate of tax to be applied.

#### **4.3.1 What gain is taxed?**

The taxable gain arising on a chargeable event is: -

- the amount of the distribution, where the chargeable event is the making of an annual distribution to a unit holder;
- the amount of the payment less the cost of acquisition of the units, where the chargeable event is the making of a payment to a unit holder on the cancellation, redemption or repurchase of units;
- the value of the units concerned at the time of transfer less their cost of acquisition, where the chargeable event is the transfer of ownership of units;
- the amount of the tax due grossed up for tax payable at 28%, where the chargeable event is the appropriation or liquidation of units in order to pay the tax due as a consequence of such a transfer;
- the value of the units at the time less their cost of acquisition, where the chargeable event is deemed to happen on 31 December, 2000 (*but see paragraph 4.3.4*);
- where the chargeable event is the ending of an 8 year period, the value of the units at the time less their cost of acquisition;
- if the investment undertaking so elects, the value of the units at 30 June or 31 December prior to the date of the chargeable event.

#### **4.3.2 Cost of acquisition of units**

In general, for the purposes of calculating a gain on disposal of units held by an investor in an investment undertaking, whether a single fund or an umbrella fund, the average cost of units is used. However, the legislation gives an investment undertaking the choice of electing to use the first-in first-out (FIFO) basis. The basis used on the first occasion of a disposal by an investor of units in an investment undertaking is the basis that must be used by the investment undertaking for all other disposals by all investors. The average cost basis or FIFO basis applies whether an investor invests in a single fund or an umbrella fund.

Alternatively, in the case of an umbrella fund, an investment undertaking can apply the average cost basis or the FIFO basis as if each sub-fund of the umbrella fund were a single fund. However, since the investor in an umbrella fund is entitled to switch the investment between sub-funds of the umbrella fund without triggering a gain, it is necessary that the investment undertaking track the original cost of the units when such a switch occurs. Where the FIFO basis is being used such tracking is relatively simple. The example set out in *Appendix I(a)* shows how the tracking should be done where the average cost method is being used and each sub-fund of an umbrella fund is being treated as a single fund.

#### 4.3.3 *What tax rate applies to a gain arising on the happening of a chargeable event?*

Where the details are *correctly included* in a timely tax return to Revenue:

Where the chargeable event occurs -	Before 1 <sup>st</sup> January 2009	Between 1 <sup>st</sup> January 2009 and 7 <sup>th</sup> April 2009	On or after 8 <sup>th</sup> April 2009
<b>Relevant payment</b> (i.e. regular payment made annually or at shorter intervals)	Standard rate of income tax (currently 20%)	Standard rate of income tax (currently 20%) plus 3%	25%
<b>Non-regular payment</b>	Standard rate of income tax (currently 20%) plus 3%	Standard rate of income tax (currently 20%) plus 6%	28%
<b>Disposal</b>	Standard rate of income tax (currently 20%) plus 3%	Standard rate of income tax (currently 20%) plus 6%	28%
<b>PPIU</b>	Standard rate of income tax (currently 20%) plus 23%	Standard rate of income tax (currently 20%) plus 26%	Standard rate of income tax (currently 20%) plus 28%

Where the details are *not correctly included* in a timely tax return to Revenue:

Where the chargeable event occurs -	Before 1 <sup>st</sup> January 2009	Between 1 <sup>st</sup> January 2009 and 7 <sup>th</sup> April 2009	On or after 8 <sup>th</sup> April 2009
Not a PPIU	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate)
PPIU	Marginal rate (i.e. 20% or 41% as appropriate) plus 20%	Marginal rate plus 23%	Marginal rate plus 25%

#### 4.3.4 Chargeable event occurring on 31 December, 2000

As indicated at paragraph 4.1 above, a chargeable event occurred on 31 December, 2000 in two situations: -

- a liability arose for the fund in relation to investors who acquired units in the period from 1 April, 2000 to 31 December, 2000 and who had not made a declaration. The growth in value of their units from the date of acquisition to 31 December, 2000 was liable to tax at the rate of 40%;
- investors in IFSC funds as at 1 April, 2000 who were resident in the State and who had not made a declaration, were themselves liable to capital gains tax on the growth in value of their units from the date of acquisition to 31 December, 2000.

#### 4.4 Chargeable event occurring on the ending of an 8-year period

Finance Act 2006 introduced a new chargeable event and provides that a disposal of units is deemed to occur on the ending of an eight-year period following the acquisition of the units. The legislation applies to all units in investment undertakings acquired on or after 1 January 2001. Therefore such a chargeable event cannot occur before 1 January 2009.

##### 4.4.1 De Minimis limit

Section 39(1)(c), Finance Act 2008, amended Section 739E, by inserting a new subsection (2A), which provided that an investment undertaking will not have to deduct exit tax in respect of this deemed disposal where the value of the chargeable units (i.e. those units held by unit holders to whom the declaration procedures do not apply) in the investment

undertaking (or in the sub-fund within an umbrella scheme) is less than 10% of the value of the total units in the investment undertaking (or in the sub-fund) and the investment undertaking has made an election to report certain details in respect of each affected unit holder to Revenue (the “Affected Unit Holder”) in each year that the de minimis limit applies.

The investment undertaking shall determine whether or not chargeable units are less than 10% of the total units in an investment undertaking on 30 June, or another date that the fund at its discretion may choose (the “Calculation Date”) each year. On choosing to use a Calculation Date, such date is to be used consistently, unless the Calculation Date does not fall on a business day, in which case the calculation shall be made on the last business day prior to the Calculation Date. An investment undertaking is deemed to have made the election to report once it has advised the Affected Unit Holders in writing that it will make the required report.

#### ***4.4.2 Format of De Minimis Report***

The report to Revenue, which shall be made (before 31 March each year in respect of the previous year of assessment) to the tax district dealing with the investment undertaking’s tax affairs, shall be made on Form IU(3e) - **see link (below)** and shall contain the following details:

- a. Name of the investment undertaking;
- b. Tax Reference Number of the investment undertaking;
- c. Name and Tax Reference Number of the Affected Unit Holder;
- d. Account number of the Affected Unit Holder
- e. Address of the Affected Unit Holder; and
- f. Valuation of the total net asset value of the holding at the calculation date or at the end of the chargeable period.

**[Form IU\(3e\)](#) (PDF, 521KB) - Agreed format of the "De Minimis" Election by an Investment Undertaking Report - Section 739E(2A)(a)(ii), TCA 1997 refers.**

Although the fund does not have to deduct tax in the circumstances outlined above the Affected Unit Holder will be subject to tax on the gain arising on the deemed disposal and must include details of the gain in a timely filing of their income tax return to Revenue.

#### ***4.4.3 Valuation of units for the purposes of 8-year event***

An investment undertaking can choose to value the units at the date of the chargeable event itself or at the 30 June or 31 December prior to the date of the chargeable event. The fund may also choose to value the units that have reached their eighth anniversary all on the one day in the six month period i.e. on one day for the period ended 30 June and on one day for the period ended 31 December. Once the valuation date is chosen, such date is to be used consistently, unless the valuation date does not fall on a business day, in which case the calculation shall be made on the last business day prior to the valuation date.

For example, the fund could choose to value all units which have reached their eighth anniversary in the period 1 January 2009 to 30 June 2009 as at 25 June 2009. This should give the fund enough time to redeem units as required so that the tax can be collected from the fund for remittance to Revenue.

Once the election is made on the first occasion of an eight-year event it cannot be reversed.

Where units that have reached their eighth anniversary are sold during the same 6 month period, then there will be no requirement to calculate the deemed chargeable event in respect of such units.

#### ***4.4.4 Switches***

The fund may take the date of the switch as the acquisition date where the original acquisition date has not been tracked. **With effect from June 2009, the fund is now required to keep track of the original acquisition date or the last known switch date, depending on the information available.**

#### ***4.4.5 Inheritance of historical information***

Where the fund administrator has changed and the new fund administrator does not have all of the information with regard to the history of the units held by investors, the new fund administrator may rely on the information provided by the previous administrator in order to determine the acquisition date or the last known switch date, where relevant.

#### ***4.4.6 Offset of tax deducted***

Exit tax already paid in connection with the ending of an 8-year period may be set off against tax due on a subsequent chargeable event. Where an overpayment of tax arises after such set off, the excess is repaid by the investment undertaking to the unit holder. The investment undertaking reduces its next payment to Revenue by the amount repaid to the unit holder. If immediately before the subsequent chargeable event, the value of chargeable units in the investment undertaking (or in the sub-fund within an umbrella scheme) does not exceed 15% of the value of the total units, the investment undertaking (or sub-fund) may elect to have any excess tax arising repaid directly by Revenue to the unit holder. The investment undertaking is deemed to have made this election once it notifies the unit holder in writing that any repayment due will be made directly by Revenue on receipt of a claim by the unit holder.

#### ***4.4.7 Calculation of tax for the purposes of the deemed disposal calculations***

Appendix I(b) sets out an example of how the tax may be calculated for the purposes of the deemed disposal event under a weighted average cost basis.

## **5. Returns and payment of tax**

### **5.1 Returns to be made by all investment undertakings**

An investment undertaking must make a return of appropriate tax to the Collector General: -

- in connection with chargeable events occurring between 1 January and 30 June in a particular year, by 30 July of that year, and
- in connection with chargeable events occurring between 1 July and 31 December in a particular year, by 30 January of the following year.

The return should specify where there is no appropriate tax due for the period. Copies of these return forms are **issued automatically by Customer Services Section, Collector General's Office, based in Listowel, Co. Kerry**, once registration for investment undertaking tax, as set out at paragraph 4.0 above, has been completed.

Returns made by an investment undertaking may be subject to audit by Revenue through inspection of the records of the investment undertaking. An assessment can be raised if Revenue is dissatisfied with a return.

## **5.2 Payment of tax**

The payment of appropriate tax for the periods outlined at 5.1 above should accompany the return. An assessment can be raised if appropriate tax is not paid on time.

## **5.3 Correction of errors**

Generally, no refunds of tax incorrectly paid are available. However, where it can be proved to the satisfaction of Revenue that a return contains any amount of tax deducted in error, the Inspector can make any necessary adjustments or set-offs to secure correct liability of the investment undertaking. Such a situation could arise where a fund inadvertently deducts exit tax from a payment to a unit holder (e.g. where the payment is not regarded as a chargeable event) and includes the tax deducted in a return as appropriate tax.

