



STATUTORY INSTRUMENTS.

S.I. No. 7 of 2011

MANDATORY DISCLOSURE OF CERTAIN TRANSACTIONS
REGULATIONS 2011

(Prn. A11/0076)

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MANDATORY DISCLOSURE OF CERTAIN TRANSACTIONS
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The Revenue Commissioners in exercise of the powers conferred on them by section 817Q (inserted by section 149 of the Finance Act 2010 (No. 5 of 2010)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, hereby make the following regulations:

PART 1

GENERAL

Citation

1. These Regulations may be cited as the Mandatory Disclosure of Certain Transactions Regulations 2011.

Interpretation

2. (1) In these Regulations—

“emoluments” means emoluments to which Chapter 4 of Part 42 of the Principal Act applies;

“employee” means any person in receipt of emoluments;

“employer” means any person paying emoluments;

“non-business day” means a day which is a Saturday, Sunday or public holiday;

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

“return” means any return, claim, application, notification, election, declaration, nomination, statement, list, registration, particulars or other information, which a person is or may be required by the Acts to give to the Revenue Commissioners or any Revenue officer;

“Revenue officer” means the Collector-General, an inspector or other officer of the Revenue Commissioners (including an inspector or other officer who is authorised under any provision of the Acts (however expressed) to receive a return or to require a return to be prepared and delivered);

“specified date” means—

(a) in relation to a promoter, the relevant date, and

(b) in relation to a person other than a promoter, the date the person enters into any transaction forming part of a disclosable transaction.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 21st January, 2011.*

(2) In these Regulations a reference to a transaction shall be read as including a reference to—

- (a) a proposal for a transaction, and
- (b) in the case of Regulations 7, 8, 11, 12, 13, 14 and 15, any element of a transaction (including the way in which the transaction is structured).

PART 2

GENERAL

Specified classes of transaction

3. (1) A transaction which falls within any description set out in a provision of these Regulations listed in paragraph (2) is specified as a class of transaction which is to be a transaction of a specified description for the purposes of Chapter 3 of Part 33 of the Principal Act.

(2) The provisions of these Regulations referred to in paragraph (1) are—

- (a) Regulation 7 (confidentiality where promoter involved),
- (b) Regulation 8 (confidentiality where no promoter involved),
- (c) Regulation 9 (fees),
- (d) Regulation 10 (standardised tax products),
- (e) Regulation 11 (loss schemes — individuals),
- (f) Regulation 12 (loss schemes — companies),
- (g) Regulation 13 (employment schemes),
- (h) Regulation 14 (income into capital schemes), and
- (i) Regulation 15 (income into gift schemes).

Prescribed class of person

4. A person to whom the description “any other promoter” applies in Regulation 7 is a prescribed class of person for the purposes of section 817D(2)(c)(i) of the Principal Act.

Prescribed purposes

5. The purposes referred to in Regulations 7 and 8 are each a prescribed purpose for the purposes of section 817D(2)(c)(i) of the Principal Act.

Prescribed classes of tax advantage

6. (1) A tax advantage which falls within any description set out in a provision of these Regulations listed in paragraph (2) is a prescribed class of tax advantage for the purposes of section 817D(2)(c)(iv) of the Principal Act.

(2) The provisions of these Regulation referred to in paragraph (1) are —

- (a) Regulation 11 (loss schemes — individuals),
- (b) Regulation 12 (loss schemes — companies),
- (c) Regulation 13 (employment schemes),
- (d) Regulation 14 (income into capital schemes), and
- (e) Regulation 15 (income into gift schemes).

