

PART 2

EVASION OF REVENUE OBLIGATIONS: INCORRECTLY CLASSIFIED NON-RESIDENT DEPOSIT ACCOUNTS

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LEGISLATIVE REGIME

Position prior to the introduction of Deposit Interest Retention Tax

Deposit Interest Retention Tax (“DIRT”) was introduced by the Finance Act, 1986.

Prior to the introduction of DIRT, under Section 175 of the Income Tax Act, 1967, a bank was obliged, if required to do so by notice from an Inspector of Taxes, to make and deliver to the Inspector a return of all interest paid or credited without deduction of tax, giving the names and addresses of the persons to whom the interest was paid or credited and stating in each case the amount of the interest. The statutory limit below which there was no reporting requirement for gross interest paid or credited on a deposit was IR£50.

However, if a person to whom any interest was paid or credited served a notice in Form F, on the bank:

- (i) declaring that the person beneficially entitled to the interest was not then ordinarily resident in the State,
- (ii) requesting that the interest not be included in any return under Section 175 of the Income Tax Act, 1967, and
- (iii) undertaking to advise the bank without delay in the event of the person beneficially entitled for the time being to the interest becoming ordinarily resident in the State,

no return under Section 175 was necessary in respect of that interest.

Where the bank was not satisfied that the person who had served the notice in Form F was non-resident at the time the claim was made, it was obliged to request that that person provide the bank with an affidavit stating the name, address and country of residence of the depositor at the time the interest was paid or credited on the deposit account the subject of the notice in Form F served on the bank and, if the depositor was not the beneficial owner of the interest paid or credited on the account, giving like particulars in respect of the beneficial owner. The declarations in Form F were inspectable by the Inspector of Taxes on a named individual basis only.

Position after the introduction of DIRT

Following the introduction of DIRT, a bank, as a relevant deposit taker, is required under Section 32 of the 1986 Act to treat every deposit made with it as a relevant deposit and to deduct tax at the standard rate or, in the case of a relevant deposit held in a Special Savings Account, at the reduced rate in force at the time, from all interest paid or credited on the deposit, unless satisfied that the deposit is not a relevant deposit.

Excluded from the definition of a relevant deposit are, *inter alia*:

- A deposit in respect of which, up to 5 April 1995, no person “ordinarily resident” in the State is beneficially entitled to any interest (or after 5 April 1995 no person “resident” in the State) and a non-resident declaration in a form prescribed or authorised by the Revenue Commissioners has been made to the bank pursuant to Section 37 of the Act by the person or persons to whom any interest on the deposit is payable;
- A deposit by a charity the interest on which is exempt from income tax or, in the case of a company, Corporation Tax, and in respect of which a declaration pursuant to Section 38 of the Act has been made to the bank;
- A deposit made on or after 1 January 1993 by, and the interest on which is beneficially owned by, a company within the charge to Corporation Tax and in respect of which a declaration pursuant to Section 37B of the Act has been made to the bank, and
- A deposit made on or after 1 January 1993 by, and the interest on which is beneficially owned by, a pension scheme and in respect of which a declaration pursuant to Section 37B of the Act has been made to the bank.

During the period the subject of the investigation, banks were obliged to make a return to the Revenue Commissioners by 20 April each year detailing the interest paid in the year to the previous 5 April on which DIRT was exigible, and the DIRT in respect of that interest, and were obliged at the same time as the return was due to pay to the Revenue Commissioners the balance of the DIRT deductible for the relevant tax year, having taken account of any amount paid by way of interim payment on account of the DIRT deductible.

Non-Resident Declaration

The non-resident declaration made to the bank must be made by a person to whom interest is payable, must be signed by that person and must:

- Declare that the person or persons beneficially entitled to interest on the deposit up to 5 April 1995 is not or are not “ordinarily resident” in the State or thereafter is not or are not “resident” in the State;
- State the names, addresses of principal places of residence and the countries of ordinary residence or residence, as applicable, of the person or persons entitled to interest on the deposit at the time the declaration is made; and
- Contain an undertaking by the declarer that, if the non-residence conditions cease to be satisfied, the bank will be advised accordingly.

Before November 1993, when the Revenue gave a concession that a non-resident declaration would also serve to exempt interest on non-resident accounts from any

requirement to report it to the Revenue, it remained necessary for banks to hold a Form F for this purpose.

Summary

The relevant provisions of the Finance Act, 1986 in relation to non-resident deposit accounts held by individuals may be summarised as follows. If a non-resident Irish Pound denominated deposit account (or a foreign currency deposit on or after 1 January 1993) is to be excluded from the definition of a relevant deposit, and accordingly free from the obligation to have DIRT deducted, a bank must be satisfied that in respect of such deposit up to 5 April 1995 no person “ordinarily resident” in the State was beneficially entitled to any interest (and after 5 April 1995 that no person “resident” in the State was so entitled) and in addition the bank must hold a completed non-resident declaration form complying with the requirements indicated in the preceding paragraph (subject to certain transitional provisions in relation to foreign currency deposits).

NIB PROCEDURES

Prior to the introduction of DIRT, the Bank maintained accounts designated non-resident.

The procedures laid down by the Bank for the introduction and operation of DIRT were communicated to branch managers and other branch personnel in various ways, principally by way of Special Circulars. A summary of the relevant sections of the principal communications is set out below:

- Special Circular No. N13/86 was issued by Northern Bank Limited (to branches in the Republic of Ireland only) on 18 March 1986. This circular advised the introduction of DIRT with effect from 6 April 1986 and set out the manner in which non-resident deposit accounts were to be “flagged” at account level for DIRT purposes. It stated that the Bank’s mainframe computer would examine all accounts on the system and would set the appropriate retention tax flags for each account category; retention flag “B” would be set on all accounts at that time designated as non-resident, with the implication that interest earned or credited on such accounts was to be paid without deduction of DIRT. Branch staff were required to ensure that the correct flags were set for any accounts opened after 4 April 1986.
- Special Circular No. S5/86 was issued by the Bank to all branches on 24 July 1986. This circular gave notice of the availability of declaration forms for non-resident deposit accounts to satisfy the declaration requirements of Section 37 of the Finance Act, 1986 and advised that such forms must be completed by 5 April 1987 for all non-resident accounts which existed at 5 April 1986, in default of which the account must revert to being liable to DIRT.

- Routine Circular No. R17/87 was issued to all branches on 1 April 1987, advising that all branches were to receive a report as at 6 April 1987 indicating the DIRT category of all deposit accounts. Branch staff were instructed to examine this report carefully and to ensure that the appropriate new declaration forms were in place for all accounts identified as not liable to DIRT, in default of which the account must revert to being liable to DIRT.
- Special Circular No. S9/93, issued to all branches on 11 March 1993, advised the branches of the introduction of branch Retention Tax Compliance Reports which, insofar as they related to non-resident accounts, required the branch to:
 - Examine all non-resident accounts flagged as exempt from DIRT to ensure that they were valid non-resident accounts and that non-resident declarations were held, and
 - Amend the DIRT flag so as to make liable to tax at standard rate all interest on any account where the requisite non-resident declaration was not held.
- In support of the implementation of the new LiveLink system (ie the Bank's main system for maintaining customer account details and transactions) on 3 May 1994, a LiveLink Reference Manual was issued to all branches. The introduction states "*It is imperative that all Branch staff read and familiarise themselves with the contents of this manual prior to the implementation of the new system.*"

The reference manual introduced a new Non-Resident Monitoring Report to be produced on the working day after a static amendment had been made to any non-resident accounts at a branch. The purpose of the report was to highlight amendments on non-resident accounts which, *prima facie*, were inconsistent with the non-resident status afforded to the account and which therefore required further investigation by or under the control of a managerial official at the branch. This official was obliged to identify and record the reason for the amendment, to record his decision on the non-resident status of the customer and to attach both records to the relevant non-resident declaration form.