In the circumstances where a fund deducts and pays over exit tax to the Collector General, but within one year of the making of the return, proves that the unit holder would not have been chargeable to exit tax had the fund been in possession of a declaration at the time of the chargeable event, such tax may be repaid to the unit holder. If such refunded amount (i) has already been paid to Revenue, the fund may adjust the next return to the Collector General to reclaim such refunded amounts from Revenue or (ii) has yet to be paid to Revenue, the fund simply excludes such refunded amounts from the next return. In the majority of cases the fund may make the refunds without recourse to Revenue. However, in cases where there is an element of doubt as regards the entitlement to exemption, the matter should be submitted to the Inspector of Taxes for clearance. Each fund must ensure that there is adequate documentation in place to support any refund made in correction of an error.

## **6. The Courts Service**

Where funds which are held under the control or subject to the order of any Court are used to acquire units in an investment undertaking, payments from the investment undertaking to the Courts Service in respect of these units can be made without deduction of the exit tax.

However, the Courts Service will be required to operate the exit tax when they allocate those payments to the beneficial owners. (Section 4 and 5 of these guidelines also apply to the Courts Service for the purpose of deducting the exit tax and returning appropriate tax to the Collector General).

## **6.1 Electronic Return**

In addition to the return to the Collector General, the Courts Service must also make a further return to the Revenue Commissioners on or before 28 February each year, in respect of each year of assessment, which:-

- Specifies the total amount of gains arising in respect of the units that the Courts Service has acquired; and
- Specifies in respect of each person who is or was beneficially entitled to those units:
  1. The name and address of the person (where available), and
  2. The amount of the gains to which the person has beneficial entitlement.

This return should be made in an electronic format which has been approved by the Revenue Commissioners.

## **7. Repayment of exit tax**

Exit tax must always be deducted from payments to investors with the exception of those referred to in paragraph 4.2. Apart from where errors are being corrected as outlined at 5.3 above the following persons may be entitled to repayment of exit tax provided the conditions outlined in the following sections of the Taxes Consolidation Act 1997, are satisfied: -

- a permanently incapacitated individual who is exempt from income tax under section 189 in respect of income arising from the investment of compensation payments in respect of personal injury claims;
- the trustees of a 'qualifying trust' within section 189A where the life policy is held as part of the trust fund (funds raised for the benefit of incapacitated individual(s) through public subscriptions) of the qualifying trust, provided that income from the trust or investment returns from investment of the trust funds is the sole or main income of the incapacitated individual;
- a thalidomide victim who is exempt from income tax under section 192 in respect of income arising from the investment of compensation payments made by the Minister for Health and Children or by the foundation Hilfswerk für behinderte Kinder.

The investment undertaking or Courts Service must deduct the exit tax in the normal manner, but the individual or trust may be entitled to a repayment of the tax. The tax can be reclaimed, where appropriate, when the tax return is submitted to Revenue.

## **8. Declaration forms/Equivalent measures**

The tax regime provides for a declaration procedure which, when complied with, may exempt certain investors from the deduction of tax on the occurrence of a chargeable event. A charge to appropriate tax shall **not** apply to an investment undertaking in respect of a unit holder where a valid declaration is in place prior to the occurrence of a chargeable event, **or, where exemption from this requirement to have a valid declaration in place has been given in writing by the Revenue Commissioners. The issue of such approval will be subject to the relevant investment undertaking putting in place appropriate “equivalent measures” in place of the declaration procedure. (S.739D(7B) 1997)** The “equivalent measures” are detailed in Appendix I(c). Any undertaking wishing to receive such approval should apply in writing to the Financial Services (Insurance & Investment Funds Unit), Setanta Centre, Nassau Street, Dublin 2, confirming compliance with the conditions set out in Appendix I(c) and enclosing a copy of the proposed application form for Units. Schedule 2B, TCA 1997, provides for declarations for various categories of investor and also details the content of those declarations. The texts of the various types of authorised declaration forms are contained in Appendix II. To facilitate the transition to the new declaration procedure Revenue agreed certain transitional arrangements.

### **8.1 Transitional Arrangements**

The transitional arrangements are outlined in Appendix III. The arrangements applied only to IFSC funds that were in existence at 31 March, 2000 and **where the fund’s application form included a requirement that the applicant declared that he/she was not resident in Ireland.** Revenue agreed that such an application form, including the declaration of non-Irish residence, would suffice for any new investors subscribing for units before 1 October, 2000. However, a condition of this agreement was that such funds were required to forward to the Collector General a form listing the names and addresses of all resident persons, if any, who were issued with units between 1 April, 2000 and 1 October, 2000. These forms were issued

from the Collector General's Office and should have been returned to that Office on or before 30 November, 2000. Investors subscribing on or after 1 October, 2000 for units in IFSC funds that existed at 31 March, 2000 must adhere to the declaration procedure provided for in the legislation.

Aside from these transitional arrangements, the declaration procedure set out in the legislation **must** be adhered to if tax is not to be deducted from payments to investors, **unless the conditions - detailed in Appendix I(c) are met** . The legislation requires that investors complete a declaration that has been authorised by the Revenue Commissioners.

## **8.2 Authorised declaration forms for resident investors**

The Revenue Commissioners have authorised a separate, single declaration form for use by each of the resident entities set out below:-

- a pension scheme;
- a life assurance company;
- an investment undertaking;
- a special investment scheme;
- an exempt unit trust within section 731(5)(a);
- a charity;
- a qualifying management company;
- an approved retirement fund, an approved minimum retirement fund or a PRSA administrator;
- a credit union.

As an alternative, a “resident entities composite declaration form” has also been authorised for inclusion in an application form that is used **at the time of subscription for units** by any of the above entities seeking to invest in a fund. (See *paragraph 8.5*)

Intermediaries acting on behalf of the above entities can complete a separate declaration form or the composite declaration form. (See *paragraph 8.9*)

### **8.3 Declaration not on Revenue authorised form**

The Revenue Commissioners are not required to authorise a declaration for use by:-

- an Irish corporate investing in a money market fund;
- a section 110 securitisation company;
- The National Asset Management Agency;
- the National Pension Reserve Fund Commission.

Payments by the fund to these entities can be paid without deduction of exit tax subject to the following:

- the company must provide the fund with its tax reference number (within the meaning of section 885);
- the company must declare to the fund that it is a company within the charge to corporation tax in respect of payments made to it by the investment undertaking;
- in the case of the National Asset Management Agency it must make a declaration to the fund to that effect; and
- in the case of the National Pensions Reserve Fund Commission it must make a declaration to the fund to that effect.

### **8.4 Authorised declaration forms for other investors**

Declaration forms have also been authorised for use by: -

- an intermediary within the meaning of section 739B(1),
- a person who at the time of acquiring units in a fund is neither resident nor ordinarily resident in the State, and
- a person who at the time of acquiring units in a fund was resident or ordinarily resident in the State but subsequently becomes neither resident nor ordinarily resident in the State.

As an alternative, a “non-resident composite declaration form” has also been authorised for inclusion in an application form that is used **at the time of subscription for units** by an intermediary or an investor subscribing on his/her own behalf. (See *paragraph 8.5*)

Following Finance Act 2001, a new declaration by the investment undertaking to the Collector General has been authorised for use where the assets of a unit trust, whose trustees

are neither resident or ordinarily resident in the State, are transferred to an investment undertaking in exchange for the issue by the investment undertaking of units to the unit holders of the unit trust (scheme of migration and amalgamation).

### **8.5 Composite declaration forms**

Revenue has agreed, subject to certain conditions, that the texts of the authorised resident entities composite form and the authorised non-resident composite form can be an integral part of an investment undertaking's application form.

Where the text of the **resident entities composite declaration** is included in the investment undertaking's application form the following conditions apply: -

- the text should be located beside that part of the application form requiring signature; (*see paragraph 8.8*)
- the application form should clearly identify the name and address of the person to whom the application form should be returned;
- the definition of 'intermediary' must be included in the prospectus which accompanies the investment undertaking's application form or in the application form itself. (*see Appendix IV*)

Where the text of the **non-resident composite declaration** is included in the undertaking's application form the following conditions apply:-

- the text should be located beside that part of the application form requiring signature; (*see paragraph 8.8 below*)
- the definitions of residence, ordinary residence, company residence and intermediary must be included in the prospectus which accompanies the investment undertaking's application form or in the application form itself. (*see Appendix IV*) Where the definitions are included in the application form, they must be located as close as possible to the declaration of non-residence;
- the application form should clearly identify the name and address of the person to whom the application form should be returned; and
- the name of the party to whom any changes in the unit holder's residence status should be notified must be clearly stated in the body of the non-resident composite declaration.

## **8.6 Foreign language**

The non-resident declaration may be translated into foreign languages on the understanding that the translations are done in good faith.

It should be noted that, in the context of the non-resident declaration, the terms “Ireland” or “Republic of Ireland” and the terms “not resident or ordinarily resident in Ireland” or “not resident or ordinarily resident in the Republic of Ireland”, may be used in the text of the declaration.

## **8.7 To whom should a declaration be made?**

Declarations should be made to the investment undertaking or to any person who is authorised to act on behalf of the undertaking, and does so on a regular basis. Revenue does not accept that this requirement is met if, for example, the declaration is made to a person who is merely providing investment advice or performing functions of an analogous nature. The investment undertaking or any person authorised to act on behalf of the investment undertaking must ensure that the person responsible for making payments from the fund to investors has access to completed declarations and also has access to the most up-to-date information about the investor’s circumstances (e.g. pension fund exemption, residence status etc.).

A person responsible for making payments from a fund to investors is required to deduct tax where a valid declaration has not been provided by an investor. In addition, **if that person has information that reasonably suggests that a declaration that has been provided to them is not materially correct or that the “non-resident” investor is resident or ordinarily resident in the State, tax should be deducted from the payment.**

## **8.8 Who should sign a declaration?**

Declaration forms must be signed by the person who is entitled to the units or by an intermediary as defined in section 739B(1) acting on behalf of such a person. (*See paragraph 8.9 for intermediaries’ obligations*) They may also be signed by a person who holds a power of attorney from the person entitled to the units and in such a case, a copy of the power of attorney must be furnished in support of the declaration. Where the person entitled to the

units is a company, the declaration must be signed by the company secretary or other authorised officer. In the case of an authorised officer, a copy of the resolution of authorisation should be obtained and retained by the person with responsibility for retaining declarations. The signature of the company secretary or authorised officer is required even in a case where the application form is executed under seal.