PART 3

TRANSACTIONS OF A SPECIFIED DESCRIPTION

Confidentiality where promoter involved

7. (1) This Regulation applies to a transaction which—

- (a) gives rise to the tax advantage expected to be obtained, and
- (b) complies with any of the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1)(b) are:

- (a) that it might reasonably be expected that any promoter would wish to keep the way in which the transaction concerned gives rise to the tax advantage confidential from any other promoter at any time after the specified date and a purpose for doing so would be to maintain competitive advantage;
- (b) that the promoter of the transaction would, but for the requirements of Chapter 3 of Part 33 of the Principal Act, wish to keep the way in which the transaction gives rise to the tax advantage confidential from the Revenue Commissioners at any time after the specified date and a purpose for doing so is to facilitate repeated or continued use of the same, or substantially the same, transaction in the future;
- (c) that the person implementing the transaction would, but for the requirements of section 817F or 817H of the Principal Act, wish to keep the way in which the transaction gives rise to the tax advantage confidential from the Revenue Commissioners at any time after the specified date and a purpose for doing so is—
 - (i) to facilitate repeated or continued use of the same, or substantially the same, transaction in the future,
 - (ii) to prevent the Revenue Commissioners from using the information relating to the transaction to enquire into any return, or

- (iii) to prevent the Revenue Commissioners from using the information relating to the transaction to withhold a refund or repayment of, or a payment of, any amount claimed separately from a return under any of the provisions of the Acts.

Confidentiality where no promoter involved

8. (1) This Regulation applies to a transaction which—

- (a) gives rise to the tax advantage expected to be obtained, and
- (b) complies with the condition specified in paragraph (2).

(2) The condition referred to in paragraph (1)(b) is that the person implementing the transaction would, but for the requirements of section 817G of the Principal Act, wish to keep the way in which the transaction gives rise to the tax advantage confidential from the Revenue Commissioners at any time after the specified date and a purpose for doing so is any of the purposes referred to in Regulation 7(2)(c).

Fees

9. (1) This Regulation applies to a transaction which gives rise to the tax advantage expected to be obtained and where it might reasonably be expected that a promoter, or a person connected (within the meaning of section 10 of the Principal Act) with a promoter, of transactions that are the same as, or substantially the same as, the transaction concerned, would, but for the requirements of Chapter 3 of Part 33 of the Principal Act, be able to obtain a premium fee from or charge a premium fee to a person implementing such transaction, being a person experienced in receiving services of the type being provided.

(2) For the purposes of this Regulation—

“premium fee”, in relation to a transaction, means a fee chargeable by virtue of the transaction from which the tax advantage expected to be obtained arises and which is—

- (a) to a significant extent attributable to that tax advantage, or
- (b) to any extent contingent upon the obtaining of that tax advantage;

“fee”, in relation to a transaction, includes any consideration, in whatever form, which is attributable to the provision of the transaction, whether the consideration is provided directly or indirectly.

Standardised tax products

10. (1) This Regulation applies to a transaction which complies with the conditions specified in paragraph (2) (in this Regulation referred to as a “standardised tax product”).

(2) The conditions referred to in paragraph (1) are that —

- (a) the transaction has, or is intended to have standardised, or substantially standardised, documentation—
 - (i) the purpose of which is to enable the implementation, by a person, of the transaction, and
 - (ii) the form of which is determined by the promoter and not tailored, to any material extent, to reflect the circumstances of the person implementing the transaction,
 and
- (b) the person referred to in subparagraph (a)(i) is required to enter into a specific transaction, or series of transactions, that are standardised, or substantially standardised, in form.

(3) For the purpose of paragraphs (1) and (2) a transaction is standardised if a promoter makes, or intends to make, the transaction available for implementation by more than one person.

(4) Notwithstanding paragraphs (1) to (3) and without prejudice to Regulations 8 and 9, a transaction shall not be a standardised tax product where it is a transaction of a kind specified in the Schedule.

Loss schemes — individuals

11. This Regulation applies to a transaction where the promoter expects more than one individual to implement the same, or substantially the same, transaction and the transaction is such that an informed observer, having examined it, could reasonably conclude—

- (a) that a main outcome of the transaction that could be expected for some or all of the individuals participating in it is the provision of losses, and
- (b) that those individuals would be expected to use such losses to reduce their liability to income tax or capital gains tax.