- Following consideration of the results of the DIRT Theme Audit described at pages 54 and 55 below, Special Circular No. S11/95 was prepared by the Bank's Finance and Planning Department and issued to all branches on 8 March 1995 under the signature of Frank Brennan, General Manager. The circular, which replaced all previous circulars in relation to DIRT, stated that "*DIRT must be deducted at the standard rate unless a valid declaration is held which has been signed, dated and in all other respects fully completed by the customer.*" The circular pointed to the responsibility of the staff member opening a non-resident deposit account to have a thorough understanding of the procedures for the opening of such accounts and to obtain fully and properly completed documentation on their opening.

The circular also required that a person who wished to avail of DIRT-exempt non-resident status must produce documentation such as a driving licence, passport or

other identification with details of the person's address and signature as evidence of the entitlement to the non-resident status sought and that a photocopy of the identification documentation be retained on file by the branch.

- Special Circular No. S22/95, which was issued to all branches on 15 May 1995, introduced semi-annual DIRT compliance reports, to be completed by each branch manager and returned to the Bank's Finance and Planning Department. The standard-form report declared that the branch manager understood the contents of Special Circular No. S11/95 and either confirmed that the branch had proper statutory declarations on file for all accounts classified as DIRT-exempt non-resident accounts or, where a proper statutory declaration was not held, detailed the action which the manager proposed to take to rectify the situation.

The circular also introduced a one page DIRT guide for use by cashiers and other branch staff which sought to summarise the contents of Special Circular No. S11/95 and included the following direction to branch staff:

The official who opens the account must be fully satisfied that the customer is a non resident and I. D. must be produced before an account may be flagged non resident.

- Special Circular No. S20/96 was issued to all branches on 24 April 1996. This circular, while emphasising that it was not the role of the Bank to give tax advice to prospective customers, set out the residency requirements for entitlement to non-resident status for DIRT and directed that:

The bank should satisfy itself that the customer is a bona fide non-resident, documentary evidence should be produced e.g. foreign driving licence, passport, etc.

- Special Circular No. S22/98 was issued to all branches on 7 December 1998, advising that a listing of all accounts at the branch designated as non-resident would shortly issue from Head Office. Each branch manager was required to examine all non-resident declarations, and, where the declaration was dated after 8 March 1995, the attached identification documents introduced by Special Circular No. S11/95, and certify by completing and signing a branch confirmation certificate that he/she was completely satisfied that all customers on the list issued from Head Office remained non-resident.

Inspectors' Criticism of the Special Circulars

The Circulars referred to above failed to inform branch staff expressly of the provisions of Section 32 (2) of the Finance Act, 1986, which require that a "*relevant deposit taker shall treat every deposit with it as a relevant deposit unless satisfied that it is not a relevant deposit*" – ie in the context of non-resident deposit accounts the Bank was obliged to treat every deposit account as an account in respect of which DIRT was to be deducted from interest paid or credited on the account, unless the Bank held a valid declaration from the depositor and was satisfied that the person

beneficially entitled to the interest was genuinely non-resident. It meant that the Bank was obliged to look at all non-resident deposit accounts on its books, since the provision applied both to existing and future accounts, and to deduct DIRT from the interest paid or credited on any accounts in respect of which it was not satisfied that the depositor was non-resident. This was never clearly explained to branch staff.

Because of this omission, managers seem to have believed, as appears from their evidence to the Inspectors, that, provided they had the declaration from the customer that he was non-resident, nothing further was required of them.

The first time that branch personnel were asked to concern themselves with the validity of non-resident deposit accounts was when they received Special Circular No. S9/93, which required them to examine such accounts *“to ensure that they are valid Non-Resident accounts and that non-resident forms are held.”* While this Circular required that non-resident accounts should be examined in order to ensure they were valid, the Circular did not specify how their validity should be tested. The Circular did not state, as it ought to have, that a non-resident account was not valid unless the Bank was satisfied that the person beneficially entitled to the interest on the account was non-resident. Furthermore, the only circumstance in which branch staff were directed to take action was if a non-resident form was not held. In such a case the non-resident flag was to be amended so that DIRT would be deducted.

Special Circular No. S11/95 introduced documentary requirements for the opening of new non-resident accounts. It required that before any new non-resident account could be opened, documentation had to be produced as evidence that the depositor was resident outside the State (e.g. a driving licence or passport or other identification with details of the person’s address and signature). But there was still the same omission as before. Branch staff were not instructed that DIRT had to be deducted unless the Bank was satisfied that the depositor was non-resident. Because of this, an individual who was resident, but happened to have a foreign passport, or a foreign driving licence, would have been able to open a non-resident account. In regard to existing non-resident accounts, the circular was also deficient. The only direction given was that DIRT had to be deducted at the standard rate *“unless a valid declaration is held which has been signed, dated and in all other respects fully completed by the customer”*.

Circular S22/95, issued on 15 May 1995, refers to a DIRT aide memoir prepared by Finance and Planning Department as a guide for use by cashiers and other branch staff. It is stated that it summarises the contents of Circular S11/95 but in fact it does more than that. It contains for the first time in any Bank document relating to non-resident accounts an instruction that *“The official who opens the account must be fully satisfied that the customer is a non-resident ...”* This instruction, however, concerns the opening of new accounts only. The Guide does not deal with existing accounts.

BRANCH MANAGER EVIDENCE ON OPERATION OF PROCEDURES

Present and former branch managers interviewed by the Inspectors have indicated that they did not believe there was any onus on them to check the veracity of the non-

resident declaration made by a customer when opening a non-resident account, and it was not their practice to do so. The procedure followed was to have the depositor sign the signature card, and complete and sign the form of declaration. The declaration was taken at its face value. The managers were under pressure to get deposits and did not question it. They considered the signature card and form of declaration was all that was required, and this remained the position until May 1995 when the Bank introduced account opening procedures to assist compliance with the money laundering provisions of the Criminal Justice Act, 1994.

Illustrative evidence from managers, which the Inspectors accept:

[Prior to the Money Laundering Act] if the customer came in and stated that he was from wherever he was from, ... we wouldn't have carried out checks to authenticate his address.

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Inspector: When you were opening a non-resident account, what procedure did you adopt to satisfy yourself that the person was in fact a non-resident?

Manager: That they completed the form and signed it. I would say, being honest, nothing more than that.

Prior to the Money Laundering Act there was no onus on the bank at that stage to produce [proof of identity] ... we took the word of the customer.

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Inspector: ... did you feel that in regard to the form that you had to try and satisfy yourself that the declaration was reasonably accurate or, put in a more negative way, that you had no reason to believe that it wasn't accurate?

Manager: No ... They were signing the form, not you.

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Manager: Just a signature card was all we required. Pre Criminal Justice Act 1994, all we needed at that time for a non-resident account was the declaration and signature card.

Inspector: Yes. And what was the position in regard to checking whether or not the person who was taking out the account was in fact a non-resident?

Manager: There was no obligation on me.

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We didn't open a non-resident account unless the person had a non-resident address and came in and said they were non-resident. Then, and this was before we had to have documentary evidence for opening accounts, you didn't query them to an extent because you were under pressure to get deposits.

