



STATUTORY INSTRUMENTS.

S.I. No. 609 of 2015



MANDATORY AUTOMATIC EXCHANGE OF INFORMATION IN THE
FIELD OF TAXATION REGULATIONS 2015

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The Revenue Commissioners, in exercise of the powers conferred on them by section 891G (inserted by section 74 of the Finance Act 2015 (No. 52 of 2015)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Mandatory Automatic Exchange of Information in the Field of Taxation Regulations 2015.

(2) These Regulations come into operation on 31 December 2015.

Interpretation

2. (1) In these Regulations—

“Act” means the Taxes Consolidation Act 1997;

“authorised officer” means an officer of the Revenue Commissioners authorised under Regulation 8;

“Directive” means Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation;¹

“return date” means a date that is not later than the 30th day of June of the calendar year following the year for which a return is required;

“US\$” means United States dollars, the official currency of the United States of America.

(2) For the purposes of these Regulations the following terms referred to in the Directive or in Annex 1 or Annex 2 to the Directive shall have the following meanings—

“excluded account” means—

(a) any account included in the definition of excluded account in subparagraphs (a) to (f) of section VIII(C)(17) of Annex I to the Directive,

(b) a Personal Retirement Savings Account within the meaning of section 787A of the Act,

¹OJ No. L359, 16.12.2014, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th January, 2016.*

- (c) an approved retirement fund within the meaning of section 784A of the Act,
- (d) an approved minimum retirement fund within the meaning of section 784C of the Act,
- (e) an approved scheme within the meaning of section 770 of the Act, or
- (f) a sponsored superannuation scheme within the meaning of section 783 of the Act;

“non-reporting financial institution” means any financial institution that is—

- (a) a governmental entity, international organisation or central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution, or depository institution,
- (b) a pension fund of a governmental entity, international organisation or central bank, a qualified credit card issuer, a broad participation retirement fund or a narrow participation retirement fund,
- (c) an exempt collective investment vehicle, or
- (d) a trust provided that the trustee of the trust is a reporting financial institution and reports all information required to be reported pursuant to section I of Annex I to the Directive with respect to all reportable accounts of the trust.

(3) Subject to paragraphs (1) and (2), and unless the context otherwise requires, a word or expression used in these Regulations that is also used in the Directive or in Annex 1 or Annex 2 to the Directive shall have the same meaning as it has in the Directive or in Annex 1 or Annex 2 to the Directive, as the case may be.

General reporting requirements

3. (1) Subject to paragraphs (3) to (5), a reporting financial institution shall, with respect to the calendar year 2016 and each subsequent calendar year, make and deliver to the Revenue Commissioners on, or before, the return date—

- (a) a return in respect of all reportable accounts maintained by the reporting financial institution in that year, or
- (b) where it has no reportable accounts in a calendar year, a return which states that it had no such accounts in that year.

(2) The return referred to in paragraph (1)(a) shall, with respect to each reportable account, include:

- (a) in the case of each reportable person that is an account holder of the account and that is an individual—
 - (i) the name,
 - (ii) address,
 - (iii) Member State of residence,
 - (iv) TIN, and
 - (v) date and place of birth,

of that individual;

- (b) in the case of each reportable person that is an account holder of the account and that is an entity—
 - (i) the name,
 - (ii) address,
 - (iii) Member State of residence, and
 - (iv) TIN,

of that entity, and

- (v) where that account holder has been identified, pursuant to Regulation 6, as having one or more controlling persons that is a reportable person, the information specified in subparagraphs (i) to (iv) with respect to each such reportable person and the date and place of birth of each such reportable person;
- (c) the account number or, in the absence of an account number, the functional equivalent;
- (d) the name and identifying number, if any, of the reporting financial institution;
- (e) the account balance or value, including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value, as of the end of the relevant calendar year or, if the account was closed during that year, the date of closure of the account;
- (f) where the account is a custodial account—
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account, or with respect to the account, during the relevant calendar year, and

- (ii) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
 - (g) where the account is a depository account, the total gross amount of interest paid or credited to the account during the calendar year;
 - (h) where the account is a reportable account, other than a custodial account or a depository account, the total gross amount paid or credited to the account holder with respect to the account during the calendar year with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during that year;
 - (i) the currency in which each amount is denominated.
- (3) (a) Notwithstanding paragraph (2)(a) and subject to subparagraph (b), the TIN or date of birth with respect to pre-existing accounts is not required to be reported if such TIN or date of birth is not in the records of the reporting financial institution.
- (b) A reporting financial institution shall use reasonable efforts to obtain the TIN and date of birth with respect to pre-existing accounts by the end of the second calendar year following the year in which pre-existing accounts were identified as reportable accounts.
- (4) Notwithstanding paragraph (2)(a), the TIN is not required to be reported if a TIN is not issued by the Member State of residence of the account holder.
- (5) Notwithstanding paragraph (2)(a), the place of birth of the account holder is not required to be reported unless it is stored in the electronically searchable data maintained by the reporting financial institution.