Loss schemes — companies

12. (1) This Regulation applies to a transaction where one of the parties to the transaction is a company that has, or expects to have, unrelieved losses at the end of an accounting period and an informed observer, having examined the transaction, could reasonably conclude that a main benefit of the transaction is—

- (a) that the company transfers those losses to another party who would be expected to use them to reduce its corporation tax liability, or
- (b) that the company is able to use those losses to reduce its corporation tax liability.

(2) For the purposes of paragraph (1) “unrelieved losses at the end of an accounting period” means trading losses in respect of which relief could not have been given (but for the transaction) under the Principal Act for that, or any previous, accounting period.

Employment schemes

13. (1) This Regulation applies to a transaction where a tax advantage is obtained, or might be expected to be obtained, by virtue of the transaction by way of a reduction in, or deferment of, liability to tax, by the employer or the employee or by any other person by reason of the employee’s employment—

(a) where the tax advantage relates to employment income, in any year of assessment, or

(b) in any other case, in any period of account.

(2) For the purposes of paragraph (1) “employment income” means salaries, fees, wages, perquisites, benefits or profits (by whatever name called, including expenses) from an office or employment.

(3) Notwithstanding paragraph (1) and without prejudice to Regulations 8 and 9, a transaction shall not be a transaction of a kind described in this Regulation where it is a transaction of a kind specified in the Schedule.

Income into capital schemes

14. (1) This Regulation applies to a transaction where, as a consequence of the transaction, a person who would otherwise incur, or be expected to incur, a liability to income tax in any tax year, will—

(a) incur, or be expected to incur, a lesser or nil liability to income tax chargeable in that year, and

(b) acquire an asset, the disposal of which would, in principle, be a chargeable gain under the Principal Act.

(2) For the purposes of paragraph (1) a chargeable gain includes a gain on the disposal of assets that are exempt from capital gains tax or relieved from capital gains tax under any of the provisions of the Principal Act.

(3) Notwithstanding paragraph (1) and without prejudice to Regulations 8 and 9, a transaction shall not be a transaction of a kind described in this Regulation where it is a transaction of a kind specified in the Schedule.

Income into gift schemes

15. This Regulation applies to a transaction where, as a consequence of the transaction, a person who would otherwise incur, or be expected to incur, a liability to income tax in any tax year will—

(a) incur, or be expected to incur, a lesser or nil liability to income tax chargeable in that year, and

- (b) be deemed to take a gift by virtue of section 5(1) of the Capital Acquisitions Tax Consolidation Act 2003 (No. 1 of 2003).

PART 4

SPECIFIED INFORMATION IN RELATION TO DISCLOSABLE TRANSACTIONS

Specified information — general

16. (1) The information requirements set out in paragraph (2) are specified information for the purposes of Chapter 3 of Part 33 of the Principal Act.

- (2) (a) The information which shall be provided to the Revenue Commissioners by a person under all or any of sections 817E to 817G and section 817H(1) of the Principal Act in respect of a disclosable transaction is the information set out in—

(i) subparagraph (b), and

(ii) clauses (i) to (iii), as the case may be, of subparagraph (c).

- (b) The information referred to in subparagraph (a)(i) is such information as might reasonably be expected to enable the manner in which the disclosable transaction operates, or is intended to operate, to be fully understood by a Revenue officer, and shall include—

(i) full reference to the provisions of Chapter 3 of Part 33 of the Principal Act and of these Regulations by virtue of which the person by whom, or on whose behalf, the information is being provided considers that the transaction is disclosable,

(ii) a summary of the disclosable transaction and the name (if any) by which it is known,

(iii) full reference to the provisions of the Acts that are considered by the person to be relevant to the treatment of the disclosable transaction for tax purposes, and

(iv) full details of the disclosable transaction explaining each element of the transaction (including the way in which the transaction is structured) from which the tax advantage expected to be obtained under the transaction arises and how, in the opinion of the person by whom, or on whose behalf, the information is being provided, each provision of the Acts referred to in clause (iii) applies, or as the case may be, does not apply to the transaction.

