

Non-resident Declaration New “Equivalent Measures”

Contacts:

Pat Wall

+353 1 792 8602
pat.wall@ie.pwc.com

Pat Convery

+353 1 792 8687
pat.convery@ie.pwc.com

Rebecca Maher

+353 1 792 8634
rebecca.maher@ie.pwc.com

Marie Coady

+353 1 792 6810
marie.coady@ie.pwc.com

Rosaleen Carey

+353 1 792 8756
rosaleen.carey@ie.pwc.com

John Perry

+353 1 792 8859
john.b.perry@ie.pwc.com



The Finance Act 2010 contained provisions allowing investment funds that are marketed outside Ireland to obtain approval from the Irish Revenue Commissioners permitting non-resident investors to make investments in the fund and receive payments from the fund with no deduction of Irish tax, without the need to make the declaration of non-Irish tax residence. Approval is granted to funds that have appropriate equivalent measures in place to ensure that investors are non-Irish resident. These new “equivalent measures” have just been published by the Irish Revenue Commissioners.

Typically, the approval will apply to funds that are effectively distributed exclusively outside of Ireland. Given the representative low level of investment by Irish residents in Irish funds distributed on the international market, this has the potential to remove the need to obtain the

completed tax declarations when investors are investing in an Irish fund range for the first time. In the event that an investor becomes Irish resident, then the fund is obliged to comply with Irish tax obligations, as appropriate.



Revenue guidance published

The Finance Act 2010 provided that the Revenue Commissioners could grant approval for investment funds to apply a waiver subject to meeting the “equivalent measures”.

Under these “equivalent measures” an Irish fund is required to confirm each of the following matters in order to obtain approval to permit non-resident investors to make investments in an Irish fund without the need to make a declaration of non-Irish tax residence;

- the fund will verify an investor’s identity through compliance with appropriate anti-money laundering procedures,
- while it cannot prohibit investment by Irish resident investors, the fund shall not actively promote to Irish investors,
- upon subscription, an investor or an intermediary shall complete an application form which should detail a registered address and a correspondence address (if desired). Should the investor or intermediary provide an Irish address, the fund is required to treat the investor as Irish resident, unless a signed non-resident declaration or intermediary declaration is provided and the fund is satisfied that the non-resident declaration is correct,

- an investor must undertake to inform the fund if the investor becomes resident or ordinarily resident in Ireland,
- in providing details of a bank account to the fund into which payments from the fund are to be made, where an investor provides details of an Irish bank account the fund is required to treat the investor as Irish resident, unless a non-resident declaration is provided and the fund is satisfied that the declaration is correct,
- each intermediary is required to notify the fund, or the fund’s administrator, should it become aware that a beneficial owner of units may be, or may become, resident or ordinarily resident in Ireland. The fund is then required to treat the investor as Irish resident unless a non-resident declaration form is provided to the fund and the fund is satisfied that the declaration is correct,
- the fund must comply fully with its obligations in accordance with Irish tax law.

In summary, a fund should treat any investor as Irish resident in respect of whom it is in possession of any information which would reasonably suggest that the investor is resident or ordinarily resident in Ireland (such as where an investor provides details of an Irish address or Irish

bank account). Therefore each fund applying the waiver must include wording in the terms and conditions of its application form outlining the obligation of each investor to notify the fund if they become Irish resident as well as clarify an investors non residents status in the event of receiving conflicting information.

How to apply

Any fund wishing to receive approval should apply in writing to the Office of the Revenue Commissioners, Financial Services (Insurance and Investment Funds), Setanta Centre, Nassau Street, Dublin 2, confirming compliance with the conditions outlined above and enclosing a copy of the proposed application form.

Permitting non-resident investors to make investments in Irish funds without the need to make the declaration of non-Irish tax residence is a welcome development and is seen as a positive and practical way of dealing with what can often be seen as an administrative burden.

For further information or to discuss the impact of these developments for your business, please call any of the contacts listed overleaf or your regular PricewaterhouseCoopers contact.

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