

S. I. No. 136 of 2008

Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks)
Regulations 2008

(PRN. A8/0605)

**Return of Payments (Banks, Building Societies, Credit Unions and Savings
Banks) Regulations 2008**

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Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks)
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The Revenue Commissioners in exercise of the powers conferred on them by subsections (3) and (4) of section 891B (inserted by the Finance Act 2006 (No. 6 of 2006)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, make the following regulations:

Citation.

1. These Regulations may be cited as the Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008.

Definitions.

2. (1) In these Regulations and in the Schedules to these Regulations, except where the context otherwise requires -

“account number” includes, in addition to the account number, any code or codes used generally in the financial services industry to identify a specified person or a branch of a specified person, and “bank code”, “branch code”, “sorting code” and any other similar terms used to identify a specified person or a branch of a specified person shall be construed accordingly;

“appropriate Revenue officer” means a Revenue officer designated in writing for the purpose of these Regulations by the Assistant Secretary in the Office of the Revenue Commissioners for the time being in charge of Operations Policy and Evaluation Division;

“appropriate tax” has the same meaning as in section 256 of the Principal Act;

“associated company”, in relation to a specified person, means a company which is itself a specified person and which is the specified

person's associated company within the meaning of section 432 of the Principal Act;

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

“bank” means a person who is a holder of, or who has held, a licence granted under section 9 of the Central Bank Act 1971 (No. 24 of 1971) or a person who holds, or has held, a licence or other similar authorisation under the law of any other Member State of the European Communities which corresponds to a licence granted under that section;

“books, records or other documents” includes-

- (a) any records used in the business of a specified person, or used in the transfer department of a specified person acting as registrar of securities, 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,
- (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 a specified person and a person to whom it makes a relevant payment, and

(e) the materials and documents referred to in sections 898F(5) and 898G(6) of the Principal Act;

“building society” means a building society within the meaning of the Building Societies Act 1989 (No. 17 of 1989) or a society established in accordance with the law of any other Member State of the European Communities which corresponds to that Act;

“Commissioners” means the Revenue Commissioners;

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

“credit union” means a society registered under the Credit Union Act 1997 (No. 15 of 1997), including a society deemed to be so registered under section 5(3) of that Act;

“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 payment”, in relation to any payment made by a specified person, means a payment made by the specified person which is listed in Schedule 2 to these Regulations, but—

(a) any payment referred to in paragraph 1, 2, 3 or 6 of Schedule 2 shall not be an excepted payment unless the specified person making the payment is satisfied that the person to whom it is making the payment is beneficially entitled to the payment, and

(b) any payment referred to in paragraph 4 of Schedule 2 shall not be an excepted payment if the specified person making the payment is unable to identify the payment as a payment referred to in that paragraph;

“interest” means any interest of money whether yearly or otherwise, including any amount, whether or not described as interest, paid in consideration of the making of an investment, and as respects-

(a) an investment, where the amount to be repaid may be to any extent linked to, or determined by, changes in a stock exchange index or other financial index, includes any amount which is or is to be repaid over and above the amount of the investment, and

(b) a building society or credit union, includes any dividend or other distribution in respect of shares in the society or union, but in the case of a credit union does not include any dividend or other distribution made in respect of a period ending before the end of the year 2008;

“investment” means a sum of money paid to a specified person on terms under which the sum of money, or any part of it, may be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made, notwithstanding that the amount to be repaid may be to any extent linked to or determined by

changes in a stock exchange index or any other financial index;

“money” includes money expressed in a currency other than euro;

“Operations Policy and Evaluation Division” means the division of the Office of the Revenue Commissioners known as Operations Policy and Evaluation Division or any other division of the Revenue Commissioners to which is assigned by the Commissioners the responsibilities given by these Regulations to Operations Policy and Evaluation Division;

“payee” means any person to whom a relevant payment is made;

“Principal Act” means the Taxes Consolidation Act 1997;

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

“rate of exchange” means the rate at which a currency might reasonably be exchanged for the euro by persons dealing at arm’s length;

“relevant payment”–

(a) in relation to a payment made by any bank, any building society or any savings bank–

(i) in the year 2005 or 2006, as the case may be, means any payment of interest (within the meaning of section 256 of the Principal Act) made in the year 2005 or 2006 from which appropriate tax was deducted in accordance with the provisions of Chapter 4 of Part 8 of that Act, and

(ii) in the year 2007, means any payment, other than an

excepted payment, of interest made in consideration of the making of an investment, including any amount of specified interest (within the meaning of section 260 of the Principal Act) to which the provisions of section 260(2) of the Principal Act applied, and

(b) in relation to a payment made by any bank, any building society, any savings bank or any credit union in the year 2008 and each subsequent year, means any payment, other than an excepted payment, of interest made in consideration of the making of an investment, including any amount of specified interest (within the meaning of section 260 of the Principal Act) to which the provisions of section 260(2) of the Principal Act applied;

“relevant person” has the same meaning as in the Principal section;

“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;

“savings bank” means a savings bank established under the Post Office Savings Bank Acts 1861 to 1958;

“specified person” means a person specified by Regulation 3;

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

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

section;

“tax year” means a year of assessment.