- (c) The information referred to in subparagraph (a)(ii) is—

(i) where the information is required to be disclosed by a promoter under section 817E of the Principal Act, the name, address, telephone number and tax reference number of the promoter,

- (ii) where the information is required to be disclosed by a person under section 817F or 817H(1) of the Principal Act—
 - (I) the name, address, telephone number and tax reference number of the person, and
 - (II) the name, address and telephone number of the promoter,
 or
- (iii) where the information is required to be disclosed by a person under section 817G of the Principal Act, the name, address, telephone number and tax reference number of the person.

PART 5

SPECIFIED PERIOD WITHIN WHICH SPECIFIED INFORMATION IS TO BE PROVIDED

Specified periods — general

17. The periods specified in Regulations 18 to 20 within which the specified information referred to in Regulation 16 is to be provided by a person to the Revenue Commissioners are each a specified period for the purposes of Chapter 3 of Part 33 of the Principal Act.

Specified period where promoter involved

18. Subject to Regulation 21, where the specified information referred to in Regulation 16 is to be provided under section 817E of the Principal Act, the period of time shall be the period of 5 days beginning on the day after the relevant date.

Specified period where promoter outside the State or asserts legal professional privilege

19. Subject to Regulation 21, where the specified information referred to in Regulation 16 is to be provided under section 817F or 817H(1) of the Principal Act, the period of time shall be the period of 5 days beginning on the day after the day the person enters into the first transaction forming part of the disclosable transaction.

Specified period where there is no promoter

20. Subject to Regulation 21, where the specified information referred to in Regulation 16 is to be provided under section 817G of the Principal Act, the period of time shall be the period of 30 days beginning on the day after the day the person enters into the first transaction forming part of the disclosable transaction.

Disregarding of non-business days

21. In determining any specified period for the purposes of Regulations 18 to 20 any day which is a non-business day shall be disregarded.

PART 6

SPECIFIED PERIOD WITHIN WHICH OTHER INFORMATION TO BE PROVIDED

Specified periods — general

22. The periods specified in Regulations 23 to 25 are each a specified period for the purposes of Chapter 3 of Part 33 of the Principal Act.

Specified period where promoter asserts legal professional privilege

23. Subject to Regulation 26, a promoter who by virtue of section 817J of the Principal Act does not comply with section 817E of that Act shall, within the period of 5 days beginning on the day after the relevant date, inform the Revenue Commissioners of the non-compliance and provide the Commissioners with the name, address, telephone number and tax reference number of the promoter.

Provision by promoter of client list

24. (1) Subject to Regulation 26, a person who is required, under section 817M of the Principal Act, to provide the Revenue Commissioners with a client list (within the meaning of that section) shall provide such list to the Commissioners—

(a) within the period of 30 days beginning on the day after the day on which—

(i) the promoter first makes the disclosable transaction concerned available to a person for implementation, or

(ii) in a case where the relevant date is the date referred to in paragraph (c) of the definition of “relevant date” in section 817D(1) of the Principal Act, the promoter first becomes aware of any transaction forming part of the disclosable transaction having been implemented,

and

(b) thereafter, subject to paragraph (3), within the period of 5 days beginning on the day after the end of each quarter.

(2) For the purposes of this Regulation “quarter” means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

(3) Paragraph (1)(b) shall not apply to a quarter during which the promoter—

(a) has not made the disclosable transaction available to a person for implementation, or

(b) has provided the Revenue Commissioners with a client list in accordance with paragraph (1)(a) and has not made the disclosable transaction available to any other person for implementation in the period from the date the client list was provided to the Revenue Commissioners to the last day of the quarter concerned.

(4) A client list required to be provided to the Revenue Commissioners in accordance with paragraph (1)(b) (in this paragraph referred to as the “latest client list”) shall not include the name, address and tax reference number of any person who has been included in a client list in respect of the disclosable transaction to which the latest client list relates, in any preceding quarter.

