

[38.3.13]Returns of Income and Gains and Other Obligations

Third Party Returns Requirement to Report Information Automatically

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1. Legislation

Under **Section 894 TCA 1997**, business people are obliged to automatically make annual returns of information to the Revenue Commissioners regarding payments made to, or certain transactions with, third parties. Further details are contained in [Tax Instruction 38.3.3](#).

1.1 Publications

The rules and guidelines are set out in:

- [Statement of Practice SP - IT/1/92](#) ;
- [Leaflet IT 16 Third Party Returns - Automatic Return of Certain Information](#) ;
- [Tax Instruction 38.3.4](#)¹ and [Tax Instruction 38.3.11](#))², which set out the procedures agreed for solicitor client accounts;
- [Tax Instruction 38.3.2](#))³ which gives information on returns to be made by intermediaries in the Financial Services area.

1.2 Practices

Under the legislation, any person may be excluded from the obligation to make a return or may be allowed to confine a return to a particular type or category of information. Where such procedures are agreed they are kept under review to ensure that they continue to be appropriate. The following practices have been agreed:

Exempt bodies/persons

Permission has been given on request to omit from certain headings of the return, individuals or bodies who are exempt from tax under the particular heading. The person responsible for making the return must seek appropriate evidence of the exempt status e.g. letter or other notice from the Revenue Commissioners in respect of pension funds or charities or declarations in respect of non-residents.

Nominee companies for Employment and Investment Incentive (EII) relief purposes.⁴

¹ Article 2 Tax Briefing Issue 12 - October 1993

² Tax Briefing Issue 29 - December 1997

³ Tax Briefing Issue 23 - September 1996

⁴ Replaced Nominee Companies for Business Expansion Scheme (BES). BES investors were not required to make a return where information had been given to an individual on Form RICT3.

Nominee companies for Employment and Investment Incentive Investors need not make a return where Revenue has issued an EII 3 certificate.

2. Legislation

Section 895 TCA 1997 places an obligation on financial institutions and other intermediaries who act for or assist Irish residents in opening foreign bank accounts to make an appropriate return to the appropriate Inspector. In addition, Irish residents are themselves obliged to report the opening of such accounts in their annual returns of income.

2.1 Practice

It is accepted that the reporting requirements were not intended to cover certain transactions by financial services companies in the ordinary course of their business. The legislation, if strictly applied, would mean that those companies would be obliged to report hundreds of transactions on their annual return in circumstances where the income on the accounts is being returned for tax purposes. Accordingly, the Revenue Commissioners have agreed that Irish-resident companies are not required to report the opening of foreign bank accounts in the following circumstances:

- (a) the foreign account is opened in the course of a financial services trade carried on by the company;
- (b) the account is opened for overnight/short-term placement (short-term meaning up to 3 months);
- (c) the deposit on the account is held as a trading asset of the company;
- (d) income on the account forms part of the trading income of the company, chargeable to tax under Case 1, Schedule D.

This practice is agreed subject to a written undertaking being supplied by the companies involved to the Revenue office dealing with their affairs to the effect that the income arising on such foreign accounts will be included in the company's annual return of income.