

**Return of Payments (Insurance Undertakings)
Regulations 2011
(S.I. No. 641 of 2011)**

Guidance Notes for Life Assurance Companies

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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Contents

1. INTRODUCTION	3
Legislative Background	3
Revenue Contacts	3
2. OVERVIEW	4
Specified Persons	4
Relevant Payment.....	5
Excepted payments.....	5
3. REPORTING OBLIGATIONS	6
Information relating to a specified person.....	7
Information relating to the payee	7
Relevant Payment details.....	8
Type of Payments to be reported on.....	8
Joint Investments	8
Partnership Investments	9
Non-beneficial owners/Intermediaries.....	9
Time limits for the delivery of returns.....	9
4. OTHER OBLIGATIONS	11
Obligation to seek tax reference numbers (including PPSNs)	11
Storage of tax reference number data.....	12
Tax reference number verification	12
Existing tax reference numbers already supplied for other tax purposes	13
Intermediaries and tax reference numbers	13
Change of policy number	13
Penalties.....	14
Suspicious Transaction Reporting.....	14
Revenue Office for receipt of returns.....	14

1. INTRODUCTION

Legislative background

- 1.1 Section 891B of the Taxes Consolidation Act 1997 (as introduced by section 125 of the Finance Act 2006) provides for the making of regulations by the Revenue Commissioners, with the consent of the Minister for Finance, to require certain financial institutions, such as banks, investment funds and assurance companies, to make automatic annual returns electronically to Revenue of customers to whom they have made payments of interest and other payments in respect of investments. Regulations under S.I No. 136 of 2008 entitled *Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008* were made on 6 May 2008 and provide for banks, building societies, credit unions and savings banks to report details of interest or similar payments made to customers to the Revenue Commissioners. In addition, Regulations under S.I. No. 254 of 2009 entitled *Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) (Amendment) Regulations 2009*, were made on 3 July 2009 to also include EU financial institutions operating in Ireland. Regulations under S.I. No. 273 of 2011 entitled *Return of Payments (Government Departments and Other Bodies) Regulations 2011* were made on 10 June 2011.
- 1.2 The purpose of these Guidance Notes is to set out Revenue's interpretation of certain aspects of the new Regulations under S.I. No. 641 of 2011 entitled *Return of Payments (Insurance Undertakings) Regulations 2011*. These notes also address issues raised during consultations with various interested parties. The guidelines do not provide, in all instances, a full statement of the law. However, it is hoped that they will assist with the introduction of the new arrangements in relation to the reporting of certain payments made by assurance companies to certain customers.

Revenue contacts

- 1.3 Where an assurance company requires further information on the issues raised in these guidelines, they may contact the Revenue Commissioners at the following address:

Financial Services II Branch,
Corporate Business and International Division,
Stamping Building,
Dublin Castle,
Dublin 2.
Email: CBID-IFS2B@revenue.ie

For issues concerning the secure transfer of data please contact:

Information Management,
Planning Division,
Revenue Commissioners,
Bishop's Square,
Dublin 2.
Email: 3rdPartyReturns@revenue.ie

2. OVERVIEW

2.1 The substantive provision is contained in Regulation 4, which provides for the making of annual returns to Revenue by “specified persons” who make a “relevant payment” to a “payee” in a tax year. The return is to be made within the time specified in Regulation 5 and is a return of the aggregate of all such relevant payments in respect of that investment made in the tax year. There are also obligations on specified persons to seek and provide tax reference numbers for new investments made on or after 1 January 2013 and these provisions are contained in Regulation 6. Inspection of the books and records of an assurance company by an authorised Revenue officer in connection with the reporting regime is dealt with in Regulation 7.

Specified Persons

2.2 A specified person is an assurance company that has to make a report under these regulations to Revenue. Such specified persons are outlined in Schedule 1 and relate back to the definition of “assurance company” in section 891B of the Taxes Consolidation Act 1997. The persons required to report include:

- an assurance company within the meaning of section 3 of the Insurance Acts 1936,
- persons that hold an authorisation within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994).