In addition to the foregoing, the following are also permitted to sign the declaration: -

- the administrator, in the case of an exempt pension scheme;
- the person carrying on the business of granting annuities, in the case of a retirement annuity contract to which sections 784 and 785 apply;
- the trustees, in the case of a trust;
- the trustees or other authorised officer of a body of persons or trust established for charitable purposes only within the meaning of sections 207 and 208, in the case of a charity;
- the secretary or other authorised officer (provided that a copy of the resolution of authorisation is obtained and retained), in the case of an unincorporated entity like a club or association.

Finally, apart from the parties set out above who are permitted to sign a declaration, a person, generally a parent or guardian, acquiring units on behalf of a minor child/incapacitated person may also sign a declaration of non-residence, subject to the following conditions: -

- the account is in the name of the minor child/incapacitated person;
- the units are owned solely by the minor child/incapacitated person;
- the person signing the declaration is declaring that the minor child/incapacitated person is non-resident.

## **8.9 Intermediaries**

As referred to in paragraph 8.8, an intermediary is permitted by the legislation to sign a declaration where they are acting for a non-resident investor who wishes to acquire units in a fund or on whose behalf they receive payments from a fund. Intermediaries are also permitted to sign a declaration on behalf of the following resident entities: -

- a pension scheme;
- a life assurance company;

- an investment undertaking;
- a special investment scheme;
- an exempt unit trust within the meaning of section 731(5)(a);
- a charity;
- a qualifying management company;
- an approved retirement fund, an approved minimum retirement fund;
- a credit union;
- an Irish resident company within the charge to corporation tax which invests in an investment undertaking that is a money market fund;
- the National Pensions Reserve Fund Commission; and
- a securitisation company within the meaning of section 110 TCA 1997.

An intermediary should only sign a declaration on behalf of a non-resident investor if, at the time of signing the declaration, they are satisfied that, to the best of their knowledge and belief, the person on whose behalf they are signing the declaration is not resident in Ireland and not ordinarily resident in Ireland, where that person is an individual. Additionally, an intermediary is required to advise the investment undertaking immediately they become aware that the person on whose behalf they have signed the declaration is resident, or ordinarily resident in the case of an individual, in Ireland. When signing on behalf of resident investors, intermediaries should satisfy themselves, where it is appropriate, as to the tax status of the investor e.g. tax exemption in the case of a pension fund or charity.

## **8.10 Form of declaration**

Schedule 2B, TCA 1997, requires that declarations be made in writing to the investment undertaking. There are two exceptions to the “in writing” requirement:

### ***8.10.1 Electronic version of declaration***

Where an investment undertaking accepts a completed application for units/shares in an electronic format from an investor and regards this electronic document as a legally binding contract, the Revenue authorised declaration, which is an integral part of the application form, will satisfy the requirements of the legislation, provided that the application form, including the declaration, is supported by electronic data which serve as a method of authenticating the purported identity of the investor. For this purpose, Revenue regards an electronic signature,

within the meaning of the Electronic Commerce Act, 2000, as providing assurance as to an investor's identity.

### ***8.10.2 Faxed declaration used to invest in Money Market funds***

It is understood that Money Market funds can be used by investors for very short-term (sometimes overnight) investment purposes. Industry practice is to accept a faxed version of an application for units/shares followed by the original copy of the application.

In recognition of the very exceptional circumstances which relate to Money Market funds investments, Revenue is prepared to allow an investment undertaking to operate on the basis of a faxed version of a declaration. It should be noted that this arrangement applies only in this very exceptional instance and is confined to the following classes of investor: -

#### Non-resident investors

- banks, building societies and companies carrying on life business,
- companies quoted on a recognised stock exchange, their subsidiaries and affiliates,
- pension funds and charities which are either regulated or registered with the appropriate authorities in their own jurisdiction, and,

where such a class of investor is located in:-

- an EU country, or
- a country with which a Double Taxation Treaty is signed.

#### Irish resident investors

- a company that is or will be within the charge to corporation tax under Schedule D Case I , Case III (in the case of Section 110 TCA 1997 companies) or Case IV.

The arrangement is also subject to the following conditions: -

- the investment undertaking is satisfied as to the status of potential investors;
- the original declaration or a certified copy of the original declaration is received from the investor within one month of the date on which the faxed application was received;
- the arrangement will not apply, under any circumstances, to an application made by an investor who is an individual.

Where an investment undertaking does not obtain the original declaration from an investor within the permitted one-month period, and the undertaking had made a payment to the investor without deducting appropriate tax, certain obligations ensue. In these circumstances, the investment undertaking must pay Revenue, at the next due date for payment of tax (either 30 July or 30 January in any financial year), an amount of tax which would have been deducted had the special arrangements for Money Market funds investment not applied and had the investment undertaking not been in possession of a valid declaration.

Any fund wishing to avail of these exceptional arrangements must abide by the following procedures: -

- in the case of a fund constituted as a company, the directors of the company are required to pass a Board Resolution accepting the conditions in advance of entering into the arrangements;
- where the fund is constituted as a non-corporate entity, an equivalent written undertaking is required.

### **8.11 How many declarations must an investor make?**

The general rule as regards investors who acquire units in a fund which is established after 1 April, 2000 or in an IFSC fund which existed on or before 31 March, 2000, is that a declaration form which is completed upon the first acquisition of units in the fund will also suffice for: -

- the unit holder's declaration obligations in relation to subsequent applications for units/shares in **that** fund,
- and
- the unit holder's declaration obligations in relation to applications for units/shares in any other fund which
    - (i) is set up and promoted by the entity which set up and promoted the fund in which the original investment was made
    - or
    - (ii) has the same manager, investment manager or administrator as the fund in which the original investment was made.

For this to apply to non-resident investors, the **Revenue authorised composite declaration form** (“non-resident” version) must be used in the relevant application form as this contains a statement to the effect that the completed declaration, if it is then still correct, will continue to apply in respect of subsequent acquisitions of units. In the case of resident investors who are entitled to complete a declaration, a fresh declaration is required each time that they acquire units in a fund unless the investor has completed the **revised Revenue authorised composite declaration** (“resident entities” version) as this contains a statement to the effect that the completed declaration will continue to apply in respect of future acquisitions of units.

The general rule set out above also applies where an investment undertaking requires an investor to complete one of the separate, single Revenue authorised declaration forms (non-composite version). However, this only applies where the **fund’s application form** makes it clear that the completed declaration will continue to apply in respect of future acquisitions of units.

**For investors, who had acquired units on or before 30 September, 2000 in IFSC funds that existed on or before 31 March, 2000** special rules apply. In these circumstances, where the fund: -

- has furnished a declaration to the Collector General by 30 June, 2000 together with any schedule of resident investors, or
- has availed of Revenue’s transitional arrangements and furnished a list to the Collector General by 30 November, 2000 containing the names and addresses of any resident investors in the fund,

no further declarations are required in respect of any further acquisitions of units by those investors in the same fund or another fund that is set up and promoted by the same person.

#### ***8.11.1 Special arrangements for intermediaries acting on behalf of non-residents***

The following agreed procedures will apply where, in all cases, the investment undertaking has put in place the arrangements set out at (1) below **and** where the conditions are satisfied as outlined at (2) below for the particular category applicable to the intermediary concerned.

The declaration will suffice for:-

- the intermediary's declaration obligations in relation to subsequent applications for units/shares in that fund,

and

- the intermediary's declaration obligations in relation to application for units/shares in any other fund which
  - (i) is set up and promoted by the entity which set up and promoted the fund in which the original investment was made
  - or
  - (ii) has the same manager, investment manager or administrator as the fund in which the original investment was made.

***(1) Arrangements to be put in place by the investment undertaking***

The investment undertaking must put arrangements in place which ensure that the trade confirmation which issues after a settlement contains the following important information:-

**It is a condition of this trade that it is being made by, or on behalf of, a person(s) who is/are:**

- (a) non-resident (where the person is a company), or**
- (b) neither resident nor ordinarily resident in Ireland (where the person is not a company) and, this is in accordance with the declaration which you have made to (Name of Investment Undertaking to whom declaration is made). If this is not the case you must inform the investment undertaking in writing immediately and failure to do so is a criminal offence.**

***(2) Conditions applicable to various categories of Intermediaries***

a) Intermediaries who sign the form of composite non-resident declaration authorised on 19 December, 2001 and to be incorporated in all application forms no later than 30 June 2002, together with the arrangements outlined at (1) above, may rely on this single declaration.

b) Intermediaries who had acquired units in a fund on or before 31 March, 2000 may rely on the single declaration included in the first application to the fund provided that: -

- i) the first application included a declaration to the effect that the units/shares were not being acquired on behalf of Irish residents, and
- ii) the application form contained a statement to the effect that it would apply to all future acquisitions provided the declaration is still correct.

These procedures continue to be agreed in the context of Revenue's understanding that the requirement to act only for non-residents was a key consideration between intermediaries and the fund prior to April 2000 and that this requirement to sign only one declaration at the time of application was on the understanding that all future trades would be with non-residents. Consequently, if an intermediary has subsequently acquired an Irish resident investor(s), then, the above agreed procedures would no longer apply to non-resident investors acquired after the first Irish resident investor was acquired.

- c) Intermediaries who signed the Revenue composite declaration form incorporated in applications signed after 31 March, 2000 and before 30 June, 2002 where:
  - i) the first application form contained a statement to the effect that the application would apply to all future acquisitions provided the declaration is still correct.
  - ii) it is the understanding of both the fund and the intermediary that, on the basis of the Revenue declaration signed, future trades must be with persons who are not resident or ordinarily resident in Ireland.

### **8.12 How long should declarations be retained?**

Completed declaration forms must be retained by the investment undertaking or by any person authorised to act on the investment undertaking's behalf, and regularly does so, for a period of six years from the time the unit holder in respect of which a declaration was made ceases to be both a unit holder in the fund or in a fund which is set up and promoted by the same entity that set up and promoted the fund in which the original investment was made.

## **9. Revenue audit/inspection**

The power to conduct an audit of an investment undertaking company derives from section 904D TCA 1997. This section empowers an authorised officer of the Revenue Commissioners to conduct an audit of the return of appropriate tax made by an investment undertaking. The authorised officer may also, through the inspection of the records of investment undertaking companies: -

- examine the procedures put in place by the investment undertaking to ensure compliance with all aspects of the law;
- examine all or a sample of the declarations made to the investment undertaking;
- examine a sample of investments to ensure that the correct amount of appropriate tax has been deducted and returned to the Revenue Commissioners.