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If somebody came in to open an account and said they were non-resident and they signed the declaration, we accepted that. We didn't question them further.

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The only time I saw pressure ... to do something with these accounts was in 1995 when Paul Harte in early 1995 [addressed the issue at an area meeting of branch managers.] That's when the pressure came on to close these accounts, up to that there wasn't [any pressure].

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... if you had a customer that presented himself or herself to you as being a non-resident of the State, you were required to hold a non-resident declaration form, and in practice that's basically all that happened. If a person was completing a non-resident form, then generally speaking we didn't probe beyond that.

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[Up until a couple of years ago] if a customer came in and signed a non-resident declaration generally that was sufficient.

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As a manager I was delighted to see people coming in with over a hundred thousand pounds. I wouldn't be running around the streets to check if they were resident or otherwise but if he was a next door neighbour of yours or if he was lodging money every day of the week, there would be an onus on you then to do something about it.

ENQUIRIES OF BRANCH PERSONNEL BY SENIOR BANK MANAGEMENT

Just as the branch managers considered that what was required for the opening of a non-resident deposit account was the obtaining of the appropriate declaration, senior Bank management appear to have taken the view that the essential requirement for the validity of a non-resident deposit account was that the branch held the appropriate declaration in respect of it.

On a number of occasions between 1989 and 1993 Frank Brennan (the General Manager – Retail Banking to 30 June 1991, and thereafter General Manager – Corporate Services, and General Manager – Administration) wrote to branch managers about DIRT-free deposit accounts, and in the case of non-resident deposit accounts his request was always for confirmation that a non-resident declaration was held in respect of each non-resident account. This request was sometimes phrased slightly differently, being a request for confirmation that proper documentation was held for all non-resident accounts.

On 7 August 1991 Mr Brennan also wrote to the three Regional Managers – Kevin Curran, Regional Manager North West, Tom McMenamin, Regional Manager East, and Michael O'Rourke, Regional Manager South (with copies to Basil Noone, General Manager – Banking and Dermott Boner, Head of Retail) – on the subject of DIRT-exempt accounts, and in particular bogus non-resident accounts. He referred to the view of the Department of Finance that “a normal degree of care” is required of a bank in assessing whether a deposit is a relevant deposit or not, and stated “*It is vital therefore that all DIRT exempt accounts are supported by a properly completed declaration form.*”

On 11 November 1991, by way of follow-up to his letter of 7 August 1991, Mr Brennan again wrote to the Regional Managers requesting that they confirm to him “*that all D.I.R.T. exempt accounts are correctly documented*”.

On 26 November 1993 Mr Brennan wrote to each branch manager reminding him of the procedures for opening non-resident accounts and advising him that he would shortly thereafter receive a computer printout listing all accounts classified as DIRT-exempt at his branch. Mr Brennan requested each manager to complete and return to him a certificate in the following form:

I confirm that proper documentation is held in respect of all non-resident accounts listed on print-out dated 2 December 1993.

As noted above, Special Circular No. S22/95 introduced standard-form semi-annual DIRT compliance reports in which the branch manager declared he understood the contents of Special Circular No. S11/95 and either confirmed that his branch had proper statutory declarations on file for all accounts classified as DIRT-exempt non-resident accounts or, where a proper statutory declaration was not held, detailed the action which the manager proposed to take to rectify the situation.

From the approach adopted by senior Bank management, there appears to be no doubt that the emphasis was always on proper documentation being held in support of all non-resident accounts and this clearly influenced how branch managers understood their obligations in regard to these accounts. When branch managers were asked by Mr Brennan, or their Regional Manager, to confirm that non-resident deposit accounts were properly documented, or that they held the appropriate declaration in respect of all of them, they considered they were entitled to reply in the affirmative provided they held the relevant declarations, irrespective of the actual status of the account holder. In confirming that they held the relevant forms they were not vouching the validity of the information in those forms.

Evidence from branch managers to this effect, accepted by the Inspectors, includes:

Inspector: ... when you say “properly completed” does that ... mean that there was any effort made to authenticate the information on the form at that stage?

Manager: No, not as I understand it.

Inspector: So if, so effectively if you had a non-resident account form ... tick the box and move on to the next one?

Manager: I reckoned that was the end of my responsibility.

oooOooo

My view on that is very simple: you put the question to me to confirm that all documentation was in order, that we held all documentation but was it that we held all documentation or that all documentation was in order? ... I can have every account in the place as a bogus non-resident account and so long as I have a non-resident form for each of them my documents are in order and held.

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Inspector: ... what is it you believed that branch managers were being asked to confirm?

Manager: That they held completed non-resident forms in respect to every account.

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The use of the phrase “all documentation” was to me a cop out. Your documentation might be right but that does not mean the account is right.

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Manager: The emphasis was on, have you a declaration for the account.

Inspector: ... in relation to sending these back, once there was a declaration you sent it back, saying you had the declaration, it was not in anyway validating the authenticity of the declaration?

Manager: No, I don't think so.

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Inspector: And the confirmations that you would send back, what was it that you were confirming? Was it that you held declaration forms or was it that you were confirming you held the forms and was (sic) vouching the validity of the information on those forms?

Manager: No, just that we were holding declaration forms.

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I would say it indicated we had a form for the actual account being there, the accuracy of it would not have been examined in detail. ... At all.

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Inspector: When you were signing that and saying that “proper documentation ...” does that mean you have a form for each non-resident account or that you have researched the facts as to whether the account holder is actually non-resident?

Manager: To me it would have implied that the form was held.

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My memory is that the focus at the time was purely on whether if you had X number of non-resident accounts, did you have X number of non-resident declarations to match those accounts.

... the bank’s audit team and senior management focus purely on whether a declaration existed for a particular account or not ...

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EXISTENCE OF BOGUS NON-RESIDENT ACCOUNTS IN THE BRANCH NETWORK

The Inspectors received evidence of the existence of bogus non-resident accounts in the branch network through interviews with Bank customers, interviews with Bank personnel at both branch manager and senior management levels, and from review of internal Bank correspondence and branch audit reports.

Bank Customer Interviews

In the course of interviews with persons who invested in the Clerical Medical Insurance (“CMI”) Personal Portfolio policy (see Part 5), the Inspectors received a substantial body of evidence in regard to the existence of bogus non-resident accounts in the branch network. Most of the investors had been customers of the Bank and had had such accounts before making their investment. In some cases they stated they had opened the accounts on the advice of the branch manager, in others it had

been at their own request with a view to evading tax. In the case of most of the investors, they stated that the manager was well aware that they were not non-resident.

The Inspectors are satisfied that on this issue there is substantial agreement between the evidence of the customers and that of the branch managers. Illustrative evidence from customer interviews, accepted by the Inspectors, includes:

Inspector: Was the deposit account with a Northern Ireland address held in [branch]?

Customer: It was in [different branch] first where [manager name] was but subsequently when he moved to [branch] I moved the account to there.

Inspector: So when [manager name] was in [different branch] you had the deposit account with a Northern Ireland address and when he transferred to [branch] you went with him?

Customer: Yes.

Inspector: When you had the deposit account in [branch] with a Northern Ireland address who suggested that you should invest in CMI?

Customer: [manager name] was the first person to suggest that there were advantages in meeting this financial advisor, Mr [name].

Inspector: Was it the position that the deposit account with the Northern Ireland address would be closed and the account opened with CMI?