(2) Schedules 1 and 2 to these Regulations shall have effect for the purposes of these Regulations.

Specified persons.

3. A person who is a member of a class of relevant persons described in Schedule 1 is specified as a specified person for the purposes of -

(a) section 891B of the Principal Act, and

(b) these Regulations.

Reporting thresholds.

4. (1) Subject to paragraph (2), no relevant payment made in respect of an investment shall be required to be included in a return under Regulation 5 where the aggregate amount of the relevant payments made in respect of that investment or, where that investment is held in an account, made in respect of that investment and all other investments held in that account, which would otherwise have had to be included in the return, does not exceed €35 or the equivalent of €35 in another currency applying the rate of exchange effective as of 31 December in the tax year in which the payment is made.

(2) Paragraph (1) shall not apply in the case of the first relevant payment made in respect of an investment or investments held in an account opened on or after 1 January 2008, or, if the investment is not held in an account, as respects the first relevant payment made in respect of the investment made on or after 1 January 2008.

Returns of payments.

5. (1) Subject to this Regulation, every specified person who makes a relevant payment in respect of an investment or an investment held

in an account, shall, as respects the tax year 2005 and each subsequent tax year, make and deliver to the appropriate Revenue officer, within the time specified in Regulation 6, a return of the aggregate of all such relevant payments in respect of that investment or that account made in the tax year concerned by that specified person.

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

- (a) the specified person, the details set out in paragraph (3),
- (b) each payee to whom the specified person makes a relevant payment, the details set out in paragraph (4), and
- (c) the relevant payment, or the aggregate of the relevant payments, made by the specified person to the payee, the details set out in paragraph (5).

(3) The details relating to the specified person are –

- (a) name,
- (b) address of the specified person's registered office, and
- (c) tax reference number.

(4) The details relating to the payee are-

- (a) name,
- (b) (i) in the case of an individual -
 - (I) the address as established for the purposes of Chapter 3A of Part 38 of the Principal Act, and
 - (II) the date of birth if on record,
- (ii) in the case of a company or other payee required by law to maintain a registered office, the registered office of

the company or other payee if on record, or

(iii) in any other case or if the registered office referred to in clause (ii) is not on record, the payee's address as determined for the purposes of section 32 of the Criminal Justice Act 1994 (No. 15 of 1994),

and

(c) (i) in the case of any relevant payment made in respect of an investment held in an account opened on or after 1 January 2009 or, if the investment is not held in an account, as respects any investment made on or after that date -

(I) the payee's tax reference number, or, in the case of a charity, the reference number assigned to that person by the Commissioners and known as the charity (CHY) number, or

(II) in the absence of such a number, an indication to that effect, or

(ii) in the case of any other relevant payment -

(I) where the payee is a company, the tax reference number if available to the specified person,

(II) where the payee is a charity, the reference number assigned to that charity by the Revenue Commissioners and known as the charity (CHY) number, or

(III) in the absence of such a number, an indication to that effect.

(5) The details relating to the relevant payment or the aggregate of

the relevant payments, as the case may be, are-

- (a) (i) the account number associated with the investment relating to the relevant payment or the aggregate of the relevant payments, as the case may be, or
- (ii) in a case where there is no account number associated with the investment, information capable of identifying the investment giving rise to the relevant payment or the aggregate of the relevant payments, as the case may be,
- (b) the amount of the relevant payments or the aggregate amount of the relevant payments, as the case may be, made to the payee, and
- (c) where appropriate tax has been deducted from the payment or payments, an indication that such a deduction has been made.

(6)(a) In the case of an investment made by two or more persons jointly, this Regulation shall apply as if each person's entitlement to a portion of the relevant payment were itself a relevant payment, and for this purpose the amount of each person's entitlement shall be-

- (i) in a case where the specified person knows the respective entitlements of each of the parties to the payment, the amount of the person's entitlement, or

- (ii) in any other case, be an amount equal to the relevant payment.

(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 relevant payment is part of an investment made by two or more persons jointly and whether the amount of the relevant payment is derived from subparagraph (a)(i) or (a)(ii), and
- (ii) if known, the number of persons who are party to the investment.

(7) Where a specified person makes a relevant payment to a payee it knows is not the beneficial owner of the payment, the information to be returned under this Regulation in respect of that payment shall include an indication that the person in receipt of the payment is not the beneficial owner of the payment.