Records in this context include all records used in the business of an investment undertaking and documents relevant to an investor's circumstances (e.g. pension fund exemption, residence status etc.). It is the duty of the investment undertaking or any person acting on behalf of the investment undertaking to ensure that original copies of declarations are safely held and are available for inspection.

Where the investment undertaking or an employee of an investment undertaking fails to comply with the requirements of the auditor they will be liable to penalties in accordance with section 904D TCA 1997.

An investment undertaking is liable for the tax that should have been deducted, whether or not it was deducted by it, on the happening of a chargeable event. It should be noted that the provisions of the Taxes Act in relation to: -

- interest on late payments;
- penalties; and
- publication of the names of defaulters

will apply where there is a failure to deduct and remit appropriate tax.

## **10. General**

Any questions on the content of these guidelines may be referred to Corporate Business and International Division, Incentives and Financial Services II, Stamping Building, Dublin Castle, Dublin 2 (Telephone no. 01- 7024110; Fax no. 01-679 9287)

These guidelines may be subject to amendment from time to time by the Revenue Commissioners.

**Appendix I(a)**

**Calculation of cost of units at sub-fund level using average cost**

Fund	Date	Transaction Type	Amount	Price	No.units in trans	Base cost carried forward	Balance of Units forward	Gain (+) Loss (-)
A	1/1/01	sale	10,000	10.00	1,000	10,000	1,000	
A	3/1/01	sale	3,000	10.50	285.71	13,000	1,285.71	
A	4/1/01	switch (to B)	-5,000	12.00	-416.67	<u>-4,213.01</u> <sup>1</sup> 8,786.99	<u>-416.67</u> 869.04	
A	5/1/01	repurchase	-1,000	15.00	-66.67	8,112.89	802.38	325.90 <sup>2</sup>
A	7/1/01	sale	6,000	14.00	428.57	14,112.89	1,230.95	
A	8/1/01	repurchase (all A)	18,464.25	15.00	-1,230.95	0.00	0.00	4,351.36 <sup>3</sup>
B	2/1/01	sale	22,000	50.00	440.00	22,000.00	440.00	
B	4/1/01	switch (from A)	5,000	53.00	94.34	<u>4,213.01</u> <sup>4</sup> 26,213.01	<u>93.34</u> 533.34	
B	6/1/01	repurchase	-3,000	60.00	-50.00	23,760.17	484.34	547.16 <sup>5</sup>
B	9/1/01	sale	50,000	65.00	769.23	73,760.17	1,253.57	
B	10/1/01	repurchase (all B)	87,749.90	70.00	-1,253.57	0.00	0.00	13,989.73 <sup>6</sup>

<sup>1</sup> Cost = (13000x 416.67/1285.71) = 4213.01

<sup>2</sup> Cost = (8786.99 x 66.67/869.05) = 674.10, G/L = 1000 – 674.10 = 325.90

<sup>3</sup> Cost = (14112.89 x 1230.95/1230.95) = 14112.89, G/L = 18464.25 – 14112.89 = 4351.36

<sup>4</sup> Cost carried from switch out of fund A

<sup>5</sup> Cost = (26213.01 x 50/534.34) = 2452.84, G/L = 3000 – 2452.84 = 547.16

<sup>6</sup> AC = (73760.17 x 1253.57/1253.57) = 73760.17, G/L = 87749.90 – 73760.17 = 13989.73

**Appendix I(b)**

**Calculation of gain on deemed disposal of units where fund using average cost**

Date	Transaction Type	Amount	Price	No.units in trans	Base cost carried forward	Balance of units forward	Gain (+) Loss (-)	Note
1/1/01	Acquisition	10,000	10.00	1,000	10,000	1,000		A
3/10/03	Switch (from another subfund)	4,000	10.50	380.95	13,000	1,380.95		B
4/1/05	Actual Disposal	-5,000	12.00	-416.67	<u>-3,922.45</u> 9,077.55	<u>-416.67</u> 964.28	1,079	C
1/1/09	Deemed Disposal	-8,750	15.00	-583.33	9,077.55	964.28	3,261	D
1/1/09	Forced Redemption to pay tax	-848	15.00	-56.53	<u>-531.95</u> 8,545.60	<u>-56.53</u> 907.75	316	E
3/10/11	Deemed Disposal	-9,524	25.00	-380.95	8,545.60	907.75	5,939	F
3/10/11	Forced Redemption to pay tax	-1,544	25.00	-61.76	<u>-581.16</u> 7,964.44	<u>-61.76</u> 845.99	963	G
2/1/12	Actual Redemption	-22,842	27.00	-845.99	<u>-7,964.44</u> Nil	<u>-845.99</u> Nil	14,881	H

**Notes**

**A** – On 1 January 2001, an investor purchased 1,000 units in this fund at a unit price of €10 per unit for a total subscription of €10,000.

**B** – On 3 October 2003, the same investor switched €4,000 from another subfund. Based on a market value of the units in this fund on 3 October 2003 of €10.50 per unit, the investment of €4,000 acquires 380.95 units. The original base cost of this investment was €3,000 and this remains the base cost going forward. As a result of this transaction, the total base cost carried forward is €13,000 and the average cost per unit is €9.41.

**C** – On 4 January 2005, the investor redeemed units to the value of €5,000. This results in a chargeable event for tax purposes and as the market value per unit on 4 January 2005 is €12, the total number of units disposed of is 416.67. At an average cost per unit of €9.41, the total base cost disposed of is €3,922.4. The base cost carried forward is therefore €9,077.55 and the number of units is 964.28 with the average cost per unit remaining unchanged at €9.41 per unit. The gain arising on this disposal is therefore €1,078, which was subject to tax at that date at a rate of 23% giving rise to a tax liability of €248.

**D** – On 1 January 2009, there is a deemed disposal of the units acquired on 1 January 2001. If we treat the disposal of units on 4 January 2005 on a first in first out basis, of the 1,000 units acquired on 1 January 2001, only 583.33 units remain on 1 January 2009. As the market value on this date is €15 per unit the value of the units subject to the deemed disposal is €8,750. The gain per unit is €5.59 and as a result, the total gain is €3,261. The tax arising thereon at a rate of 26% is €848. As there has been no actual disposal of units, the number of units and the base cost of those units carried forward remains the same.

**E** – In order to release the cash to pay the tax due of €848, the fund must exercise a forced redemption of units. As the cash required is €848, the number of units to be redeemed is 56.53. The gain arising is €316 on the basis of a gain per unit of €5.59. The tax on the gain at 26% is €82 but there is a credit available for the tax already paid on the deemed disposal. As a result, there is no additional tax due. The 56.53 units disposed of are taken from the same pool of units as those which are the subject of the deemed disposal and there is no impact on units acquired since that date i.e. the 583.33 units which were originally acquired on 1 January 2001 are reduced by 56.53 to 526.8 in order to take account of the forced redemption so that the amount of units carried forward which were originally acquired on 1 January 2001 is 526.8.

**Note:** This example is prepared on the basis that the calculation of the deemed disposal and the forced redemption occur on the same date. In the event that the calculation of the gain arising on the deemed disposal and the gain arising on the forced redemption are not completed on the same day, then the credit available may not equal the tax paid and an additional tax payment may be required. As outlined in **section 4.4** of these guidance notes, the fund may choose to value the units on a particular date in the six-month period and this date does not have to correspond to the original acquisition date of the units. Once a particular date is chosen, this should be applied consistently on an ongoing basis.

**F** – On 3 October 2011, there is a deemed disposal of the units acquired by way of a switch into the fund on 3 October 2003. As this investor has had no activity in relation to these units in the intervening years, the full amount of 380.95 units remain on 3 October 2011. As the market value on this date is €25 per unit the value of the units subject to the deemed disposal is €9,524. The gain per unit is €15.59 and as a result, the total gain is €5,939. The tax arising thereon at a rate of 26% is €1,544. As there has been no actual disposal of units, the number of units and the base cost of those units carried forward remains the same.

**G** – In order to release the cash to pay the tax due of €1,544, the fund must exercise a forced redemption of units. As the cash required is €1,544, the number of units to be redeemed is 61.76. The gain arising is €963 on the basis of a gain per unit of €15.59. The tax on the gain at 26% is €250 but there is a credit available for the tax already paid on the deemed disposal. As a result, there is no additional tax due. The 61.76 units disposed of are taken from the same pool of units as those which are the subject of the deemed disposal and there is no impact on units acquired since that date i.e. the 380.95 units which were originally acquired on 3 October 2003 are reduced by 61.76 to 319.19 in order to take account of the forced redemption so that the amount of units carried forward which were originally acquired on 3 October 2003 is 319.19.

**H** – The final transaction for this investor in the fund is the total redemption of all units on 2 January 2012. The market value at this date is €27 per unit and the total number of units held is 845.99 with a base cost of €7,964.44. The gain arising is therefore €17.59 per unit and the total gain is €14,881. Tax on this gain at 26% is €3,869 less credit for the tax already paid on the various deemed disposals. The total tax paid to date is €848 - €82 + €1,544 - €250 = €2,060. The balance of tax due is €3,869 - €2,060 = €1,809.

### **Non-resident declarations and Intermediary declarations: Equivalent measures**

In order to obtain written notice of approval from the Revenue Commissioners to the effect that subsection (7) or (9) of section 739D of the Taxes Consolidation Act 1997 is deemed to be complied with as respects any unit holder or class of unit holders, an investment undertaking is required to confirm each of the following matters to a nominated officer of the Revenue Commissioners<sup>1</sup>:

1. The investment undertaking will verify an investor's identity by complying with applicable anti-money laundering procedures.
2. While an investment undertaking cannot prohibit Irish residents from subscribing for units, the investment undertaking will not actively promote the units concerned to Irish investors or in Ireland nor will it actively distribute in Ireland any offering material in connection with such units.
3. Every time an investor makes an initial application to subscribe for units in the investment undertaking (a) in its capacity as an investor on its own behalf or (b) in its capacity as intermediary, that application is required to be made by way of completion of an Application Form that must contain an address for the proposed investor that will be entered on the unit holder register of the investment undertaking (for this purpose the "Registered Address"). An investor may provide an additional address on the Application Form for other purposes, e.g. correspondence. If the investment undertaking receives an Application Form from an investor who provides a Registered Address that is Irish or an Irish address for any purpose, the investment undertaking will for Irish tax purposes treat that investor as if that investor were Irish resident, unless that investor provides the investment undertaking with a signed non-resident declaration or intermediary declaration, as the case may be, in the prescribed form and the investment undertaking is not in possession of any information which would reasonably suggest that the information contained in that declaration is not, or is no longer, materially correct.