Specified period relating to Appeal Commissioners’ determinations

25. Subject to Regulation 26, where, following an application by the Revenue Commissioners in accordance with subsection (1) of section 817P of the Principal Act in relation to any of the matters referred to in that subsection, the Appeal Commissioners make a determination in accordance with paragraph (a)(i), (b)(i), (c)(i), (d)(i) or (e)(i), as the case may be, of subsection (2) of that section—

- (a) the information or documents to be made available to the Revenue Commissioners by a person on foot of the determination (where the determination is made in accordance with paragraph (a)(i), (b)(i) or (c)(i) of that subsection), or
- (b) the specified information to be made available to the Revenue Commissioners by a person in consequence of the determination (where the determination is made in accordance with paragraph (d)(i) or (e)(i) of that subsection),

shall be made available within the period of 5 days beginning on the day after the date of the determination.

Disregarding of non-business days

26. In determining any specified period for the purposes of Regulations 23 to 25, any day which is a non-business day shall be disregarded.

PART 7

TRANSITIONAL ARRANGEMENTS

Transitional arrangements

27. For the purposes of Regulations 18 to 20 and 23 to 25, a period of time referred to in any of those Regulations which, apart from this Regulation, would end before 15 April 2011 shall end on that date.

PART 8

CIRCUMSTANCES IN WHICH PERSON NOT TO BE TREATED AS PROMOTER

Groups

28. (1) A person shall not be treated as a promoter, in relation to a disclosable transaction, for the purposes of Chapter 3 of Part 33 of the Principal Act where—

- (a) the person carrying on the relevant business is a company (in this Regulation referred to as the “first-mentioned company”), and

- (b) on the relevant date, each other person to whom the first-mentioned company provides services relating to taxation in connection with a transaction is a company which is a member of the same group as the first-mentioned company.

(2) For the purposes of this Regulation “group” has the same meaning as it has in the definition of “relevant business” in section 817D(1) of the Principal Act.

Employees

29. (1) An individual shall not be treated as a promoter for the purposes of Chapter 3 of Part 33 of the Principal Act where he or she is an employee of an employer who is—

- (a) a promoter in relation to the transaction concerned, or
- (b) a person who enters into any transaction forming part of a disclosable transaction where that person is required under section 817G of the Principal Act to provide the Revenue Commissioners with specified information in relation to the transaction.

(2) For the purposes of this Regulation an employee of a person who is connected (within the meaning of section 10 of the Principal Act) with another person shall be treated as an employee of that other person.

Other circumstances

30. A person shall not be treated as a promoter for the purposes of Chapter 3 of Part 33 of the Principal Act where—

- (a) in the course of providing tax advice, the person is not responsible for the design of the disclosable transaction (including the way in which the transaction is structured) from which the tax advantage expected to be obtained arises,
- (b) in the course of a business that is a relevant business by virtue of paragraph (a) of the definition of “relevant business” in section 817D(1) of the Principal Act, the person is to any extent responsible for the design of the disclosable transaction (including the way in which the transaction is structured) from which the tax advantage expected to be obtained arises but does not provide tax advice in the course of carrying out his or her responsibilities in relation to the disclosable transaction, or
- (c) the person is not responsible for the design of all of the elements of the disclosable transaction (including the way in which the transaction is structured) from which the tax advantage expected to be obtained arises and could not reasonably be expected to have sufficient information as would enable the person—
 - (i) to know whether or not the transaction is a disclosable transaction, or

- (ii) to comply with the requirements of section 817E of the Principal Act.

PART 9

MISCELLANEOUS

Form and manner of delivery of information

31. Information required to be provided to the Revenue Commissioners under Chapter 3 of Part 33 of the Principal Act and these Regulations shall be delivered in such form and manner, including by electronic means, as may be specified by the Revenue Commissioners from time to time and to such office of the Revenue Commissioners—

- (a) as is so specified, or
- (b) as may be identified in guidelines issued by the Revenue Commissioners relating to Chapter 3 of Part 33 of the Principal Act and these Regulations, as the office to which the information should be sent.