(8) Returns made under this Regulation for a tax year shall be sent to the appropriate Revenue officer at the office of Operations Policy and Evaluation 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.

6. Returns under these Regulations shall be made not later than–

- (a) 15 September 2008 as respects returns made for the tax years 2005 and 2006,
- (b) 31 October 2008 as respects returns made for the tax year 2007, and
- (c) as respects returns made for the tax year 2008 and each subsequent tax year, 31 March in the tax year immediately following the year for which the return is to be made.

Obligation to provide and seek Tax Reference Numbers.

7. (1) Subject to paragraph (2), as respects any investment held in an account opened on or after 1 January 2009 or, if the investment is

not held in an account, as respects any investment made on or after that date -

- (a) a specified person shall make all reasonable efforts to obtain from a person who makes the investment (in this Regulation referred to as the “customer”) that person’s tax reference number, if any, and
- (b) the customer shall provide to the specified person that customer’s tax reference number, if any.

(2) Paragraph (1) shall not apply as respects any account or investment under which a payment mentioned in Schedule 2 will be made.

(3) Without prejudice to the provisions of Chapter 3A of Part 38 of the Principal Act, the provisions of this Regulation shall apply as respects the manner in which the obligations set out in paragraph (1) are to be fulfilled.

(4) (a) Any application or other form (including a form to be completed electronically) given or provided to a customer by a specified person, or a person acting for a specified person, for the purpose of making an investment with-

- (i) the specified person, or
- (ii) a person for whom the specified person acts,

shall require the customer to record the tax reference number, if any, of the beneficial owner at an appropriate location on the form.

(b) Where a customer is making an investment with a specified person or a person for whom the specified person acts and the customer is not required to complete a form for the

purposes of making the investment, the specified person or any person acting for the specified person shall request the customer to provide the customer's tax reference number, if any. Any form or other record (including any electronic form or other record) used by the specified person or the person acting for the specified person to record personal or other details relating to the customer shall include provision for the recording of the customer's tax reference number on the form at an appropriate location on the form.

(5) (a) A specified person shall verify a customer's tax reference number by reference to any document or copy of a document on which is printed, in addition to the customer's tax reference number, the customer's-

(i) name and address as established for the purposes of Regulation 5(4)(b),

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

(iii) name and name of the customer's employer,

other than a document which in the opinion of the specified person or an employee of the specified person 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) A specified person shall retain a copy of the document used to verify the tax reference number of a customer entered on any application or other form used in connection with an investment by the customer for a period of 5 years after the relationship between the specified person and the customer

has ended.

(6) Where a customer, at the time of the making of an investment, fails to provide a tax reference number or a document verifying a tax reference number, the obligation of a specified person under this Regulation to obtain or verify, as the case may be, the customer's tax reference number shall be regarded as fulfilled if-

- (a) the specified person has made, in respect of the investment made by that customer, a report under section 57 of the Criminal Justice Act 1994 (No. 15 of 1994), or
- (b) where for any reason such a report has not been made by the specified person, the specified person includes in the return to be made under Regulation 5 an indication to the effect that no tax reference number has been provided by the customer.

(7) 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.

(8) The specified person 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 5 and for no other purpose.

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

8. (1) Any Revenue officer may by notice in writing require a specified person, or a person who appears to that officer to be a specified person, 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 specified person is correct and complete.

(2) Where an authorised officer in exercising or performing his or her powers and duties under subsection (6) 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 a specified person or an employee of a specified person to produce books, records or other documentation 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 (6) 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 a specified person or an employee of such an associated company to produce books, records or other documentation 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 (6) 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 (6) of the Principal section and, as the case may be, under this Regulation.

Transitional matters relating to returns under section 891 of Principal Act.

9. (1) Where, before the commencement of these Regulations, a specified person has included in a return, made under section 891 of the Principal Act as applied by section 894 of that Act, a payment made in a chargeable period (within the meaning of section 321(2) of the Principal Act) which period includes any part of the year 2007 or 2008, then the specified person shall be regarded for the purpose of these Regulations as having fulfilled any obligation to include that payment in a return under these Regulations for that year.

(2) Notwithstanding paragraph (1), a specified person may include in a return under these Regulations payments referred to in paragraph (1) if it is expedient for the person to so include such payments.

Delegation.

10. 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.

SCHEDULE 1

1. A financial institution (within the meaning of section 891B of the Principal Act) being a bank.
2. A financial institution (within the meaning of section 891B of the Principal Act) being a building society.
3. A financial institution (within the meaning of section 891B of the Principal Act) being a credit union.

Act) being a credit union.