Payments to non-Irish residents as detailed in Schedule 2 of the Regulations are not required to be returned so international insurers based in Ireland are likely to be affected by the Regulations only if they have customers living in Ireland. Insurers carrying on business into Ireland on a Freedom of Services basis are not subject to these Regulations.

A person (see definition of “insurance undertaking”) only comes within the scope of reporting in respect of its business which comes within the classes I, III, V and VI of Part A of Annex 1 to the 1994 Regulations, i.e.

Class	Description
I	Life assurance and contracts to pay annuities on human life but excluding Classes II and III
III	Assurances which are linked to investment funds
V	Tontines
VI	Capital Redemptions

Accordingly, contracts of insurance providing for a sum on marriage or birth (Class II), Permanent Health Insurance (Class IV) and managed pension funds (Class VII) are outside the scope of the Regulations. In addition, Pensions business coming

within section 706 of the Taxes Consolidation Act 1997 (including annuities) is also excluded as are pure protection policies e.g. term assurance, mortgage protection policies which do not acquire a surrender value. (See also “Excepted Payments” at paragraph 2.4 below for payments that have a mixture of protection and investment).

Relevant Payment

- 2.3 The term “relevant payment” defines the payments to be reported. This is essentially any payment, other than an “excepted payment”, made by an assurance company in respect of an investment.

Excepted Payments

- 2.4 There are certain payments that are not regarded as relevant payments for the purposes of the regulations. These are set out in Schedule 2 of the regulations and can be summarised as follows:

1. Payments where the entity holds an Exit Tax (LAET) non-resident declaration made by the person who made the investment. This will be treated as satisfied where a declaration is held at the end of the year.
2. Payments to certain persons where the assurance company is not in possession of an LAET non-resident declaration. These relate to life policies where the company underwrites the business from Ireland on a freedom of services basis to non-residents and the company has received written approval from Revenue not to deduct LAET. Also, payments made to other non-resident entities such as banks, building societies and companies in certain circumstances together with bodies listed in Appendix III, paragraph 11.2 of the DIRT Guidance Notes effective from January 2006.
3. Payments made by reason of death or disability but only in relation to the portion of such payment relating to protection. This is to deal with payments which have both a protection and investment element. Accordingly, only the payment relating to the investment is reportable. If this cannot be separately identified then the full amount of the payment should be reported together with the “Protection Policy Indicator” to show that part of the payment relates to protection. (Note that this indicator should not be selected where the protection element is insignificant e.g. where the total payment is 101% of the surrender value).
4. Payments in respect of certificates of deposit or commercial paper, which qualifies for the treatment provided for under section 246A of the Taxes Consolidation Act 1997 (interest in respect of wholesale deposits paid gross of tax) where the payment would not already have been included in a return to Revenue under section 891 of that Act.

5. Payments in respect of medium term notes subject to certain conditions as outlined in Appendix III paragraph 11.1 of the DIRT Guidance Notes effective from January 2006.
6. Payments made to certain resident entities i.e. to pension schemes, ARFs and AMRFs, PRSA providers, resident banks, building societies, credit unions, Post Office Savings Bank, the NTMA, NAMA and the National Pensions Reserve Fund. Payments to the NTMA under the Unclaimed Life Assurance Policies Act 2003 are also excepted payments but any subsequent claim on the policy should be returned. Payments where policies are assigned to such entities would not be treated as an excepted payment. Neither would payments from one assurance company to another assurance company, unless as policyholder (although payments in respect of the transfer of a pension fund or the purchase of an annuity are exempt as pensions business.). Payments made by an insurer for administrative purposes (e.g. reinsurance, commercial investments, remittance of exit tax) are also outside the scope of the Regulations.
7. Payments made in respect of a debt on a security issued by a bank and listed on the stock exchange.
8. Payments by branches outside the State.

Any payment referred to in 1, 2, 3 or 6 above will only be an excepted payment if the assurance company is satisfied that the person to whom the payment is made is beneficially entitled to the payment (other than in cases where the beneficial owner will never be the policyholder). Also, any payment referred to in Schedule 2 will not be excluded if the assurance company is unable to identify from its electronic records the payment as falling within that Schedule. This may arise where, for example, the payment is a mixture of protection and investment.