Each Application Form must contain terms and conditions which will include language to the effect that: *"Every applicant applying for units on the applicant's own behalf is hereby obliged to notify the Investment Undertaking or an agent of the Investment Undertaking appointed for this purpose, as the case may be, in writing if the applicant is or becomes resident or ordinarily resident in Ireland. An individual is ordinarily resident in Ireland if the individual has been resident in Ireland for each of the 3 preceding years of assessment (i.e. calendar years) and that individual continues to be ordinarily resident in Ireland until the individual has not been resident in Ireland in each of the 3 preceding years of assessment."*

4. Every investor is required to provide details of one or more bank accounts into which payments to that investor may be made. If an investor provides details of any Irish situate bank account, the investment undertaking will for Irish tax purposes treat that investor as if that

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<sup>1</sup> Each reference to units and unit holders in this document is to be construed in accordance with Section 739B(1) TCA 1997 so that references to units and unit holders include *inter alia* references to shares and share holders. In particular, the language to be included in Applications Forms, as set out in paragraphs 3 and 5 of this document should refer to units or shares as appropriate.

investor were Irish resident, unless that investor provides the investment undertaking with a signed non-resident declaration or intermediary declaration, as the case may be, in the prescribed form and the investment undertaking is not in possession of any information which would reasonably suggest that the information contained in that declaration is not, or is no longer, materially correct.

5. Each intermediary with respect to the holding of units in the investment undertaking, is obliged from the time of completion of an Application Form, as a matter of contract, to notify in writing the investment undertaking or the administrator of the investment undertaking, as the case may be, if it is, or becomes, aware that a person who is beneficially entitled to any units issued by the investment undertaking to that intermediary may be resident or ordinarily resident in Ireland or may have become resident in Ireland. Where an intermediary makes such a notification, the investment undertaking will for Irish tax purposes treat the relevant investor as if that investor were Irish resident, unless that investor provides the investment undertaking with a signed non-resident declaration in the prescribed form and the investment undertaking is not in possession of any information which would reasonably suggest that the information contained in that declaration is not, or is no longer, materially correct.

Each Application Form must contain terms and conditions which will include language to the effect that: *“Every applicant applying for units on behalf of another person is hereby obliged to notify in writing the Investment Undertaking or an agent of the Investment Undertaking appointed for this purpose, as the case may be, if the applicant is, or becomes, aware that any person who is beneficially entitled to any of those units may be resident or ordinarily resident in Ireland or may have become resident in Ireland. An individual is ordinarily resident in Ireland if the individual has been resident in Ireland for each of the 3 preceding years of assessment (i.e. calendar years) and that individual continues to be ordinarily resident in Ireland until the individual has not been resident in Ireland in each of the 3 preceding years of assessment.”*

6. The investment undertaking will comply fully with all of its obligations in accordance with the provisions of Irish tax law and Revenue practice, including but not limited to, its obligations in respect of all Irish resident or ordinarily resident investors; persons treated as Irish resident investors pursuant to each of 3, 4 and 5 above; and each unit holder in respect of whom it is in possession of any information which could reasonably suggest that the unit holder is resident or ordinarily resident in Ireland.

**Pension Scheme**

**Declaration for the purposes of Section 739D(6)(a), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.**

**Name of pension scheme:** \_\_\_\_\_

**Pension scheme address:** \_\_\_\_\_  
\_\_\_\_\_

**Irish tax reference number of the pension scheme:** \_\_\_\_\_

("tax reference number" in relation to a person, has the meaning assigned to it by Section 885 TCA, 1997 in relation to a "specified person" within the meaning of that section)

**Description and number of units:** \_\_\_\_\_

(in respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_

(to whom declaration is being made)

- I declare that at the time of making this declaration, the above mentioned pension scheme is entitled to the units in respect of which this declaration is made, and I certify that, to the best of my knowledge and belief, the information contained in this declaration is true and correct.
- I declare that at the time of making this declaration, the person entitled to the units is a pension scheme.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made (see note 1 below)** \_\_\_\_\_

**Date** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by (i) the administrator (within the meaning of Section 770 TCA, 1997) in the case of an exempt approved scheme (within the meaning of Section 774 TCA, 1997), or (ii) the person lawfully carrying on in the State the business of granting annuities on human life with whom the contract is made in the case of a retirement annuity contract to which section 784 or 785 TCA, 1997 applies, or the trustees in the case of a trust scheme to which section 784 or 785 TCA, 1997 applies, or (iii) a person who holds power of attorney from the pension scheme. A copy of the power of attorney should be furnished to support this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

**Company carrying on life business**

**Declaration for the purposes of Section 739D(6)(b), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.**

**Name of company carrying on life business:** \_\_\_\_\_

**Company address:** \_\_\_\_\_

\_\_\_\_\_

**Irish tax reference number of the company:** \_\_\_\_\_

**Description and number of units:** \_\_\_\_\_  
(in respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_  
(to whom declaration is being made)

- I declare that at the time of making this declaration, the above named company is entitled to the units in respect of which this declaration is made, and I certify that the information contained in this declaration is true and correct.
- I also declare that at the time when the declaration is made, the above named company which is entitled to the units is a company carrying on life business within the meaning of section 706 TCA, 1997.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made: (see note 1 below)** \_\_\_\_\_

**Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by the company secretary or such other authorised officer of the company carrying on life business. It may also be signed by a person who holds the power of attorney from the company. A copy of the power of attorney should be furnished in support of this declaration
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

## Investment Undertaking

### Declaration for the purposes of Section 739D(6)(c), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.

Name of investment undertaking: \_\_\_\_\_

Investment undertaking address: \_\_\_\_\_

\_\_\_\_\_

Irish tax reference number of the investment undertaking: \_\_\_\_\_

("tax Reference Number" in relation to a person, has the meaning assigned to it by Section 885 TCA, 1997 in relation to a "specified person" within the meaning of that section)

Description and number of units: \_\_\_\_\_

(in respect of which this declaration is being made)

Name of investment undertaking: \_\_\_\_\_

(to whom declaration is being made)

- I declare that at the time of making this declaration, the investment undertaking on whose behalf this declaration is being made, is entitled to the units in respect of which this declaration is made and I certify that the information contained in this declaration is true and correct.
- I also declare that at the time of making this declaration, the person entitled to the units is an investment undertaking.

Authorised signatory: \_\_\_\_\_ (declarant)

Title (Mr./Ms. etc.) \_\_\_\_\_

Capacity in which declaration is made: (see note 1 below) \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

#### IMPORTANT NOTES

1. This declaration must be signed by an authorised officer of the investment undertaking. Where the investment undertaking is a company, the declaration must be signed by the company secretary or such other authorised officer of the company. It may also be signed by a person who holds power of attorney from the investment undertaking/company. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

**Special Investment Scheme**

**Declaration for the purposes of Section 739D(6)(d) Taxes  
Consolidation Act, 1997, as inserted by Finance Act, 2000.**

**Name of special investment scheme:** \_\_\_\_\_

**Special investment scheme address:** \_\_\_\_\_

\_\_\_\_\_

**Irish tax reference number for the special investment scheme:** \_\_\_\_\_

(“tax Reference Number” in relation to a person, has the meaning assigned to it by Section 885 TCA, 1997 in relation to a “specified person” within the meaning of that section)

**Description and number of units:** \_\_\_\_\_

(in respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_

(to whom declaration is being made)

- I declare that at the time of making this declaration, the above mentioned special investment scheme is entitled to the units in respect of which this declaration is made, and I certify that the information contained in this declaration is true and correct.
- I also declare that at the time of making this declaration, the person entitled to the units is a special investment scheme.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made: (see note 1 below)** \_\_\_\_\_

**Date** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by an authorised officer of the special investment scheme. It may also be signed by a person who holds power of attorney from the special investment scheme. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

**Unit Trust**

**Declaration for the purposes of Section 739D(6)(e), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.**

**Name of unit trust:** \_\_\_\_\_

**Unit trust address:** \_\_\_\_\_

\_\_\_\_\_

**Irish tax reference number of the unit trust:** \_\_\_\_\_

("tax Reference Number" in relation to a person, has the meaning assigned to it by Section 885 TCA, 1997 in relation to a "specified person" within the meaning of that section)

**Description and number of units:** \_\_\_\_\_

(in respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_

(to whom declaration is being made)

- I declare that at the time of making this declaration, the above mentioned unit trust is entitled to the units in respect of which this declaration is made, and I certify that the information contained in this declaration is true and correct.
- I also declare that at the time this declaration is made, the person entitled to the units is a unit trust to which section 731(5)(a) TCA 1997 applies.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title (Mr./Ms. etc.):** \_\_\_\_\_

**Capacity in which declaration is made: (see note 1 below)** \_\_\_\_\_

**Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by the trustees of the unit trust or some other authorised officer. It may also be signed by a person who holds power of attorney from the unit trust. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

## Charity

### Declaration for the purposes of Section 739D(6)(f), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.

Name of charity: \_\_\_\_\_

Address of charity: \_\_\_\_\_

\_\_\_\_\_

Charity exemption number (CHY) as issued by Revenue: \_\_\_\_\_

Description and number of units: \_\_\_\_\_

(in respect of which this declaration is being made)

Name of investment undertaking: \_\_\_\_\_

(to whom declaration is being made)

- I declare that at the time of making this declaration, the above mentioned charity is entitled to the units in respect of which this declaration is made, and is a person referred to in Section 739D(6)(f)(i) TCA, 1997.
- I also declare that at the time of making this declaration, the units in respect of which this declaration is made are held for charitable purposes only and:
  - form part of the assets of a body of persons or trust treated by the Revenue Commissioners as a body or trust established for charitable purposes only, or
  - are, according to the rules or regulations established by statute, charter, decree, deed of trust or will, held for charitable purposes only and are so treated by the Revenue Commissioners.
- I undertake that, in the event that the person referred to in paragraph (7)(d) of Schedule 2B TCA 1997 ceases to be a person referred to in section 739D(6)(f)(i) TCA 1997, I will, by written notice, bring this fact to the attention of the investment undertaking accordingly.

Authorised signatory: \_\_\_\_\_ (declarant)

Title (Mr./Ms. etc.): \_\_\_\_\_

Capacity in which declaration is made: (see note 1 below) \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

#### IMPORTANT NOTES

1. This declaration must be signed by the trustees or other authorised officer of a body of persons or trust established for charitable purposes only within the meaning of Section 207 and 208 TCA, 1997. Where a charity is a company, the declaration should be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the charity. A copy of the power of attorney should be furnished in support of this declaration.