Customer: Yes. I was anxious to get my money back. As a policeman I was getting worried about it, I was not happy about it and they were aware of that.

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Inspector: What made you decide to put the money into [branch] and in a non-resident account?

Customer: To avoid paying tax on it. In addition there was the fact that it was money that was taken from the business which would be hard to explain to the Revenue at the time ...

Inspector: Where were you living at the time you had the account?

Customer: In [town in Republic of Ireland, distant from branch].

oooOooo

Inspector: And what was the address on the account?

Customer: It was an address in England. When I opened the account I was advised that this was the best way to put in the money and I would not have to pay tax on it. I had a daughter living in England and it was her address I used.

Inspector: When had you opened the account?

Customer: I had it for years.

oooOooo

Inspector: What address was on the account when you opened it, was it your new address in [town in Republic of Ireland] or your Australian address?

Customer: [named street], that is in Melbourne.

Inspector: Was that because people in the bank thought you were living in Australia?

Customer: No, they were very aware of where I was.

Inspector: They were fully aware of where you were?

Customer: Yes.

Inspector: Effectively, at the time you opened the savings account which was to earn interest you had a bogus non-resident account?

Customer: Yes.

oooOooo

Inspector: So in June '92 you came back home to the house that you bought the previous year, so you took up residence here in Ireland and you had an account in the National Irish Bank in [town], OK, with "care of the branch" on it?

Customer: Yes.

Inspector: OK, but you didn't have your own address on it?

Customer: No.

Inspector: But he [ie named manager] would have been aware you were now living in Ireland?

Customer: Oh, yes.

Inspector: Why would that be, why would he just have “care of branch”?

Customer: To avoid the tax.

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Inspector: And whose name was that deposit account in?

Customer: The deposit account was in my wife and my young son and myself, ...

Inspector: And what address would have been on that account?

Customer: It was an English address.

Inspector: And so from a tax point of view, would you have been, at that stage, an Irish resident?

Customer: Oh yes, very much so, very much so.

And later

Inspector: So at that stage then [in January 1987], what discussion took place with the bank ... vis-à-vis opening a non-resident account?

Customer: Yeah, well I am going to say this out straight. The manager, he said, “why don’t you open an English account, a non-residential (sic) account”.

Inspector: What benefit would he have put forward in relation to that?

Customer: Well, he says you don’t have to reveal it to the tax people.

Inspector: And who was that manager?

Customer: [manager name] was his name.

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Inspector: And then he [ie named Bank official] opened an account for you in the [name] branch?

Customer: Yes.

Inspector: And he opened it as a non-resident account?

- Customer:* Yes.
- Inspector:* What was the address for that account?
- Customer:* It was [spouse's aunt]'s address when she was in America.
- Inspector:* How did he know that address?
- Customer:* We gave it to him, he asked us for the American address.
- Inspector:* Who did he think this money belonged to?
- Customer:* We told him the story, I would say he thought it was our money.
- Inspector:* So he knew it was your money?
- Customer:* Yes.
- Inspector:* What was the reason for his opening a non-resident account for you?
- Customer:* The way you wouldn't have to pay tax on it ...
- Inspector:* In whose name was the account in [branch]?
- Customer:* It was in [spouse]'s parents' name with [spouse's aunt]'s address in America.
- oooOooo
- Inspector:* Would the bank have been aware you had accounts in different names?
- Customer:* They would have set that up for me at the start for the simple reason that I would say to the bank I could get better interest in different places and they would say, we'll sign a form – I think it was an F17 where you declare you are non-resident – we will get you that you will not be paying DIRT, you are not supposed to be in the country. So that they set up that for me, it wasn't a matter of me going in and asking for it. I would just say that I could get 1% interest rate better in some other bank and they would say, no, hold on, sign this form.
- Inspector:* Who would have introduced that concept to you, who would have said you could have a non-resident account?
- Customer:* [name], the bank manager.

oooOooo

Inspector: Now, Miss [customer name], do you know the particulars of this account in the National Irish Bank in [named town]? Your brother said it was a non-resident account.

Customer: Yes, and it was in both our names.

Inspector: In both your names?

Customer: Yes.

Inspector: And what address was given?

Customer: I think it was [named street]. Wait until I see.

Inspector: Where was it? Was it in England or the States or ...

Customer: Australia I think it was.

Inspector: And how was it that the address in Australia was given? Was that on your suggestion or on someone else's suggestion?

Customer: It was their suggestion.

Inspector: When you say "their suggestion", who?

Customer: In the bank.

Inspector: In the bank?

Customer: Yes.

Inspector: And can you remember who it was that, who was it? Was it the manager's suggestion or another official?

Customer: The Manager.

Inspector: Can you remember the name of the Manager?

Customer: [mispronounced, but identifiable, manager name].

Inspector: Was he there at the time?

Customer: I think it was [mispronounced, but identifiable, manager name].

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Inspector: Whose address is that UK address?

Customer: It was the address of an uncle of mine who is now dead.

Inspector: So it is an address you would have supplied to the bank yourself?

Customer: That is correct.

Inspector: I take it you did not live there?

Customer: No, apart from going there on holidays.

Inspector: At the time you supplied that address you would have been resident in the Republic of Ireland?

Customer: Correct.

Inspector: Would you know, in relation to that account, if DIRT was deducted, that is, the deposit account with a foreign address?

Customer: I couldn't honestly say that.

Inspector: Can you tell me why there was a foreign address on the account?

Customer: I suppose it was avoiding paying tax on it.

oooOooo

Inspector: Was the money you used to invest in the CMI in an account in the names of yourself and your sister?

Customer: Yes, but it was my money.

Inspector: And what was the address for the account?

Customer: It was an American address. I was in America and I had money there a few years before I came back. I came back in '84 so they had my American address, they just kept it under that address.

Inspector: Was this money you had brought back with you from America?

Customer: Most of it.

Inspector: Had it been in that account then in the names of yourself and your sister from 1984?

Customer: Yes.

Inspector: And with the American address?

Customer: Yes.

Branch Manager Interviews

Branch managers indicated at interview that the practice of having bogus non-resident deposit accounts existed throughout the Bank.

Illustrative evidence, accepted by the Inspectors:

... I would say around '92, '93, the first rumblings were probably starting that there had to be something done about the non-resident situation in the banks,

...

oooOooo

Inspector: In relation to bogus non-resident accounts, you have said clearly that there was an industry-wide problem and it existed on a reasonably extensive scale within NIB. Is that not right?

Manager: Yes.

Inspector: ... is that something that was just in the awareness of the branch manager network or would everyone have known about it?

Manager: I would say everybody had to know.

oooOooo

Inspector: In your view did the practice of what could loosely be described as bogus non-resident accounts exist within the bank?

Manager: Yes.

Inspector: Did it exist within those branches where you were manager?

Manager: Yes.

Inspector: ... have you reason to believe that practice was widespread within the network?

Manager: Without question.

Inspector: Would people at a senior level within the bank, people at a level above branch manager, have been aware of the existence of that practice?

Manager: They would because most of these people, certainly under the Northern Bank regime, worked their way up from postage clerk to senior position ...

oooOooo

Manager: ... I think when you went in [ie on transfer to a different branch] you inherited and you stayed with them.

Inspector: The first time that you felt there would have been any significant pressure in relation to this was when Mr Harte tackled the matter in 1995?

Manager: Correct.

oooOooo

Inspector: Was it something that was available at the branches where you were manager, were they within the branch, regardless of whether you opened some or whether you inherited some?