3. REPORTING OBLIGATIONS

- 3.1 Regulation 4 is the core of the new reporting regime. The assurance company that has to make the return is called a specified person in the regulations. The specified person is required to report certain details about a payee to whom they make a relevant payment. Certain details are also required in relation to the relevant payments being reported. Each separate policy on which a payment is made must be reported separately. If there are no relevant payments made by an assurance company, there is no requirement to make a return for that year. However, it would be of assistance to Revenue if the specified person notified Planning Division accordingly (e.g. by email).

Details of the precise format of reports are contained in the Revenue file specification. For international insurers with few Irish resident customers and a low level of reporting, the information, which must be sent electronically, may be shown on a spreadsheet and then converted accordingly into a format suitable for submission.

Information relating to a specified person

3.2 The following information should be included in the report:

- The name of the specified person (i.e. the assurance company making the report)
- The address of its registered office
- The tax reference number of the assurance company, and
- The contact details

Information relating to the payee

3.3 The payee will generally be the policyholder (see paragraph 3.8 for further detail). What actually has to be reported to Revenue in such cases will depend on whether the payee is an individual and whether the investment was made on or after 1 January 2013. Paragraph 4.1 gives further detail on this latter point.

The following is a general summary of the details to be reported for each payee:

- Name of the payee,
- If the payee is an individual, the residential address as recorded by the assurance company and his/her date of birth if on record (there is no requirement for the company to verify this date),
- If the payee is a company or other payee, the registered office (if required by law to maintain this) or, if not on the record, the payee's address as determined for the purposes of section 32 of the Criminal Justice Act 1994 (the previous Money Laundering provisions) or of Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010,
- Relevant payment details (see paragraph 3.4),
- Tax reference number data:-
 - For companies and charities there is a requirement to report the tax reference number or the charity number, if readily available, in all instances for all years,
 - If the payment is in respect of an investment opened on or after 1 January 2013, the payee's tax reference number (including the PPSN if an individual) or the charity number if a charity, or in the absence of these numbers, an indicator to that effect (see section 4 for obligations in this regard),
- All other relevant indicators i.e.
 - No verified tax reference number (for investments made on or after 1 January 2013,
 - Policies with joint policyholders together with the apportionment of the payment between the parties, if applicable,
 - Beneficial owner,
 - Protection payment

As a general point, the information that is required to be reported is what is held in a defined field on the computer system of the assurance company making the report. This, in particular, will apply to the date of birth data reporting requirements. The address field is what is held in the computer system when the report is being made.

Relevant Payment details

3.4 The details here relate to the relevant payment, or the aggregate of the relevant payments if more than one was made, on the investment during the year. These are:

- The policy number, which should also include any code if it is part of the investment. If there is no policy number, information capable of identifying the investment must be provided. This would generally be the serial or other identifying number.
- The amount of the payment, or payments where more than one. This is the gross amount disregarding any LAET or other tax that has been deducted.

Type of Payments to be reported on

3.5 The payment to be reported will be any amount in respect of an investment (e.g. on maturity, or on a surrender in whole or in part). All such payments are regarded as relevant for the purposes of the regulations and any reference to payments in these guidance notes should be regarded as including all these items unless they are specifically excluded. Where a customer instructs an insurer to transfer funds payable under a policy directly to a new policy with the same insurer then this should be treated as a payment under the original policy and reported in the normal way.

Joint investments

3.6 Where an investment is made by two or more people (i.e. joint policyholders), then a report is then required for each party to the investment irrespective of the individual entitlement. If the entitlement is not known then the life assurance company should attribute the full payment to each policyholder.

The following details are to be included in the return for each party:

- Where the company is aware of that person's entitlement that amount should be shown but in the normal course of events the insurer should treat everyone as entitled to the total payment(s) and report on that basis.
- An indicator as to whether the amount shown is the total for the investment or just that person's respective entitlement.
- An indicator that it is a joint investment.

- The number of persons who are party to the investment, if known.

It is acceptable to report only the year-end parties to an investment even if other parties existed during the course of the year. In the case of client accounts what is to be reported is the name of the customer as it appears on the account in the computer record and all that customer's related details.