2. This is a form authorised by the Revenue Commissioners.

3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

## Appendix II(vii)

### **Qualifying management company Declaration for the purposes of Section 739D(6)(g), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.**

**Name of company:** \_\_\_\_\_

**Address of company:** \_\_\_\_\_  
\_\_\_\_\_

**Irish tax reference number of the company:** \_\_\_\_\_

**Description and number of units:** \_\_\_\_\_  
(in respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_  
(to whom declaration is being made)

- I declare that the above named company is entitled to the units in respect of which this declaration is made.
- I also declare that at the time of this declaration, the person entitled to the units is a qualifying management company, as defined in section 739B(1), as inserted by section 31(1)(a), Finance Act 2010.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made: (see note 1 below)** \_\_\_\_\_

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

#### **IMPORTANT NOTES:**

1. This declaration must be signed by the company secretary or such other authorised officer of the qualifying management company. It may also be signed by a person who holds power of attorney from the company. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

## Appendix II(viii)

### Qualifying fund manager or qualifying savings manager\*

#### Declaration for the purposes of Section 739D(6)(h), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.

Name of qualifying fund/savings manager\*: \_\_\_\_\_

Name of beneficial owner: \_\_\_\_\_

(beneficial owner is the person who is beneficially entitled to the units and on whose behalf the qualifying fund manager is acting)

Address of beneficial owner: \_\_\_\_\_  
\_\_\_\_\_

Irish tax reference number of beneficial owner: \_\_\_\_\_

("tax reference number" in relation to a person, has the meaning assigned to it by Section 885 TCA, 1997 in relation to a "specified person" within the meaning of that section)

Description and number of units: \_\_\_\_\_

(in respect of which this declaration is being made)

Name of investment undertaking: \_\_\_\_\_

(to whom declaration is being made)

I declare that at the time this declaration is made, the units in respect of which this declaration is made -

- are assets of an approved retirement fund/an approved minimum retirement fund,\* and,
- are managed by the declarant for the above named individual who is beneficially entitled to the units.

I undertake that, if the units cease to be assets of the approved retirement fund/ the approved minimum retirement fund or held in the special savings incentive account,\* including a case where the units are transferred to another such fund or account, I will, by written notice, notify the investment undertaking accordingly. \* (delete as appropriate)

Authorised signatory: \_\_\_\_\_ (declarant)

Title: (Mr./Ms. etc.) \_\_\_\_\_

Capacity in which declaration is made: (see note 1 below) \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

#### IMPORTANT NOTES

1. This declaration must be signed by a qualifying fund manager of an approved retirement fund/an approved minimum retirement fund or by a qualifying savings manager of a special savings incentive account. Where a qualifying fund manager or a qualifying savings manager is a company, the declaration must be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the declarant. A copy of the power of attorney should be furnished with this declaration.

2. This is a form authorised by the Revenue Commissioners.

3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

**PRSA Administrator**

**<sup>1</sup>Declaration for the purposes of Section 739D(6)(i), Taxes Consolidation Act 1997**

**Name of PRSA Administrator:** \_\_\_\_\_

**Name of Beneficial Owner:** \_\_\_\_\_

(Beneficial owner is the person who is beneficially entitled to the units and on whose behalf the PRSA Administrator is acting)

**Address of Beneficial Owner:** \_\_\_\_\_

\_\_\_\_\_

**<sup>2</sup>Irish Tax Reference Number of Beneficial Owner:** \_\_\_\_\_

**Description and Number of Units:** \_\_\_\_\_

(In respect of which this declaration is being made)

**Name of Investment Undertaking:** \_\_\_\_\_

(To whom declaration is being made)

- I declare that at the time this declaration is made, the units in respect of which this declaration is made -
  - are assets of a PRSA, and,
  - are managed by the declarer for the above named individual who is beneficially entitled to the units.
  
- I undertake that, if the units cease to be assets of the PRSA, including a case where the units are transferred to another PRSA, I will, by written notice, notify the investment undertaking accordingly.

**<sup>3</sup>Authorised Signatory:** \_\_\_\_\_ **(Declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made:** \_\_\_\_\_ **Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**IMPORTANT NOTES**

\_\_\_\_\_

<sup>1</sup> This is a form authorised by the Revenue Commissioners. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

<sup>2</sup> Tax Reference Number in relation to a person, has the meaning assigned to it by Section 885 TCA 1997 in relation to a “specified person” within the meaning of that section)

<sup>3</sup> This declaration must be signed by a PRSA administrator. Where a PRSA administrator is a company, the declaration must be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the declarant. A copy of the power of attorney should be furnished with this declaration.

## Credit Union

### <sup>1</sup>Declaration referred to in Section 739D(6)(j) Taxes Consolidation Act, 1997

Name of Credit Union: \_\_\_\_\_

Address of Credit Union: \_\_\_\_\_

*Irish Tax Reference of the Credit Union:* \_\_\_\_\_

("tax reference number" in relation to a person, has the meaning assigned to it by Section 885 TCA 1997 in relation to a "specified person" within the meaning of that section.

Description and number of units: \_\_\_\_\_  
(in respect of which this declaration is being made)

Name of investment undertaking: \_\_\_\_\_  
(to whom declaration is being made)

- I declare that at the time of making this declaration, the above named Credit Union is entitled to the units in respect of which this declaration is made.
- I declare that at the time this declaration is made, the person entitled to the units is a Credit Union within the meaning of section 2 of the Credit Union Act 1997.
- I also declare that the information contained in this declaration is true and correct.

<sup>2</sup>Signature of Declarer or Authorised Signatory (declarant):

\_\_\_\_\_

Capacity in which declaration is made: \_\_\_\_\_

Date: \_\_\_\_\_

### IMPORTANT NOTES

<sup>1</sup> This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

<sup>2</sup> This declaration must be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the Credit Union. If the latter, a copy of the power of attorney should be furnished with the declaration.

**<sup>1</sup>Declaration referred to in Section 739D(6)  
Taxes Consolidation Act, 1997**

**[It is important to note that this declaration, if it is then still correct, shall apply in respect of any subsequent acquisitions of shares/units.]**

- I declare that the information contained in this declaration is true and correct.
- I also declare that I am applying for the shares/units on behalf of the applicant named below who is entitled to the units in respect of which this declaration is made and is a person referred to in Section 739D(6) of the Taxes Consolidation Act, 1997, being a person who is: (please tick  as appropriate)

**\* Delete as appropriate. (Please see overleaf for important information)**

a pension scheme;	
a company carrying on life business within the meaning of section 706 TCA 1997;	
an investment undertaking;	
a special investment scheme;	
a unit trust to which section 731(5)(a) TCA 1997 applies;	
a charity being a person referred to in section 739D(6)(f)(i) TCA 1997;	
a qualifying management company, as defined in section 739B(1), as inserted by section 31(1)(a), Finance Act 2010;	
entitled to exemption from income tax and capital gains tax by virtue of section 784A(2) TCA, 1997* or by virtue of section 848E TCA, 1997*, (see further requirements for Qualifying Fund Manager below).	
a PRSA Administrator	
a credit union within the meaning of section 2 of the Credit Union Act 1997	

**Additional requirements where the declaration is completed on behalf of a Charity**

- I also declare that at the time of making this declaration, the units in respect of which this declaration is made are held for charitable purposes only and;
  - form part of the assets of a body of persons or trust treated by the Revenue Commissioners as a body or trust established for charitable purposes only, or
  - are, according to the rules or regulations established by statute, charter, decree, deed of trust or will, held for charitable purposes only and are so treated by the Revenue Commissioners.
- I undertake that, in the event that the person referred to in paragraph (7)(d) of Schedule 2B TCA 1997 ceases to be a person referred to in Section 739D(6)(f)(i) TCA, 1997, I will, by written notice, bring this fact to the attention of the investment undertaking accordingly.

**Additional requirements where the declaration is completed by a qualifying fund manager/  
qualifying savings manager/PRSA Administrator**

- I/we\* also declare that at the time this declaration is made, the units in respect of which this declaration is made
  - are assets of an \*approved retirement fund/an approved minimum retirement fund a special savings incentive account or a PRSA, and
  - are managed by the Declarant for the individual named below who is beneficially entitled to the units.
- I/we\* undertake that, if the units cease to be assets of the \*approved retirement fund/the approved minimum retirement fund, a PRSA, or held in a special savings incentive account, including a case where the units are transferred to another such fund or account, I/we\* will, by written notice, bring this fact to the attention of the investment undertaking accordingly.

**Additional requirements where the declaration is completed by an Intermediary**

I/we\* declare that I am/we are\* applying for shares/units on behalf of persons who

- to the best of my/our\* knowledge and belief, have beneficial entitlement to each of the units in respect of which this declaration is made; and
- is a person referred to in section 739D(6) TCA 1997.

I/we\* also declare that

- unless I/we\* specifically notify you to the contrary at the time of application, all applications for shares/units made by me/us\* from the date of this application will be made on behalf of persons referred to in section 739D(6) TCA 1997; and
- I/we\* will inform you in writing if I/we\* become aware that any person ceases to be a person referred to in section 739D(6) TCA 1997. \* **Delete as appropriate**

**Name of applicant:** \_\_\_\_\_

<sup>2</sup>**Irish tax reference number of applicant:** \_\_\_\_\_

<sup>3</sup>**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**IMPORTANT NOTES**

<sup>1</sup>This is a form authorised by the Revenue Commissioners which may be subject to inspection. It is an offence to make a false declaration.

<sup>2</sup>Tax reference number in relation to a person has the meaning assigned to it by Section 885 TCA, 1997 in relation to a “specified person” within the meaning of that section. In the case of a charity,

quote the Charity Exemption Number (CHY) as issued by Revenue. In the case of a qualifying fund manager/qualifying savings manager, quote the tax reference number of the beneficial owner of the shares/units.

