



STATUTORY INSTRUMENTS.

S.I. No. 245 of 2013



RETURN OF VALUES (INVESTMENT UNDERTAKINGS)
REGULATIONS 2013

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The Revenue Commissioners in exercise of the powers conferred on them by section 891C (inserted by section 121(e) of the Finance Act 2012 (No. 9 of 2012)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, hereby make the following regulations:

Citation

1. These Regulations may be cited as the Return of Values (Investment Undertakings) Regulations 2013.

Definitions

2. In these Regulations—

“administration” has the same meaning as in Schedule 1 of The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011);

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

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

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

“books, records or other documents” includes—

- (a) any records used in the business of an investment undertaking or by any person providing services relating to administration by or on behalf of the investment undertaking, whether—
 - (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or
 - (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,

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

“Commissioners” means the Revenue Commissioners;

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

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

“excepted unit holder”, in relation to an investment undertaking, means a unit holder—

- (a) in respect of which a gain shall not be treated as arising to the investment undertaking under any provision of subsections (6) to (9A) of section 739D of the Principal Act, or
- (b) whose units in the investment undertaking are held in a recognised clearing system within the meaning of section 246A(2) of the Principal Act;

“investment” means an investment in units of an investment undertaking;

“investment number” is the identifier of the unit holder by the investment undertaking;

“investment undertaking” has the same meaning as it has in the Principal section;

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

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

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

“return” means a return made electronically—

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

“Revenue officer” means an officer of the Commissioners;

“tax” means any tax provided for under the Tax Acts or the Capital Gains Tax Acts;

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

“tax year” means a year of assessment;

“unit” and “unit holder” have the same meanings respectively as in the Principal section;

“value”, in relation to units, means the redemption or repurchase price calculated under the provisions of regulation 110(3) of The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011;

“year of assessment” has the same meaning as in the Principal Act.

Return of values

3. (1) Subject to this Regulation—

- (a) every investment undertaking shall, as respects the tax year 2012 and each subsequent tax year, make and deliver to the appropriate Revenue officer, within the time specified in Regulation 4, a return of the value of the investment held by a unit holder in that investment undertaking at—
 - (i) 31 December in the tax year, or
 - (ii) the date of first redemption in the tax year if earlier,

(b) subparagraph (a) shall not apply to an excepted unit holder.

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

- (a) the investment undertaking, the details set out in paragraph (3),
- (b) each unit holder, the details set out in paragraph (4), and
- (c) the value of the investment held by each unit holder, the details set out in paragraph (5).

(3) The details relating to the investment undertaking are—

- (a) the name of the investment undertaking,
 - (b) the address of the investment undertaking's registered office, and
 - (c) the tax reference number of the investment undertaking if available.
- (4) The details relating to the unit holder are—
- (a) the name of the unit holder,
 - (b) (i) in the case of an individual—
 - (I) his or her address as established for the purposes of Chapter 3A of Part 38 of the Principal Act, if applicable, or
 - (II) his or her address determined for the purposes of section 32 of the Criminal Justice Act 1994 (No. 15 of 1994), or Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No. 6 of 2010), as appropriate,but if neither (I) nor (II) applies, the address on record, and
 - (III) the date of birth if on record,
 - (ii) in the case of a company or other unit holder required by law to maintain a registered office, the address of the registered office of the company or other unit holder if on record, or
 - (iii) in any other case or if the registered office referred to in subparagraph (ii) is not on record, the unit holder's address as determined for the purposes of section 32 of the Criminal Justice Act 1994 or Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as appropriate,
- and
- (c) in the case of any unit holder, in respect of an investment made on or after 1 January 2014—
 - (i) the unit holder's tax reference number, or
 - (ii) in the absence of such a number, an indication to that effect.
- (5) The details relating to the investment held are—
- (a) (i) the investment number associated with the investment,
 - (ii) in a case where there is no investment number associated with the investment, information capable of identifying the investment, and
- (b) the value of the units held.

- (6) (a) In the case of an investment made by two or more persons jointly, this Regulation shall apply to each person's entitlement to a portion of the investment and for this purpose, the amount of each person's entitlement shall be—
- (i) in a case where the investment undertaking knows the respective entitlements of each of the parties to the investment, the amount of the person's entitlement, or
 - (ii) in any other case, an amount equal to the value of the units,
- (b) Where this paragraph applies, the information to be returned under this Regulation in accordance with subparagraph (a) shall include—
- (i) an indication that the investment was made by two or more persons jointly and whether the value of the investment is derived from subparagraph (a)(i) or (a)(ii), and
 - (ii) if known, the number of persons who are party to the investment.
- (7) Returns made under this Regulation for a tax year shall be sent to the appropriate Revenue officer at the office of Planning Division at the address set out on the return to be made under this Regulation for the year concerned.