In the case where there is a joint investment held by parties some of whom are resident and some of whom are non-resident, all parties should be reported (unless a party is in receipt of an excepted payment under Schedule 2 in which case he/she can be excluded from the report under these regulations).

The customer in the case of a joint investment, which is a client account, is the party that appears as the policyholder on the computer system of the assurance company concerned and this is the person who is to be reported.

Partnership investments

- 3.7 For investments opened by partnerships, it will be sufficient to report only the partner details that are recorded on the computer system of the assurance company concerned. It is sufficient also to only report the tax reference number of the partnership in such cases. The names and addresses to be returned for such an investment are those recorded on the computer records of the company concerned for that partnership investment.

Non-beneficial owners / Intermediaries

- 3.8 There will be instances where payments are made to persons who are not, necessarily, the beneficial owner. Examples of these are policies assigned to a bank as security for a loan or payments on death to executors. . In such instances the return should only include the details for the person shown on the policy. Where a policy has been absolutely assigned and the original policyholder is no longer entitled to the policy, details of the new policy owner should be returned. In cases where the payment is made to the beneficial owner who is known to be so by the assurance company, an indicator to that effect should be included in the return.

Time limits for the delivery of returns

- 3.9 The schedule for submission of the returns is as follows:

<u>Tax Year of Payment(s)</u>	<u>Due Date</u>
2011	30 September 2012
2012 onwards	31 March in the following year

All returns are to be made electronically. Any issues in regard to the delivery of information should be addressed to:

Information Management,
Planning Division,
Revenue Commissioners,
Bishop's Square,
Dublin 2.
Email: 3rdPartyReturns@revenue.ie

4. OTHER OBLIGATIONS

Obligation to seek tax reference numbers (including PPSNs) when opening new investments on or after the 1 January 2013

- 4.1 Regulation 6 sets out the need for assurance companies to make all reasonable efforts to seek a tax reference number from any customer who takes out a new investment (i.e. policy) on or after the 1 January 2013. It is important to note that the customer in this instance is the person in whose name the investment is held and not the beneficial owner of the funds. While there is a requirement in Regulation 6 (4)(a) to seek the tax reference number of the beneficial owner of the funds (if known), this is only to apply where the customer and the beneficial owner are one and the same person.
- 4.2 Application forms for opening new investments should provide for the tax reference number. The tax reference number collected can only be used for the purpose of making a report to Revenue (see paragraphs 4.10 and 4.11 as regards penalties for any breaches of this provision). Only Irish Tax reference numbers should be reported. If the entity opening the investment does not have a tax reference number no entry should be made in that field on the return. There is no requirement to obtain tax reference numbers for excepted payments (listed in paragraph 2.4). It should also be noted that, where a non-resident customer becomes Irish resident on or after 1 January 2013, this is not considered to be a new investment and, accordingly, there is no obligation on the assurance company to seek a tax reference number.
- 4.3 There is a need to seek documentation from the customer to verify the tax reference number and a copy of such documentation should be retained (see paragraph 4.6 regarding acceptable documentation). The verification documentation is also acceptable to verify the address for money laundering purposes provided this would otherwise be acceptable and provided the customer agrees to this.
- 4.4 When a new investment is made, the documents used to verify the tax reference number must be held for 5 years after the relationship between the assurance company and the customer has ended (see paragraph 4.6 on verification of tax reference numbers). They can be stored in electronic format and paragraph 4.5 outlines storage and search guidelines. There are no penalties where a customer does not supply a tax reference number. The obligations of an assurance company will be regarded as fulfilled if an indication to that effect is included in the return or where a company makes a suspicious transaction report under Chapter 4 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provided all the surrounding circumstances suggest that such an approach is necessary (see paragraph 4.12 on suspicious transaction reporting).

Storage of tax reference number data

- 4.5 All tax reference number data (including the PPSN) may be stored at customer level. However, it should not be possible to search using the tax reference number as the search criteria or part of the search criteria.

In addition, the tax reference number should not be shown as part of the customer's standard data. However, occasions where it can be shown include

- (a) at investment opening,
- (b) if the tax reference number is being corrected,
- (c) during verification of the tax reference number,
- (d) where a scanned image of either the investment opening form (or similar documentation) or the tax reference number verification documentation is being viewed, and
- (e) areas involved in reporting.