SCHEDULE

TRANSACTIONS TO WHICH THESE REGULATIONS DO NOT APPLY

1. A Profit Sharing Scheme approved by the Revenue Commissioners under Part 2 of Schedule 11 to the Principal Act.
2. An Employee Share Ownership Trust approved by the Revenue Commissioners under paragraph 2 of Schedule 12 to the Principal Act.
3. A Savings Related Share Option Scheme approved by the Revenue Commissioners under paragraph 2 of Schedule 12A to the Principal Act.
4. A Contractual Savings Scheme certified by the Revenue Commissioners under Schedule 12B to the Principal Act.
5. A Share Option Scheme approved by the Revenue Commissioners under paragraph 2 of Schedule 12C to the Principal Act.
6. An approved salary sacrifice arrangement referred to in section 118B of the Principal Act.
7. A Retirement Benefits Scheme within the meaning of section 771 of the Principal Act, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act.
8. An Annuity Contract or a Trust Scheme, or part of a Trust Scheme, for the time being approved by the Revenue Commissioners under section 784 of the Principal Act.
9. A PRSA contract, within the meaning of section 787A of the Principal Act, in respect of a PRSA product, within the meaning of that section.
10. A Qualifying Overseas Pension Plan, within the meaning of Chapter 2B of Part 30 of the Principal Act.
11. A transaction qualifying for relief for investment in films under section 481 of the Principal Act.
12. A transaction qualifying for relief for investment in renewable energy generation under section 486B of the Principal Act.
13. A transaction qualifying for exemption for profits or gains arising from the occupation of certain woodlands under section 232 of the Principal Act.
14. A transaction qualifying for exemption from CGT of certain proceeds of sale of woodlands under section 564 of the Principal Act.
15. A transaction qualifying for relief for investment in corporate trades under Part 16 of the Principal Act.

16. A transaction qualifying for the tax treatment of certain venture fund managers under section 541C of the Principal Act.

17. A transaction qualifying for repayment of tax for relevant employees where earnings are not remitted under section 825B of the Principal Act.

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



GIVEN under the Official Seal of the Minister for Finance.
14 January 2011.

BRIAN LENIHAN,
Minister for Finance.

GIVEN under my hand,
17 January 2011.

MICHAEL O'GRADY,
Revenue Commissioner.

EXPLANATORY NOTE

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

These Regulations are made by the Revenue Commissioners under section 817Q of the Taxes Consolidation Act 1997 (inserted by the Finance Act 2010) with the consent of the Minister for Finance.

The Regulations deal with matters arising out of the Mandatory Disclosure of Certain Transactions legislation contained in Chapter 3 of Part 33 of the Taxes Consolidation Act 1997. Chapter 3 introduced a new mandatory disclosure regime that places obligations primarily on promoters of certain tax-related transactions to give details of those transactions to the Revenue Commissioners, explaining how the transactions are intended to work. The transactions affected are those that have as a main benefit the obtaining of a tax advantage and that match certain features (i.e. “specified descriptions”) set out in the Regulations.

In addition to setting out the classes of transactions that are to be transactions of a “specified description” for the purposes of the mandatory disclosure regime and the circumstances in which they are to apply to particular transactions (Regulations 7 to 15), the Regulations also set out the following operational aspects of the disclosure regime:

- The specified information that has to be provided to the Revenue Commissioners by a promoter or, as appropriate, a user about a disclosable transaction (Regulation 16).
- The specified time periods within which the specified information about a disclosable transaction has to be provided to the Revenue Commissioners (Regulations 17 to 21).
- The specified time periods within which other information (e.g. client lists) has to be provided to Revenue Commissioners (Regulations 22 to 26).
- The transitional arrangements that will apply as regards the periods within which specified information about disclosable transactions has to be provided (Regulation 27).
- The circumstances in which a person is not to be treated as a promoter in relation to a disclosable transaction for the purpose of the legislation (Regulations 28 to 30).
- The form and manner of delivery of the information to be provided to the Revenue Commissioners (Regulation 31).

In addition, the Schedule to the Regulations specifies certain transactions that do not come within certain of the classes of transaction which have to be reported.

BAILE ÁTHA CLIATH
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