Manager: I would have thought there would have been a certain few in each branch.

oooOooo

Inspector: At that stage what would have happened once you discovered they were not genuine non-resident?

Manager: In a lot of cases nothing. We would have tried to tidy them up and tell them that is not non-resident, we want them to become resident and attract DIRT. If they disagreed we would eventually say to them that we would get the financial services to talk to them.

oooOooo

Inspector: Did they exist, from your knowledge, right across the branch network?

Manager: Yes, I would have to say it would be widescale.

oooOooo

Interviews with Senior Bank Management

Senior Bank management were questioned on their knowledge of the existence of the practice. Responses included:

Dermott Boner

Inspector: ... would that have given rise to suspicion on your behalf that there may have been in existence in the branch network bogus non-resident accounts?

Mr Boner: Yes.

And at a later interview:

I'm saying we had suspicions that a lot of managers hadn't shown their hand.

There was no test to ensure that there were no bogus non-resident accounts. What the branches were told was that the bank did not want [bogus] non-resident accounts ...

Kevin Curran

There were some mavericks [in the branches] there is no question or doubt about it.

[Revenue evasion] was a national sport in the eighties and early nineties.

Frank Brennan

I was blue in the face writing to branches about the requirements under the Finance Act, 1986 ... I do not think I could put my hand on my heart and say we were perfect at any stage.

I recall writing on a number of occasions giving instructions to close down such accounts and saying that we were not in the business of bogus non-resident accounts.

Interviews with former Heads of Internal Audit

Former heads of the Bank's internal audit function made observations as follows:

Enda Carberry

As far as I recall it came up in a number of audits ... which in itself would tend to support the view that there was a culture.

Paul Harte

I believed it was a practice that had been there for quite a while, both in National Irish Bank and in the industry.

And at a later interview:

Inspector: Do you believe that certain of the managers within the branch network deliberately tried to conceal the maintenance of these accounts from the internal auditors by use of fictitiously named accounts, or whatever?

Mr Harte: Yes, Yes.

Internal Bank Correspondence

Gerry Hunt, Head of Financial Control, in November 1993 addressed a memorandum titled “Non Resident Accounts” to Mr Brennan, Mr Keane and Mr Boner, with a copy to Mr Lacey, noting concerns expressed to him by senior officials in the Department of Finance and in the Office of the Revenue Commissioners regarding “*the alleged actions of a number of bank officials*”. He expressed the view that a Revenue audit focussing on non-resident documentation was likely and noted a difficulty in explaining the significant increase in the level of non-resident deposits held at branches of the Bank in the year ended 30 September 1993. He stated that he had spoken with the Group Tax Manager and the Head of Audit and reported that both shared his concerns that the Bank’s documentation might be “weak” in the following areas:

- 1. c/o branch addresses.*
- 2. Non resident declaration forms missing, incomplete or inaccurate.*
- 3. Unusual addresses that clearly warrant closer scrutiny eg Main St., Swansea, (sic) Wales.*
- 4. Obvious errors eg non res. deposit and resident loan in same name.*

Mr Hunt was interviewed by the Inspectors:

Inspector: Can you recall whether you would have had a genuine concern at the time?

Mr Hunt: I would not have written that note [of 18 November 1993] if I did not have some concerns.

The full text of Mr Hunt’s memorandum is reproduced at Appendix 8.

On 7 November 1994, prior to the commencement of the DIRT Theme Audit discussed at pages 54 and 55 below, Paul Harte, Head of Audit, sent a memorandum

to Mr Brennan, Mr Keane and Nigel D'Arcy, Head of the Bank's Financial Advice and Services Division, stating, *inter alia*:

Non-Residents

- (a) *Branches again need to be reminded of the requirements in relation to non-residents. It is not sufficient to simply have a non-resident form – where branches are aware that customers are resident DIRT must be deducted.*
- (b) *the whole area of DIRT needs to be reviewed. Audit Department will soon carry out a theme audit of the area and this will cover all areas including instructions issued to branches, forms, staff knowledge, withdrawal notice requirements etc.*

On 9 February 1995, on the completion of the DIRT Theme Audit, Mr Brennan addressed a memorandum to the Executive Director of the Bank, Barry Seymour, which included the following:

Having wrestled with DIRT for a number of years, I do believe that we must introduce a change of attitude by our management staff to the legal requirements. It is an Irish failing that there is considered little harm in closing ones eyes to tax evasion and to confusing evasion with avoidance.

INTERNAL AUDIT REPORTS

General

Branch audit reports are consistently critical of the standard of compliance with the legislative provisions and Bank procedures pertaining to the operation of non-resident deposit accounts. With regard to the Bank's obligation to hold a non-resident declaration in a form prescribed or authorised by the Revenue Commissioners pursuant to Section 37 of the Finance Act, 1986 for each account designated by the Bank as a non-resident account, the deficiencies most commonly reported were:

- Failure to produce non-resident declaration form at time of audit;
- Holding a "Charities" declaration form instead of a non-resident declaration form;
- Relying on "obsolete" non-resident declaration forms in use prior to the Finance Act, 1986;
- Non-resident declaration forms not dated, (eg Dungloe, July 1995: 39% of sample undated);
- Non-resident declaration forms not fully completed, and
- Incorrect account number on non-resident declaration form.

Use of Incorrect Forms

As a transitional measure, the Finance Act, 1986 provided that existing non-resident declarations given to a bank under Section 175 (4) of the Income Tax Act, 1967 would continue to have effect up to 5 April 1987 as if they were declarations made under Section 37 of the 1986 Act. After that date declarations under the 1967 Act ceased to have effect and thereafter declarations in the new format are necessary for all non-resident accounts. Special Circular No. S5/86 and Routine Circular No. R17/87 issued by the Bank to all branches on 24 July 1986 and 1 April 1987 respectively advised branches of this requirement.

Notwithstanding what was advised in these circulars, it was noted in internal audit reports on 27 branches between 1988 and 1996 that obsolete non-resident declaration forms were still in use. In addition, audit reports on 18 branches between 1991 and 1996 noted that “Charities” declaration forms were being used instead of non-resident declaration forms.

Use of Bank as Accommodation Address

Internal audit reports for branches in May 1992 and November 1992 noted the use of branch as an accommodation address and stated that such use was not to occur in the future. In his letter of 26 November 1993, Mr Brennan advised each branch manager that use of the branch as an accommodation address was strictly forbidden when opening non-resident accounts.

As noted at page 26 above, the new LiveLink system became operational in all branches on 3 May 1994. This system required input of a customer address for each deposit account. Internal Audit subsequently reported that notwithstanding the clear instruction in Mr Brennan’s letter, “care of branch” addresses and Irish addresses were being input to LiveLink for non-resident deposit accounts. Between September 1995 and October 1996 one or other or both of these irregularities were noted by Internal Audit as having occurred in 17 branches.

In course of interview with Mr Boner, the Inspectors referred to a memorandum dated 23 November 1993 sent by him as Head of Retail to all branch managers.

Inspector: *In particular I refer to the following:*

1. Care-of-branch addresses. What’s the problem with care-of-branch addresses?

Mr Boner: *Well, care-of-branch addresses would obviously lead to conclude (sic), rightly or wrongly, that there’s some reason why the person can’t give a proper address; and, therefore, that they may not be a legitimate non-resident. I mean, if they were a legitimate non-resident, why wouldn’t they give a non-resident address?*

Non-Resident Declarations at variance with other branch records

Internal audit reports at the dates listed below noted instances where non-resident declarations were at variance with other branch records. Examples include:

August 1991 (circulated to J Lacey, B Noone, D Boner, K Curran)

A number of completed forms were at variance with other branch records.