Subject to the above, an assurance company may retain tax reference number and related documentation in its computer records and there is only a need to get such data once. This tax reference number and verification documentation can be used again by a company when opening another new investment for the same customer in the future.

Tax reference number verification

- 4.6 The following documentation (original or copy) may be used to verify the tax reference number as required under regulation 6(5)(a):

- P60
- P45
- P21 Balancing Statement
- Payslip (where employer is identified by name or tax number)
- Drug payment scheme card
- European health insurance card
- Tax Assessment
- Tax Return Form
- PAYE Notice of Tax Credits
- Child Benefit Award Letter /Book
- Pension Book
- Social Services card
- Public Services card

In addition, any printed documentation issued by the Revenue Commissioners or by the Department of Social Protection which contains the person's name, address and tax reference number will also be acceptable.

There is no expiry period for any of the above documentation.

All tax reference numbers (verified and unverified) should be included in the return. If the system can readily identify whether the tax reference number is verified or not, the indicator should also be included as appropriate..

The address on the investment does not have to match the address contained in the documentation that is used to verify the tax reference number. The format of a tax reference number is seven numbers followed by one or, in some instances, two letters (check characters).

Existing tax reference numbers already supplied for other tax purposes

- 4.7 Tax reference number data for individuals should only be reported for new investments made on or after 1 January 2013. Under no circumstances should the tax reference number be provided for individuals for investments that were made prior to that date.

Where an existing customer commences a new investment on or after the above date, the tax reference number can be stored at customer level but it can only be included in a report for that new investment - not for investments already made prior to 1 January 2013.

Under no circumstances should a tax reference number that was collected for other tax purposes (such as the opening of a SSIA account) be used in connection with these current regulations. Tax reference numbers collected in such circumstances should only be used for the purposes for which they were intended.

Intermediaries and tax reference numbers

- 4.8 The regulations require that an intermediary who acts for an assurance company, but who does not hold investments, should seek the tax reference number from a customer when commencing a new investment – a customer is any person who makes an investment with an assurance company and is the person to whom the funds will be given when the policy is surrendered or matured. In such circumstances, the intermediary should pass on the tax reference number information to the assurance company.

Change of policy number

- 4.9 In general, a change of policy number will be regarded as a new investment. However, where a policy number changes in the process of the company upgrading its Information Systems or in other necessary circumstances, it is not to be treated as

a new investment. Therefore, in such circumstances, there is no need to seek tax reference number details.

Penalties

4.10 Section 891B (7) TCA 1997 contains a number of penalty provisions which relate to the specified person (i.e. the assurance company). In general, penalties are applied in three broad categories of issues, which are:

- Failure to deliver a return or when an incorrect or incomplete return is made,
- Failure to comply with the requirements of the regulations, or
- Non-compliance with a Revenue officer in the exercise or performance of that officer's powers or duties.

4.11 Particular attention is drawn to the need to ensure that no misuse of any data collected for reporting purposes by an assurance company occurs. This is of particular importance in the context of the PPSN data that will be collected on and after 1 January 2013 and, in this context, it is important to note the provisions of Regulation 6 (8) which states that a specified person shall only use the tax reference number obtained under the regulation for the purpose of including it in a return to be made under Regulation 4 and for no other purpose. If Revenue auditors detect abuses in the exercise of their powers under Regulation 7 to inspect the books and other records of an assurance company, then the provisions of Section 891B (7) TCA 1997 will be applied as required.

Suspicious Transaction Reporting

4.12 Under money laundering regulations, designated bodies and persons must report to An Garda Síochána and the Revenue Commissioners **any suspicion** that a money laundering offence has been, or is being, committed in relation to their business (including the laundering of the proceeds of tax evasion).

Revenue Office for receipt of returns

4.13 The annual return is to be made electronically to Revenue as follows:

Information Management,
Planning Division,
Revenue Commissioners,
Bishop's Square,
Kevin Street,
Dublin 2.

Email: 3rdPartyReturns@revenue.ie