

## **Returns in relation to foreign accounts - section 895 TCA 1997**

### **Part 38-03-35**

This document should be read in conjunction with sections 256, 835YA, 891E, 891F, 891G and 895 TCA 1997

Document created March 2024

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<sup>1</sup> Further information on AEOI is contained in Tax and Duty Manual 35-01-01a

## 1 Introduction

This Manual sets out the reporting requirements that apply to an Irish resident person, or an intermediary acting on behalf of the Irish resident person, who opens a foreign account (being an account in which a deposit is held in a location outside the State).

## 2 Person opening an account - section 895(6) TCA 1997

Where a person who is resident in the State opens an account outside the State (subject to [section 4](#)), or causes an account to be opened outside the State, and the resident person is beneficially entitled to the sums in the account that resident person is a chargeable person:

- for that accounting period in respect of a company,
- for that year of assessment in respect of an individual<sup>2</sup>.

As a chargeable person they must file a tax return under the provisions of Part 41A TCA 1997, and must provide Revenue with the following details:

- the name and address of the financial institution with which the account was opened,
- the date on which the account was opened,
- the amount of the deposit made in opening the account,
- the name and address of any intermediary, if any, who provided a relevant service in relation to opening the account.

### 2.1 Revenue practice – financial services companies

It is accepted that the reporting requirements under section 895 TCA 1997 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.

Revenue accepts that Irish-resident companies are not required to report the opening of foreign 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 I, Schedule D.

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<sup>2</sup> [Guide to Self-Assessment](#)

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

### 3 Intermediary opening an account - section 895(2) TCA 1997

Any person who, in the ordinary course of their trade, acts as an intermediary in connection with the opening of a foreign account for a person who is resident in the State also has reporting obligations<sup>3</sup>.

The details to be reported by the intermediary are as follows:

- the full name and permanent address of the resident for whom the foreign account was opened,
- the resident person's tax reference number,
- the name and address of the financial institution with which the account was opened,
- the date on which the account was opened, and
- the amount of the deposit made in opening the account.

#### 3.1 Obligation of the resident to supply information

A resident requesting an intermediary to open a foreign account on their behalf is required to provide the intermediary with the details which the intermediary is required to include in a return.

The intermediary is required to take all reasonable steps to confirm the details given to him/her are correct.

#### 3.2 Penalties for a resident

A resident that:

- fails to provide an intermediary with the information to be reported by the intermediary,

or

- provides the intermediary with incorrect information,

shall be liable to a penalty of €4,000.

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<sup>3</sup> The intermediary is required to complete a [Form 8B-B](#) which is in Excel format. The Form 8B-B must be filed annually in conjunction with the annual Corporation Tax or Income Tax Return. This can be done through Revenue's MyEnquiries or myAccount facility under the category 'Third Party Returns'.

### 3.3 Penalties for an intermediary

An intermediary that does not:

- make a return for a chargeable period,
- include in a return for a chargeable period details of an account opened by them on behalf of a resident,

or

- take all reasonable steps to verify that the details supplied to them by the resident are correct,

shall be liable to a penalty of €4,000.

## 4 Foreign account that is subject to Automatic Exchange of Information<sup>4</sup> - section 895(7) TCA 1997

The provisions of section 895 TCA 1997 do not apply to an individual who opens a foreign account that will be subject to Automatic Exchange of Information<sup>5</sup>.

An individual who, in the year the foreign account is opened, is not:

- already a chargeable person under the provisions of Part 41A TCA 1997,
- an accountable person<sup>6</sup> for Stamp Duty purposes,
- accountable<sup>7</sup> for the payment of gift or inheritance tax,

and whose foreign account details will be automatically exchanged with the Revenue Commissioners under:

- FATCA
- DAC2/CRS

is not considered to be a chargeable person for the purposes of section 895(6) TCA 1997.

Under section 895(7) TCA 1997 there is no obligation on an individual (specified individual) to report the opening of that foreign account (specified foreign account) in the year the foreign account is opened. This reduces the burden of reporting on individuals who would not otherwise have to file a return of income in that year.

The provisions of section 895 TCA 1997 continue to apply to an individual who opens a foreign account in a country that is a listed territory<sup>8</sup> within the meaning of section 835YA TCA 1997.

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<sup>4</sup> Further information on AEOI is contained in [Tax and Duty Manual 35-01-01a](#)

<sup>5</sup> [Automatic Exchange of Information](#)

<sup>6</sup> Accountable person within the meaning of section 1 of the Stamp Duties Consolidation Act 1999.

<sup>7</sup> Accountable in accordance with section 45 of the Capital Acquisitions Tax Consolidation Act 2003.

<sup>8</sup> [EU list of non-cooperative jurisdictions](#)



#### 4.1 Foreign Account opened in Hong Kong

In general, Ireland exchanges CRS information under the Convention on Mutual Administrative Assistance in Tax Matters.

Currently, Hong Kong is the only jurisdiction with which Ireland will exchange CRS information on the basis of a legal instrument other than the Convention. In the case of Hong Kong, Ireland exchanges CRS information under Article 24 of the Agreement Between the Government of Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Ireland – Hong Kong DTA<sup>9</sup>).

Accordingly, a foreign account opened in Hong Kong by an individual will be considered to be exchanged under the CRS provisions.

#### 4.2 OECD Automatic Exchange Portal

The OECD maintains a list of all bilateral exchange<sup>10</sup> relationships that are currently in place for the automatic exchange of CRS information under Article 6 of the Multilateral Convention and the CRS MCAA, as well as under the EU framework [DAC2].

This list should be consulted if there is uncertainty regarding whether the foreign account will be the subject of Automatic Exchange of Information between the state in which the foreign account was opened and Ireland.

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<sup>9</sup> [Double Taxation Treaty between Ireland and Hong Kong](#)

<sup>10</sup> [OECD Automatic Exchange Portal](#)