March 1992 (circulated to J Lacey, B Noone, D Boner, T McMenamin)

It would appear that some accounts designated 'Non-Resident' are connected to other resident accounts at Branch.

May 1992 (circulated to J Lacey, B Noone, D Boner, M O'Rourke)

A few instances were noted where the residential status quoted on the non-resident declaration forms were at variance with other Branch records.

July 1992 (circulated to J Lacey, B Noone, D Boner, K Curran)

Instances were noted where the residential status quoted on the declaration was at variance with other Branch records.

Recommended Action

The Manager must be satisfied that all Non-Resident accounts are bona fide and comply fully with the requirements of the Finance Act 1986.

September 1992 (circulated to J Lacey, B Noone, D Boner, K Curran)

Instances were noted where the residential status on Non-Resident Declaration forms was at variance with other Branch records.

April 1993 (circulated to J Lacey, M Keane)

One instance was noted where the residential status quoted on a Non-Resident declaration form was at variance with other Branch records. (The account has since been correctly designated Resident).

May 1993 (circulated to J Lacey, M Keane, D Boner)

Instances were noted where the residential status on Non-Resident deposit accounts was at variance with other Branch records.

July 1993 (circulated to J Lacey, M Keane, D Boner)

Three instances were noted where the residential status on a Non-Resident savings account was at variance with other branch records.

October 1993 (circulated to J Lacey, M Keane, K Curran)

Eleven instances were noted where the address on the non-resident savings account was at variance with other branch records.

August 1994 (circulated to B Seymour, M Keane, D Boner)

Three instances were noted where the address on Non-Resident accounts was at variance with other branch records.

Recommended action

The Manager/Assistant Manager is asked to ensure that all non-resident accounts at Branch are bona fide.

September 1995 (circulated to B Seymour, M Keane, K Curran)

During the course of the Audit, Management gave written confirmation that all Non-Resident accounts were genuine. Despite this confirmation, it was noted on five occasions (3%) that Non-Resident addresses were at variance with other branch records.

Non-Resident Deposits as Security for Resident Borrowings

Internal Audit also identified instances where non-resident deposits were held as security for resident borrowings, among which were:

March 1992 (circulated to J Lacey, B Noone, D Boner, K Curran)

It was noted that two Bonus Saver accounts were classified non-resident where Letters of Lien were held supporting lending on resident accounts in the same names.

November 1992 (circulated to J Lacey, B Noone, D Boner, K Curran)

Advances made to Branch customers [name] are partly secured by a letter of lien over deposits held in the same name. These deposits are designated non-resident (exempted from Retention Tax) on the basis that correspondence for administrative purposes is to a United Kingdom address. The account should immediately be redesignated to collect Deposit Interest Retention Tax.

February 1993 (circulated to J Lacey, B Noone, D Boner, M O'Rourke)

One instance was noted where a Bonus Saver account was exempt from Deposit Interest Retention Tax and the beneficial owners were Irish residents. It was further noted that these deposits were held in support of a letter of guarantee for lending at Branch. The funds have now been transferred in to an account which is subject to DIRT in future.

July 1993 (circulated to J Lacey, M Keane, D Boner)

Three instances were noted where lending to resident customers was secured by Letters of Set-Off over Non-Resident deposits at Branch.

Branch Response

A full review of all L.O.L. security will now take place and above incidences (long standing) will be addressed.

August 1995 (circulated to B Seymour, M Keane, T McMenamin)

Two instances were noted where lending to resident customers was secured by Letters of Set Off over deposits with Non Resident status. The deposits in both cases related to the principals of the companies in question.

Recommended Action

Management are asked to ensure that this practice ceases immediately. Non Resident accounts must not be opened in future unless they are genuine.

April 1996 (circulated to B Seymour, M Keane, K Curran)

A non-resident savings account with a present balance of £10,780 in the name of [two names] was opened in September 1994. These deposits belong to [two different names] (IR residents). It is further noted that a letter of set-off is held over these deposits.

Non-Resident Accounts in Fictitious Names

Internal Audit also reported instances where non-resident savings accounts were maintained at branches in fictitious or incorrect names, including:

October 1993 (circulated to J Lacey, M Keane, K Curran)

Seven instances were noted where there was a mismatch between the name on the account and the exact name of the customer.

A deposit receipt account is held in a fictitious name.

April 1994 (circulated to B Seymour, M Keane, D Boner)

- 1. A Non Resident Super Saver account is held in the name of [two names] and the account details are at variance with other Branch records.*
- 2. It was also noted that the customer details on Livelink relating to [two names as above] are in the name of [two different names, incorporating the same first names but different surname].*

Further examination of transactions which passed over the account revealed

that [second surname as above] & [first surname as above] are one and the same persons. Retention Tax is not collected on this Super Saver account.

June 1995 (circulated to B Seymour, M Keane, T McMenamin)

Four other instances were recorded where Non-Resident savings accounts were opened in fictitious or incorrect customer names.

September 1995 (circulated to B Seymour, M Keane, K Curran)

- 1. A non-resident savings account with a balance of £210,000 is held in the name of [two names]. These deposits belong to Branch customers [two different names] (IR residents). This particular account was highlighted in the October 1993 audit when at that time the funds were held on Deposit Receipt.*
- 2. A non-resident savings account with a balance of £27,900 is held in the name of [name] (IR resident). These deposits belong to Branch customer [different name].*

Branch Response

These accounts have had a long association with NIB. In the case of item one, every effort has been made to have the account regularised. If it is the Bank's desire to instruct Branch to have these accounts closed, then proper procedures will be implemented in future. ... These accounts have been in existence prior to my arrival in June 1993.

January 1996 (circulated to B Seymour, M Keane, K Curran)

Both the Manager and the Assistant Manager signed a declaration confirming that fictitious/incorrectly named accounts do not exist and that all non-resident accounts are genuine. Despite this confirmation the following irregularities were found:

- 1. A non resident savings account, which currently has a balance of £230k, in the name of [two names] was opened in November 1992. These deposits belong to [two different names, comprising the same first names but different surname] T/A [name] (IR residents).*
- 2. A non-resident savings account with the present balance of £100k in the name of [two names] was opened in August 1995. These deposits belong to [two different names] (IR residents).*
- 3. A non-resident savings account with a present balance of £205k in the name of [name] was opened in May 1994. These deposits were*

previously in the name of [different name]. These deposits belong to [name differing from both noted above] (IR resident).

The irregularity noted at 1. above had been noted on the previous Internal Audit visit to this branch (see April 1994 extract above).

February 1996 (circulated to B Seymour, M Keane, K Curran)

Audit were made aware of the following irregularities:

1. *A non resident savings account, which currently has a balance of £78000 in the name of [two names] was opened in January 1993. These deposits belong to [different name] (IR resident).*
2. *A non-resident savings account in the name of [two names/initials, single surname] was opened in June 1995. Present balance £58000. These deposits belong to [two different names/initials, with the same surname as above]. (IR residents).*
3. *A non-resident savings account in the name of [two names/initials] was opened in December 1992. Present balance £32000. These deposits belong to [two similar names, incorporating one different initial]. (IR residents).*
4. *Deposit accounts in the names of [name] & [name] (Total balances £148000) are incorrectly designated as Non Residents.*

It should be noted that present management did not open these accounts and they are presently endeavouring to make contact with the relevant customers to have the irregularities rectified.