<sup>3</sup>In the case of, (i) an exempt pension scheme, the administrator must sign the declaration (ii) a retirement annuity contract to which Section 784 or 785 applies, the person carrying on the business of granting annuities must sign the declaration (iii) a trust scheme, the trustees must sign the declaration. In the case of a charity, the declaration must be signed by the trustees or other authorised officer of a body of persons or trust established for charitable purposes only within the meaning of Sections 207 and 208 TCA 1997. It must also be signed by a qualifying fund manager of an approved retirement fund/an approved minimum retirement fund, by a qualifying savings manager of a special savings incentive account or by a PRSA administrator. In the case of an intermediary, the declaration must be signed by the intermediary. In the case of a company, the declaration must be signed by the company secretary or other authorised officer. In the case of a unit trust it must be signed by the trustees. In any other case it must be signed by an authorised officer of the entity concerned or a person who holds a power of attorney from the entity. If the latter, a copy of the power of attorney should be furnished in support of this declaration.

**A Person (including a company) who is non-resident  
at the time of investing in units**

**Declaration for the purposes of Section 739D(7)(a)(i) or (ii), Taxes  
Consolidation Act, 1997, as inserted by Finance Act, 2000.**

**This declaration should be made on or about the time when the units are applied for or  
acquired, by the declarer.**

*Before completing this declaration, please consult the notes overleaf in relation to residence and  
ordinary residence.*

**Name of person entitled to the units:** \_\_\_\_\_

**Address of person entitled to the units:** \_\_\_\_\_

\_\_\_\_\_

**Description and number of units:** \_\_\_\_\_  
(In respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_  
(to whom declaration is being made)

- I declare that the above named person is entitled to the units in respect of which this declaration is made.
- I declare that at the time of making this declaration, the above named person,
  - (a) in the case of an individual is neither resident nor ordinarily resident in the State
  - (b) in any other case, is not resident in the State.
- I undertake that if the above named person, becomes resident or ordinarily resident in the State I will, by written notice, bring this fact to the attention of the investment undertaking accordingly.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made:** \_\_\_\_\_ **Date** \_\_\_\_/\_\_\_\_/\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by the non-resident person entitled to the units. If the non-resident person entitled to the units is a company, it must be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the non-resident person or company. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

## NOTES

### Residence - Individual

An individual will be regarded as being resident in Ireland for a tax year if s/he:

- 1) spends 183 days or more in the State in that tax year; or
- 2) has a combined presence of 280 days in the State, taking into account the number of days spent in the State in that tax year together with the number of days spent in the State in the preceding year.

Presence in a tax year by an individual of not more than 30 days in the State will not be reckoned for the purpose of applying the two-year test. Up to 31 December 2008, presence in the State for a day means the personal presence of an individual at the end of the day (midnight). **From 1 January 2009, presence in the State for a day means the personal presence of an individual at any time during the day.**

### Ordinary Residence -Individual

The term “ordinary residence” as distinct from “residence” relates to a person’s normal pattern of life and denotes residence in a place with some degree of continuity. An individual who has been resident in the State for three consecutive tax years becomes ordinarily resident with effect from the commencement of the fourth tax year.

An individual who has been ordinarily resident in the State ceases to be ordinarily resident at the end of the third consecutive tax year in which s/he is not resident. Thus, an individual who is resident and ordinarily resident in the State in 2004 and departs from the State in that year **will remain** ordinarily resident up to the end of the tax year in 2007.

### Residence – Company

A company which has its central management and control in Ireland (the State) is resident in the State irrespective of where it is incorporated. A company which does not have its central management and control in Ireland but which is incorporated in the State is resident in the State except where: -

- the company or a related company carries on a trade in the State, and either the company is ultimately controlled by persons resident in EU Member States or countries with which the Republic of Ireland has a double taxation treaty, or the company or a related company are quoted companies on a recognised Stock Exchange in the EU or in a tax treaty country, or
- the company is regarded as not resident in the State under a double taxation treaty between the Republic of Ireland and another country.

It should be noted that the determination of a company’s residence for tax purposes can be complex in certain cases and declarants are referred to the specific legislative provisions which are contained in section 23A Taxes Consolidation Act, 1997.

**Appendix II(xiii)**

**An individual who becomes non-resident/non-ordinarily resident  
subsequent to investing in units**

**Declaration for the purposes of Section 739D(7)(a)(ii), Taxes  
Consolidation Act, 1997, as inserted by Finance Act, 2000.**

*Before completing this declaration, please consult the notes overleaf in relation to residence and ordinary residence.*

Name of person entitled to the units: \_\_\_\_\_

Address of person entitled to the units: \_\_\_\_\_

Description and number of units: \_\_\_\_\_  
(in respect of which this declaration is being made)

Name of investment undertaking: \_\_\_\_\_  
(to whom declaration is being made)

- I declare that I am entitled to the units in respect of which this declaration is made.
- I also declare that at the time this declaration is made, I am neither resident nor ordinarily resident in the State.
- I undertake that if I become resident in the State, I will, by written notice, bring this fact to the attention of the investment undertaking.

Authorised signatory: \_\_\_\_\_ (declarant)

Title:(Mr./Ms. etc.) \_\_\_\_\_

Capacity in which declaration is made: (see note 1 below) \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by the person who is entitled to the units. It may also be signed by a person who holds power of attorney from the declarant. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

**NOTES**

**Residence - Individual**

An individual will be regarded as being resident in Ireland for a tax year if s/he:

- 1) spends 183 days or more in the State in that tax year; or

- 2) has a combined presence of 280 days in the State, taking into account the number of days spent in the State in that tax year together with the number of days spent in the State in the preceding year.

Presence in a tax year by an individual of not more than 30 days in the State will not be reckoned for the purpose of applying the two-year test. Up to 31 December 2008, presence in the State for a day means the personal presence of an individual at the end of the day (midnight). **From 1 January 2009, presence in the State for a day means the personal presence of an individual at any time during the day.**

### **Ordinary Residence -Individual**

The term “ordinary residence” as distinct from “residence” relates to a person’s normal pattern of life and denotes residence in a place with some degree of continuity. An individual who has been resident in the State for three consecutive tax years becomes ordinarily resident with effect from the commencement of the fourth tax year.

An individual who has been ordinarily resident in the State ceases to be ordinarily resident at the end of the third consecutive tax year in which s/he is not resident. Thus, an individual who is resident and ordinarily resident in the State in 2004 and departs from the State in that year **will remain** ordinarily resident up to the end of the tax year in 2007.

### **Residence – Company**

A company which has its central management and control in Ireland (the State) is resident in the State irrespective of where it is incorporated. A company which does not have its central management and control in Ireland but which is incorporated in the State is resident in the State except where: -

- the company or a related company carries on a trade in the State, and either the company is ultimately controlled by persons resident in EU Member States or countries with which the Republic of Ireland has a double taxation treaty, or the company or a related company are quoted companies on a recognised Stock Exchange in the EU or in a tax treaty country, or
- the company is regarded as not resident in the State under a double taxation treaty between the Republic of Ireland and another country.

It should be noted that the determination of a company’s residence for tax purposes can be complex in certain cases and declarants are referred to the specific legislative provisions which are contained in section 23A Taxes Consolidation Act, 1997.

**Declaration to the Collector-General**

**Declaration<sup>1</sup> for the purposes of Section 739D(8D), Taxes Consolidation Act, 1997 as inserted by Finance Act, 2001.**

**Investment undertakings: scheme of migration and amalgamation**

**This declaration should be forwarded to the Collector-General, Customer Service Section, Sarsfield House, Francis Street, Limerick, within 30 days of a scheme of migration and amalgamation<sup>2</sup> taking place.**

**Name of investment undertaking:** \_\_\_\_\_

**Address of investment undertaking:** \_\_\_\_\_

**Irish tax reference number of the investment undertaking:** \_\_\_\_\_

("tax reference number" in relation to a person, has the meaning assigned to it by Section 885 TCA, 1997 in relation to a "specified person" within the meaning of that section)

- I declare, to the best of my knowledge and belief, that at the time of the scheme of migration and amalgamation, the investment undertaking did not issue units to a person who was resident in the State at that time, other than such persons whose names and addresses are set out in the schedule which is attached to this declaration.

**Authorised signatory<sup>3</sup> :** \_\_\_\_\_ **(declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_

**Capacity in which declaration is made:** \_\_\_\_\_

**Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

<sup>1</sup> This is a form authorised by the Revenue Commissioners. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

<sup>2</sup> "Scheme of migration and amalgamation" means an arrangement whereby the assets of a unit trust, whose trustees are neither resident nor ordinarily resident in the State, are transferred to an investment undertaking in exchange for the issue by the investment undertaking of units to the unit holders of the unit trust, in proportion to the number of units they so held and as a result of which the units in the unit trust become negligible in value.

<sup>3</sup> This declaration must be signed by an authorised officer of the investment undertaking. It may also be signed by a person who holds power of attorney from the declarant. A copy of the power of attorney should be furnished in support of this declaration.

**Intermediary\***

**Declaration for the purposes of Section 739D(9)(a), Taxes Consolidation Act, 1997, as inserted by Finance Act, 2000.**

*Before completing this declaration, please consult the notes overleaf in relation to residence and ordinary residence.*

**Name of intermediary:** \_\_\_\_\_

**Address of intermediary:** \_\_\_\_\_

\_\_\_\_\_

**Description and number of units:** \_\_\_\_\_

(in respect of which this declaration is being made)

**Name of investment undertaking:** \_\_\_\_\_

(to whom declaration is being made)

- I declare that at the time of making this declaration, to the best of my knowledge and belief, the persons who have beneficial entitlement to each of the units in respect of which this declaration is made-
  - are not resident in the State, where those persons are a company, and
  - where those persons are not a company, that those persons are neither resident nor ordinarily resident in the State.
- I undertake that where I become aware, at any time, that this declaration is not, or is no longer correct, I will, by written notice, bring this fact to the attention of the investment undertaking.

**Authorised signatory:** \_\_\_\_\_ **(declarant)**

**Title: (Mr./Ms. etc.)** \_\_\_\_\_ **Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**IMPORTANT NOTES**

1. This declaration must be signed by the intermediary. Where the intermediary is a company, it must be signed by the company secretary or such other authorised officer of the company. It may also be signed by a person who holds power of attorney from the company. A copy of the power of attorney should be furnished in support of this declaration.
2. This is a form authorised by the Revenue Commissioners.
3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

\* An “intermediary” means a person who-

- carries on a business which consists of, or includes, the receipt of payments from an investment undertaking resident in the State on behalf of other persons;
- holds units in an investment undertaking on behalf of other persons.

## NOTES

### Residence - Individual

An individual will be regarded as being resident in Ireland for a tax year if s/he:

- 1) spends 183 days or more in the State in that tax year; or
- 2) has a combined presence of 280 days in the State, taking into account the number of days spent in the State in that tax year together with the number of days spent in the State in the preceding year.