Obligation to deliver a return

4. Where a reporting financial institution is required under these Regulations to—

- (a) deliver a return, or
- (b) make a declaration or election,

the return, declaration or election shall be delivered or made electronically—

- (i) using such technology as may be approved or provided by the Revenue Commissioners, and
- (ii) in such form as the Revenue Commissioners may require.

Appointment of third parties

5. (1) A reporting financial institution may appoint a person as its agent to carry out the duties and obligations imposed on it by these Regulations.

(2) Notwithstanding the appointment of a person under paragraph (1) the reporting financial institution shall—

- (a) at all times, have access to and be able to produce, where so requested by an authorised officer, the records and documentary evidence used to identify and report on reportable accounts, and
- (b) be responsible for any failure to comply with these Regulations.

Due diligence procedures

6. (1) Subject to this Regulation, a reporting financial institution shall, in order to identify reportable accounts maintained by the institution, apply the due diligence procedures, and comply with the rules, set out in sections II to VII of Annex I, and the rules set out in Annex II, to the Directive.

(2) A reporting financial institution may—

- (a) with respect to pre-existing accounts, apply the due diligence procedures relating to new accounts as set out in sections II to VII of Annex I to the Directive to those pre-existing accounts, and
- (b) with respect to lower value accounts, apply the due diligence procedures relating to high value accounts as set out in sections II to VII of Annex I to the Directive to those lower value accounts.

(3) Notwithstanding the fact that a reporting financial institution applies the procedures referred to at paragraph (2)(a) to a pre-existing account, the rules specified for pre-existing accounts in sections I(C) and V(A) of Annex I to the Directive shall also continue to apply to that account.

- (4) (a) Where a reporting financial institution has applied the due diligence procedure set out in subparagraph B(1) of section III of Annex I to the Directive and there is a change in circumstances that causes a reporting financial institution to know, or have reason to know, that the original documentary evidence or other equivalent documentation is incorrect or unreliable, a reporting financial institution shall obtain a self-certification and new documentary evidence to establish the residence for tax purposes of the account holder by the later of the last day of the calendar year or 90 calendar days following the notice or discovery of such change in circumstances.
- (b) Where a reporting financial institution fails to obtain a self-certification and new documentary evidence as described in paragraph (a), the reporting financial institution shall apply the electronic record search procedure specified in subparagraphs B(2) to B(6) of section III of Annex I to the Directive.

(5) A reporting financial institution may, with respect to pre-existing entity accounts, use, as documentary evidence, an entity classification determined, based on a standardised industry coding system provided that—

- (a) the information was recorded by the reporting financial institution consistent with its normal business practices for the purposes of AML/KYC procedures or other regulatory purposes (other than tax purposes),
- (b) the standardised industry coding system was in place prior to the date the financial account was identified as a pre-existing account, and
- (c) the reporting financial institution does not know, or does not have reason to know, that such classification is incorrect or unreliable.

(6) With respect to new entity accounts and for the purposes of determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may only rely on a self-certification from either the account holder or the controlling person.

- (7) (a) An account shall be treated as a reportable account from the date it is identified as such pursuant to the due diligence procedures in sections II to VII of Annex I to the Directive, and
- (b) unless otherwise provided for by these Regulations, information with respect to a reportable account shall be reported annually in the calendar year following the year to which the information relates.

(8) Where an amount is referred to in US\$ in sections II to VII of Annex I to the Directive, a reporting financial institution may use an equivalent amount in Euro, converted using a published spot rate determined as of the last day of the calendar year preceding the year in which the due diligence procedures are being applied.

(9) A reporting financial institution shall implement arrangements to obtain the information required under Regulation 3(2) in respect of each reportable account.

(10) Information obtained by a reporting financial institution solely for the purpose of reporting under these Regulations shall not be used for any other purpose.

Maintaining records

7. A reporting financial institution shall keep records of the procedures applied and any information relied upon in order to comply with these Regulations for a period of 6 years from the end of the year in which the procedures were applied or the information relied upon.

Authorisation of authorised officers

8. The Revenue Commissioners may authorise, in writing, Revenue officers to be authorised officers for the purpose of these Regulations.

Inspection of records and provision of information and assistance

9. (1) An authorised officer may by notice in writing require a reporting financial institution 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 specified in a return under these Regulations is correct and complete.

(2) An authorised officer may require a reporting financial institution 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 section 891G of the Act.

(3) 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 for the purpose of exercising or performing his or her powers under these Regulations.

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



GIVEN under the Official Seal of the Minister for Finance,
22 December 2015.

MICHAEL NOONAN,
Minister for Finance.

GIVEN under my hand,
22 December 2015.

NIALL CODY,
Revenue Commissioner.

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