WHY DID BRANCH PERSONNEL OPERATE BOGUS NON-RESIDENT DEPOSIT ACCOUNTS?

Branch managers have indicated that they opened and maintained bogus non-resident deposit accounts for the following reasons:

- To gain or retain deposits – the branches were under pressure to increase deposits, and were struggling to do so. Because of competition from other banks, frequently the only way to gain or keep a deposit was to agree it should be DIRT free.
- To preserve a business relationship – if a valuable customer threatened to withdraw his business, unless facilitated, the account might have been lost.
- In the culture of the time, closing an account because it was bogus would not have been accepted as a good reason for losing the deposit.

Illustrative evidence received from branch managers and accepted by the Inspectors includes:

I am aware that I did facilitate a couple of customers with non-resident status, which, in hindsight, I was not totally comfortable with but it was to protect a deposit that I felt would have been lost to one of my competitors ...

I was regularly faced with the challenge that if I did not do it, it would be done by [named other banks] or whoever.

There may well have been a wider business connection that would have been valuable to me.

oooOooo

Manager: ... you didn't query them to an extent because you were under pressure to get deposits.

And later

Inspector: If you had said that the reason for losing the account was because you would not facilitate the operation of a [bogus] non-resident account – would you not have regarded that as a justifiable reason?

Manager: No, because of the pressure you were under, either directly or indirectly, to get business.

oooOooo

Inspector: ... why at that stage would you just not tell them you were going to close the account?

Manager: First, we would be losing the money out of the deposits for the branch and we were struggling to reach the deposits. Certainly if it was a big amount there would be a lot of gathering to make it up and make our target for that year ...

oooOooo

On the one hand they're telling me to get it sorted out, on the other hand they're telling me to get the resources up.

oooOooo

Under the pressure to increase the business I was happy to do it.

oooOooo

... going back to the pressure element, or the threat of losing business to [named bank], I mean, I think we were scared, I would say, of losing business.

I think possibly the overriding ambition to increase your deposit base may have taken precedence over the strict interpretation of the non-resident rule. I suppose if you reclassified those accounts, the chances are you would lose the business and the deposits, as you can see, would plummet.

It would be a very brave man in the regime that was in the bank at that time that would have stood up and be (sic) counted, and say the deposits are actually going down by 20 percent overnight, the reason being, X, Y, Z. I don't think anyone was brave enough to stand up and do that.

oooOooo

Inspector: [Why] would you have facilitated the maintenance of bogus non-resident accounts within the branch?

Manager: Possibly from the fear of losing the business.

oooOooo

As a branch manager you tried to protect your base as best you could and I would reckon that most people, if they saw someone approaching and saying, "I am closing that account, I can get a better rate down the street, I won't have to pay any tax on it," it was possibly done to retain the business.

oooOooo

... they were big customers in [branch] that had successful operations, they had bank accounts elsewhere ... and I was trying to get my foot in the door.

And as well as that, I was heavily targeted for deposits on the other side. ... and the best way I could get my foot in the door at the time as I felt at the time was to facilitate them in whatever way I could.

It was pressure that I needed these accounts to achieve my targets and if I rock the boat anyway that the accounts would leave me.

I was a bit more than flexible regarding the rules and maybe I bent the rules or turned a blind eye on occasions to achieve my targets ... the deposits would have been lost to the opposition. And deposits at that time were very hard to replace.

oooOooo

In the course of interview, evidence, which they accept, was given to the Inspectors by the Head of Audit to the effect that the failure to address the issue of bogus non-

resident deposit accounts in the Bank resulted from management inaction due to the potential effect on the Bank's deposit base of addressing this issue.

Paul Harte

Inspector: Can you tell me why it took time to sort out the accounts?

Mr Harte: In my view it was because of management inaction. ... I think there was a reluctance on management's behalf to lose that sort of money from the network.

Inspector: Because it was quite significant?

Mr Harte: Yes.

METHOD OF ACCOUNTING FOR DIRT

Where the Bank affords non-resident status to a deposit account, the deposit account is flagged as being exempt from DIRT – ie interest on the account is to be paid gross of DIRT. The onus is placed on branches to ensure that the correct DIRT flags are set at account level. Thereafter the amount of DIRT deducted on the payment or crediting of interest on deposit accounts is processed automatically by the computerised accounting systems of the Bank.

Accordingly, if the DIRT flags set at account level by branch personnel are incorrect, an incorrect return of DIRT to the Revenue Commissioners will result.

Extract from interview with John O'Brien of the Bank's Finance Department:

Inspector: And if they had told you [the conclusions of the DIRT Theme Audit report] ... or made the report available to you, would it in any way have influenced the way you would have gone about preparing and submitting the return?

Mr O'Brien: Not really because it was very much a mechanical exercise completing the return. You really took the figures that were provided ... for you from the financial reports. The only analysis that went into it was really kind of checking that what was the reason for maybe a large increase in the amount of DIRT paid or whatever because we wanted to kind of make sure we weren't paying too much to the Government. And we would have been looking at say the balances of deposits and whether they had increased significantly or whether interest rates had increased or whatever.

Extract from interview with Gerry Hunt, former Head of Finance:

Inspector: I am puzzled by the fact that insofar as your returns are concerned you were acting separately from what was going on in the bank. In other words, you were accepting the information you were given and there was no way your department could check the accuracy of that information.

Mr Hunt: By and large that is true. There was very little way, we inherited systems and those systems were tried and tested over the years. They accumulated information and there were literally millions and millions of transactions going on.

Inspector: At what stage, when the tax return was put in front of you and you were signing on behalf of the bank, would you say, better check these out?

Mr Hunt: We would have checked the authenticity of the numbers. There were procedures there to be gone through ... if a procedure did not happen properly at a branch, there was no realistic way we could find out. There were internal controls and checks and others would have had the responsibility to ensure that those things were done properly ...

Inspector: And you are clear from your perspective nobody ever raised any issue in relation to taxation matters with you coming from the internal audit of the branches?

Mr Hunt: I can't recall anyone raising such issues.

DIRT THEME AUDIT, DECEMBER 1994

On the initiative of Paul Harte, Head of Audit, the Bank selected the area of DIRT compliance for its first Theme Audit, a concept whereby a particular theme or area is selected for review on a Bank-wide basis. The Bank's stated reason for the selection of DIRT for the first Theme Audit was:

DIRT compliance issues (principally missing and incomplete documentation) continue to be reported in branch and other audits on a regular basis. For this reason, it was decided to select DIRT for our first theme audit to gain an understanding of the extent of DIRT compliance problems.

The results of the DIRT Theme Audit, carried out in December 1994, were rated as unsatisfactory with the following overall conclusion recorded:

Results of this audit are very disappointing and management must take immediate steps to improve the situation. The structure of the whole area can be improved but the level of non-compliance is too high. It appears that there

needs to be an organisation-wide change in attitude to the whole area. This is a risk area and the penalties for non-compliance at the level shown in this report would be very significant.

In the course of the audit, internal audit staff visited twelve branches in total. Each branch sample included 30 non-resident accounts and the report states that testing in that category “concentrated for the most part on the following areas”:

Ensure that properly completed non resident declaration forms were held for the 30 non-resident accounts. Briefly check that address on declaration form is not at variance with other branch records.