4. A financial institution (within the meaning of section 891B of the Principal Act) being a savings bank.

SCHEDULE 2

1. Any payment made by the specified person in respect of a Special Savings Incentive Account (within the meaning of section 848C (special savings incentive account) of the Principal Act) for any period before the account is treated as not being a Special Savings Incentive Account in accordance with the provisions of section 848H (termination of special savings incentive account) of the Principal Act.
2. Where the specified person is in possession of the declaration required by section 263 (declarations relating to deposits of non-residents) of the Principal Act to be made by the person who made the investment, any payment made by the specified person to that person in respect of that investment.
3. Where the specified person is not in possession of the declaration required by section 263 (declarations relating to deposits of non-residents) of the Principal Act to be made by the person who made the investment, any payment made by the specified person to the following persons and bodies in respect of that investment:
 - (a) a bank which is not resident for the purposes of tax in the State,
 - (b) a building society which is not resident for the purposes of tax in the State but which is resident for the purposes of tax in another

Member State of the European Communities,

(c) a company or any other entity quoted on a recognised stock exchange in a territory outside the State where the specified person making the payment is satisfied that the company or entity is not resident for the purposes of tax in the State,

(d) those bodies listed in Appendix III, paragraph 11.2, of the document entitled “Deposit Interest Retention Tax Guidance Notes for Deposit Takers” made available by the Commissioners to deposit takers and effective from January 2006 or listed in a corresponding list in any subsequent version of those Notes, where the bodies concerned are resident for the purposes of tax in a territory with which an agreement under section 826 (agreements for relief from double taxation) of the Principal Act has been entered into and where the specified person is satisfied–

(i) that the bodies concerned are not resident for the purposes of tax in the State, and

(ii) at the time the investment is made, that the investment will be for a period of less than 3 months.

4. Any payment made in respect of any certificate of deposit or commercial paper issued by a bank which qualifies for the treatment provided for by section 246A (interest in respect of wholesale deposits) of the Principal Act where the payment would not have been liable to be included in a return under section 891 (returns of interest paid or credited without deduction of tax) of that Act as applied by section 894 (return of certain information by third parties) of that Act if the Principal section had not been enacted.

5. Any payment made in respect of any Medium Term Note provided that-
 - (a) the conditions set out in Appendix III, paragraph 11.1, of the document entitled “Deposit Interest Retention Tax Guidance Notes for Deposit Takers” made available by the Commissioners to deposit takers and effective from January 2006, or
 - (b) the same or corresponding conditions set out in any subsequent version of those Notes,apply in respect of the Medium Term Note concerned.

6. Any payment made to-
 - (a) another resident bank, a building society, a credit union, or the Post Office Savings Bank,
 - (b) the National Treasury Management Agency or the State acting through the National Treasury Management Agency,
 - (c) the Central Bank of Ireland,
 - (d) the Investment Compensation Company of Ireland,
 - (e) the National Pensions Reserve Fund Commission or the State acting through the National Pensions Reserve Fund Commission.

7. Any payment made in respect of a debt on a security issued by a bank and listed on a stock exchange.

8. Any payment made in respect of an investment held by a specified person outside the State.

outside the State.

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

GIVEN under my Official Seal,

6 May 2008.

Brian Cowen,
Minister for Finance.

GIVEN this 6th day of May 2008,

Josephine Feehily,
Revenue Commissioner.

EXPLANATORY NOTE

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

These Regulations give partial effect to the provisions of section 891B (inserted by section 125 of the Finance Act 2006) of the Taxes Consolidation Act 1997 which allow the Revenue Commissioners to make regulations, with the consent of the Minister for Finance, requiring financial institutions, assurance companies, collective funds and State bodies to make an annual return of customers resident in the State to whom interest or other payments are made. These particular regulations provide for the reporting by banks, building societies, credit unions and savings banks of interest and similar payments.

The broad details of the reporting scheme are:

Reporting Threshold: Accounts and investments that pay interest of €35 or less in a year will not be reported. This is subject to an anti-account splitting provision requiring interest paid on all accounts opened on or after 1 January 2008 to be reported in the first year any payment is made.

Details to be reported: These include gross payment, name, address and date of birth if an individual where the account was opened or the investment was made before 1 January 2009. For new accounts opened and investments made on or after 1 January 2009 the details to be reported include gross payment, name, address, and tax reference number or, in the absence of a tax reference number a special marker indicating that the tax reference number was not provided.

Type of Payments: The income to be reported will be any return on an investment in the nature of interest or any amount paid in consideration of the making of an investment, including building society and credit union dividends, etc.

Phasing-in of Reporting:

- The payments to be reported for the years 2005 and 2006 are payments made by banks, building societies and the Post Office Savings Bank from which DIRT was deducted.
- The payments to be reported for 2007 are, subject to some exceptions, all interest and other similar payments made by banks, building societies and the Post Office Savings Bank.
- The payments to be reported for the year 2008 and subsequent years are, subject to some exceptions, all interest and other similar payments made by banks, building societies, the Post Office Savings Bank and credit unions.