Time by which returns are to be made

4. Returns under these Regulations shall be made not later than—
- (a) as respects returns made for the tax year 2012, 30 September 2013, and
 - (b) as respects returns made for each subsequent tax year, 31 March in the tax year immediately following the year for which the return is to be made.

Obligation to obtain and provide tax reference numbers

5. (1) Subject to paragraph (2), as respects any investment made on or after 1 January 2014—
- (a) an investment undertaking shall make reasonable efforts to obtain from a unit holder the tax reference number of the unit holder, if any, and
 - (b) the unit holder shall provide to the investment undertaking the unit holder's tax reference number, if any.
- (2) Paragraph (1) shall not apply as respects any excepted unit holder.
- (3) (a) Any application or other form (including a form to be completed electronically) given or provided to a unit holder by an investment undertaking, or a person acting for an investment undertaking, for the purpose of making an investment with the investment undertaking, shall require the unit holder to record the tax reference

number, if any, of the unit holder at an appropriate location on the form.

- (b) Where a unit holder is making an investment with an investment undertaking and that unit holder is not required to complete a form for the purposes of making the investment, the investment undertaking or any person acting for the investment undertaking shall request that unit holder to provide the unit holder's tax reference number, if any. Any form or other record (including any electronic form or other record) used by the investment undertaking or the person acting for the investment undertaking to record personal or other details relating to the unit holder shall include provision for the recording of the unit holder's tax reference number at an appropriate location on the form.

- (4) (a) For the purposes of this Regulation an investment undertaking shall verify a unit holder's tax reference number by reference to any document or copy of a document on which is printed, in addition to the unit holder's tax reference number, that person's—

(i) name and address as established for the purposes of Regulation 3(4),

(ii) name and address of place of employment or self employment, or

(iii) name and the name of that person's employer,

other than a document which in the opinion of the investment undertaking appears to have been altered in such a way as to cast doubt on the veracity of the tax reference number quoted on the document.

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

(5) Where a unit holder, at the time of the making of an investment, fails to provide a tax reference number or a document referred to in subparagraph (4)(a), the obligations of an investment undertaking under this Regulation in relation to that person's tax reference number shall be regarded as fulfilled if—

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

- (b) the investment undertaking includes in the return to be made under Regulation 3 an indication to the effect that a tax reference number, or a document referred to in subparagraph (4)(a) verifying the tax reference number, has not been provided by that person.

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

(7) The investment undertaking shall use the tax reference number obtained under this Regulation only for the purpose of including it in the return to be made under Regulation 3 and for no other purpose.

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

6. (1) Any Revenue officer may by notice in writing require an investment undertaking, to furnish him or her within such time, not being less than 14 days, as may be provided by the notice, with such information (including copies of any relevant books, records or other documents) as he or she may reasonably require for the purpose of determining whether information contained in a return under these Regulations by the investment undertaking is correct and complete.

(2) Where an authorised officer in exercising his or her powers and duties under subsection (5) of the Principal section has reason to believe that information—

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

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

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

(3) An authorised officer may require an investment undertaking or an employee of an investment undertaking to produce books, records or other documents and to provide information, explanations and particulars and to give all assistance which the authorised officer may reasonably require for the purpose of the powers and duties conferred on him or her by subsection (5) of the Principal section and, as the case may be, enquiries under paragraph (2).

(4) An authorised officer may require an associated company in relation to an investment undertaking or an employee of such an associated company to produce books, records or other documents and to provide information, explanations and particulars and to give all assistance which the authorised officer may reasonably require for the purpose of the powers and duties conferred on him or her by subsection (5) of the Principal section and, as the case may be, enquiries under paragraph (2).

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

Delegation

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

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



GIVEN under my Official Seal,
5 July 2013.

MICHAEL NOONAN,
Minister for Finance.

GIVEN under my hand,
5 July 2013.

NIALL CODY,
Revenue Commissioner.

EXPLANATORY NOTE

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

These Regulations, which give effect to the provisions of section 891C of the Taxes Consolidation Act 1997 (inserted by section 121 of the Finance Act 2012), are made by the Revenue Commissioners, with the consent of the Minister for Finance, and provide for the automatic annual reporting by investment undertakings of the value of units held by certain unit holders who have made investments in the respective undertaking in the year 2012 and subsequent years.

The details to be reported include the name, address, date of birth (if an individual) and the value of the units held. For new investments made on or after 1 January 2014 the details to be reported will also include the tax reference number or, in the absence of the number, a special marker indicating that this was not provided.

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