Presence in a tax year by an individual of not more than 30 days in the State will not be reckoned for the purpose of applying the two-year test. Up to 31 December 2008, presence in the State for a day means the personal presence of an individual at the end of the day (midnight). **From 1 January 2009, presence in the State for a day means the personal presence of an individual at any time during the day.**

### Ordinary Residence -Individual

The term “ordinary residence” as distinct from “residence” relates to a person’s normal pattern of life and denotes residence in a place with some degree of continuity. An individual who has been resident in the State for three consecutive tax years becomes ordinarily resident with effect from the commencement of the fourth tax year.

An individual who has been ordinarily resident in the State ceases to be ordinarily resident at the end of the third consecutive tax year in which s/he is not resident. Thus, an individual who is resident and ordinarily resident in the State in 2004 and departs from the State in that year **will remain** ordinarily resident up to the end of the tax year in 2007.

### Residence – Company

A company which has its central management and control in Ireland (the State) is resident in the State irrespective of where it is incorporated. A company which does not have its central management and control in Ireland but which is incorporated in the State is resident in the State except where: -

- the company or a related company carries on a trade in the State, and either the company is ultimately controlled by persons resident in EU Member States or countries with which the Republic of Ireland has a double taxation treaty, or the company or a related company are quoted companies on a recognised Stock Exchange in the EU or in a tax treaty country, or
- the company is regarded as not resident in the State under a double taxation treaty between the Republic of Ireland and another country.

It should be noted that the determination of a company’s residence for tax purposes can be complex in certain cases and declarants are referred to the specific legislative provisions which are contained in section 23A Taxes Consolidation Act, 1997.

## Appendix II(xvi)

### Intermediary\*

#### Declaration for the purposes of Section 739D(9A), Taxes Consolidation Act 1997

Name of intermediary: \_\_\_\_\_

Address of intermediary: \_\_\_\_\_

\_\_\_\_\_

Description and number of units: \_\_\_\_\_

(In respect of which this declaration is being made)

Name of investment undertaking: \_\_\_\_\_

(To whom declaration is being made)

I/we\* declare that I am/we are\* applying for shares/units on behalf of persons who

- to the best of my/our knowledge and belief, have beneficial entitlement to each of the units in respect of which this declaration is made; and
- is a person referred to section <sup>1</sup>739D(6).

I/we\* also declare that

- unless I/we\* specifically notify you to the contrary at the time of application, all applications for shares/units made by me/us\* from the date of this application will be made on behalf of persons referred to in section <sup>1</sup>739D(6); and
- I/we\* will inform you in writing if I/we\* become aware that any person ceases to be a person referred to in section <sup>1</sup>739D(6). **\*Delete as appropriate**

Authorised signatory: \_\_\_\_\_ (declarant)

Title: (Mr./Ms. etc.) \_\_\_\_\_ Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

#### IMPORTANT NOTES

1. This declaration must be signed by the intermediary. Where the intermediary is a company, it must be signed by the company secretary or such other authorised officer of the company. It may also be signed by a person who holds power of attorney from the company. A copy of the power of attorney should be furnished in support of this declaration.

2. This is a form authorised by the Revenue Commissioners.

3. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

\*An “intermediary” means a person who

- carries on a business which consists of, or includes, the receipt of payments from an investment undertaking resident in the State on behalf of other persons;
- holds units in an investment undertaking on behalf of other persons.

<sup>1</sup> A pension scheme; A company carrying on a life business within the meaning of section 706 TCA, 1997; An investment undertaking; A special investment scheme; A unit trust to which section 731(5)(a) TCA, 1997 applies; A charity being a person referred to in section 739D(6)(f)(i) TCA, 1997; A person entitled to exemption from income tax and capital gains tax by virtue of section 784A(2) TCA, 1997, a PRSA administrator, a credit union, an Irish resident company within the charge to corporation tax who invests in a money market fund.

**Declaration of residence outside Ireland**

**Applicants resident outside Ireland are required by the Irish Revenue Commissioners to make the following declaration which is in a format authorised by them, in order to receive payment without deduction of tax. It is important to note that this declaration, if it is then still correct, shall apply in respect of any subsequent acquisitions of shares/units. Terms used in this declaration are defined in the Prospectus.**

**Declaration on own behalf**

I/we\* declare that I am/we are\* applying for the shares/units on my own/our own behalf/on behalf of a company\* and that I am/we are/the company\* is entitled to the shares/units in respect of which this declaration is made and that

- I am/we are/the company is\* not currently resident or ordinarily resident in Ireland, and
- should I/we/the company\* become resident in Ireland I will/we will\* so inform you, in writing, accordingly.

\*Delete as appropriate

**Declaration as Intermediary**

I/we\* declare that I am/we are\* applying for shares/units on behalf of persons:

- who will be beneficially entitled to the shares/units; and,
- who, to the best of my/our\* knowledge and belief, are neither resident nor ordinarily resident in Ireland.

I/we\* also declare that:

- unless I/we\* specifically notify you to the contrary at the time of application, all applications for shares/units made by me/us\* from the date of this application will be made on behalf of such persons; and,
- I/we\* will inform you in writing if I/we\* become aware that any person, on whose behalf I/we\* holds shares/units, becomes resident in Ireland.

\*Delete as appropriate

Name and address of applicant: \_\_\_\_\_

\_\_\_\_\_

Signature of applicant or authorised signatory: \_\_\_\_\_ (declarant)

Capacity of authorised signatory (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

Joint applicants:

Names \_\_\_\_\_ Signatures \_\_\_\_\_

\_\_\_\_\_

*see notes overleaf*

## **IMPORTANT NOTES**

1. Non-resident declarations are subject to inspection by the Irish Revenue Commissioners and  
it is a criminal offence to make a false declaration.
2. To be valid, the application form (incorporating the declaration required by the Irish Revenue Commissioners) must be signed by the applicant. Where there is more than one applicant, each person must sign. If the applicant is a company, it must be signed by the company secretary or another authorised officer.
3. If the application form (incorporating the declaration required by the Irish Revenue Commissioners) is signed under power of attorney, a copy of the power of attorney must be furnished in support of the signature.

**IFSC funds - transitional arrangements**

To facilitate the IFSC funds industry to fully comply on an ongoing basis with the gross roll-up regime introduced in Finance Act 2000, the transitional arrangements as set out below shall apply.

1. Where an IFSC fund is in existence at 31 March, 2000 and the fund's application form includes a requirement that the applicant declares that he/she is not resident in Ireland, that application form will suffice for subscriptions made before 1 October, 2000. However, on making a payment to a unit holder, section 739D(7)(b) will have relevance such that tax must be deducted if the fund is in possession of information which would reasonably suggest that the unit holder is resident or ordinarily resident in Ireland. Funds established on or after 1 April, 2000, however, are required to comply with the declaration procedures set out in Finance Act, 2000.
2. All funds must, however, take such reasonable steps as are necessary in order to comply with the declaration requirements of the gross roll-up regime, particularly as respects funds which are marketed in English-speaking countries where the extent of the difficulties encountered in implementing the declaration requirements is not as significant as with other countries.
3. As a quid pro quo for the arrangements outlined at paragraph 1. above, funds, which on 31 March 2000, were specified collective investment undertakings had to forward to the Collector General a form containing the names and addresses of all resident persons (if any) who were issued with units after 1 April, 2000 and before 1 October, 2000. These forms issued from the Collector General's Office and had to be returned to that Office by 30 November, 2000.
4. Where resident investors as at 1 April, 2000 who, having made a declaration of a kind referred to in section 739D(6), would have been entitled to have payments made to them without deduction of tax, such declaration was to be in place by 30 June, 2000. Such resident persons who become investors in a fund on or after 1 April, 2000 are required to make such a declaration at the time of application.

**Other points of clarification**

5. The legislation does not treat the switching between sub-funds of a fund as giving rise to a chargeable event. It is accepted that the similar transaction of switching between different classes of units/shares of a fund will likewise not give rise to a chargeable event on the understanding that when such an event does arise the gain shall be computed on the basis of the amount of the original investment.
6. Section 739D(5) requires a fund, which prior to 1 April, 2000 was a specified collective investment undertaking, to elect on that date as to whether it will use an average cost or first-in-first-out method of computing a gain. As this election has no significance until the fund commences to issue units to persons who are resident in the State, such an election may be postponed until that time.

## Definitions – Intermediary and Residence

### Definition of Intermediary

An “Intermediary” means a person who-

- carries on a business which consists of, or includes, the receipt of payments from an investment undertaking resident in the State on behalf of other persons;
- holds units in an investment undertaking on behalf of other persons.

### Residence - Individual

An individual will be regarded as being resident in Ireland for a tax year if s/he:

1) spends 183 days or more in the State in that tax year;

or

2) has a combined presence of 280 days in the State, taking into account the number of days spent in the State in that tax year together with the number of days spent in the State in the preceding year.

Presence in a tax year by an individual of not more than 30 days in the State will not be reckoned for the purpose of applying the two-year test. Up to 31 December 2008, presence in the State for a day means the personal presence of an individual at the end of the day (midnight). **From 1 January 2009, presence in the State for a day means the personal presence of an individual at any time during the day.**

### Ordinary Residence -Individual

The term “ordinary residence” as distinct from “residence” relates to a person’s normal pattern of life and denotes residence in a place with some degree of continuity.

An individual who has been resident in the State for three consecutive tax years becomes ordinarily resident with effect from the commencement of the fourth tax year.

An individual who has been ordinarily resident in the State ceases to be ordinarily resident at the end of the third consecutive tax year in which s/he is not resident. Thus, an individual who is resident and ordinarily resident in the State in 2004 and departs from the State in that year **will remain** ordinarily resident up to the end of the tax year in 2007.

### Residence – Company

A company which has its central management and control in Ireland (the State) is resident in the State irrespective of where it is incorporated. A company which does not have its central

management and control in Ireland but which is incorporated in the State is resident in the State except where: -

- the company or a related company carries on a trade in the State, and either the company is ultimately controlled by persons resident in EU Member States or countries with which the Republic of Ireland has a double taxation treaty, or the company or a related company are quoted companies on a recognised Stock Exchange in the EU or in a tax treaty country.  
or
- the company is regarded as not resident in the State under a double taxation treaty between the Republic of Ireland and another country.

It should be noted that the determination of a company's residence for tax purposes can be complex in certain cases and declarants are referred to the specific legislative provisions which are contained in section 23A Taxes Consolidation Act, 1997.