The report’s major findings on the main issues affecting all aspects of DIRT compliance were:

- 1. Lack of clear and concise guidelines. Procedures do not clearly differentiate between the different types of DIRT.*
- 2. Lack of understanding regarding documentation required for each account category e.g. we identified instances where charity form was used for a non-resident account.*
- 3. There has been no co-ordinated review of all DIRT documentation on a regular basis. In late 1993, Administration Department conducted a review of non resident and DIRT exempt accounts whereby all branches were required to sign off on DIRT documentation held. This type of sign off does not guarantee that all DIRT documentation is in order as branch audits have continued to reveal problems in this area.*

Major findings in relation to non-resident accounts included:

- Approximately 40% of declarations selected contain some errors/omissions.*
- Our examination of non-resident accounts showed:*
 - 1. Non-resident declaration forms were not sighted for 12% of accounts.*
 - 2. 21% of the declarations had an incorrect account number.*
 - 3. 13% of the declarations were not dated.*
- Details at variance with other branch records*

Instances have been reported in branch audits where non resident details were at variance with other branch records. Some branches appear to be of the opinion that once a non resident declaration form is held there is no obligation on the branch to confirm the residency of the account holder.

The DIRT Theme Audit report is reproduced in full at Appendix 9.

Follow-up Meeting to DIRT Theme Audit

On 20 January 1995, following completion of the DIRT Theme Audit report, Michael Keane, General Manager – Banking, sent a memorandum to Barry Seymour, Executive Director, noting that the “*recent theme Audit gives serious cause for concern*” and suggesting that a meeting take place “*to define the extent of the problem and to produce an action plan (including definition of responsibilities)*.” This meeting, chaired by Mr Keane, took place on 9 February 1995 and was attended by Mr Seymour, Mr Brennan, General Manager – Administration, Mr Boner and Mr McMEnamin, Regional Managers, Mr Harte, Head of Audit, Patrick Byrne, Head of Finance, and others. The minutes of the meeting record that the following action steps were agreed:

- Issue of a circular to contain clarification of the rules in relation to DIRT and simple instructions to be followed at branch level. The responsibility for drafting this circular was assigned to the Finance Department.
- Ongoing control and enforcement to be effected by issuing to branches on a quarterly basis lists of accounts designated as non-resident, and requesting compliance checking at branches.
- Audit staff to examine these lists as part of audit of compliance testing in future to ensure that DIRT documentation checking is complete.
- Branch Business Meetings to be devoted for a period of time to DIRT issues, in relation to compliance with the procedures laid out in the circular for DIRT-free/SSA accounts to be issued to branches, noting that non-compliance would result in immediate reversion to standard rate DIRT deduction status on the account.

The minutes note that, for future reference, responsibility for monitoring and enforcement of DIRT/tax compliance in relation to savings and deposit accounts rested with Retail and Administration. The summary timetable of agreed actions resulting from the meeting however records no action points for Administration.

The minutes do not evidence any consideration of the question of a potential retrospective liability to the Revenue Commissioners for DIRT resulting from the findings of the Theme Audit. This was confirmed to the Inspectors by a number of those who attended the meeting:

Barry Seymour

Inspector: ... did anybody attempt at the time to quantify the amount of money that may have been due to the Revenue?

Mr Seymour: Not to my recollection, Tom, no. I can't say that. But whether

or not Patrick Byrne did it in Finance, I don't know. But not to my recollection.

Inspector: But it isn't something that was discussed?

Mr Seymour: Not to my recollection, no.

Patrick Byrne

Inspector: Would you be aware ... if there was any effort to retrospectively quantify the tax that would have been due?

Mr Byrne: ... my recollection is ... there was no talk when it came to tax or financial statements as of September, at putting a figure in for a liability. So the only deduction I have from that is there wasn't a figure calculated.

Michael Keane

Inspector: One thing that puzzles me, but after the date, the DIRT issue, ... [whether there] was liability for DIRT in arrears, was that ever raised or discussed within the bank?

Mr Keane: No, insofar as I can recall it was looking forward to fixing it is what my recollection was as separate (sic) to look back and to see was there any liability.

Frank Brennan

Inspector: ... who would you have regarded had the responsibility in the bank to quantify any liability that may have existed to the Revenue?

Mr Brennan: I don't remember that specific question being asked of anybody but the Finance Department were the people responsible for returning the tax deducted to the Revenue and I would see it as their responsibility ...

The Bank's external auditors, KPMG, received a copy of the DIRT Theme Audit report and it was considered by them when conducting their audit of the Bank's financial statements for the year ending 30 September 1995. When conducting their audit KPMG were, accordingly, aware of the conclusion in the DIRT Theme Audit report that "*this is a risk area and the penalties for non-compliance at the level shown in this report would be very significant*" and this put them on notice of a potentially material liability. This should have led to KPMG asking management to quantify the potential retrospective liability to the Revenue Commissioners for DIRT resulting from the findings of the Theme Audit. KPMG did not seek to have this done. The Inspectors are of the opinion that, if KPMG had requested that the potentially material

liability be quantified, this would have emphasised its importance to senior management and it is unlikely that they could have ignored it, as they did.

The Bank has confirmed to the Inspectors that it has found no evidence that, on discovering irregularities in the operation of non-resident accounts either as a result of the DIRT Theme Audit of December 1994 or otherwise, the Bank calculated the DIRT liability resulting from the deficiencies noted or, prior to the Inspectors' appointment, remitted any payment to the Revenue Commissioners in discharge of such liability.

THEME AUDIT – TAXATION OF CREDIT INTEREST, JANUARY 1999

During August and September 1998 the European Audit Division of National Australia Bank conducted an audit of compliance with tax legislation and internal procedures of the Bank. Ten non-resident deposit accounts were selected for review in each of ten randomly selected branches; no stratification by value took place.

The overall conclusion of the report on this Theme Audit, issued January 1999, includes the following:

- *We have assessed the standard of compliance in National Irish Bank as UNSATISFACTORY. A high level of errors has been identified in ... Overseas Resident Accounts (NOR) ...*
- *18% of sampled NOR accounts have been found to be erroneous when tested against current legislative requirements. These errors do not in themselves suggest that the customers were ineligible for the payment of interest without deduction of tax but do indicate a need for immediate remedial action.*
- *Controls at branch level have not been effective despite confirmations to the contrary from branch management through the Bank's six-monthly declaration process. Increased centralisation of the overview and control processes should be considered as the key element of any future control framework.*

“Significant Audit Issues” identified relating to non-resident accounts included:

- *It was evident that in some cases blank declarations had been signed by customers and branch staff had not subsequently ensured that the declarations were fully completed.*
- *Procedures for ensuring that customer's identity was verified did not provide evidence that this, in fact, had occurred.*
- *The six-monthly branch declaration process, to confirm that D.I.R.T. requirements were being met on an ongoing basis, was not robust and gave a false picture of compliance in the Bank.*

The 18% error rate noted above was analysed as follows:

- 7% *no declaration held*
- 5% *not signed by all parties*
- 3% *address missing or incorrect for at least one party to the account*
- 3% *account records suggested that advice had been received indicating the customer was now resident in the Republic of Ireland. However, the account status had not been changed and it therefore remained in operation as a non resident account.*

Referring to the six-monthly declaration confirming compliance with DIRT regulations, the report noted:

- *9 of the 10 branches sampled had erroneously certified full compliance or had failed to identify accounts which were invalid;*
- *there is no process in Finance Department to ensure all declarations are held or to follow up those branches where full compliance has not been achieved;*
- *the wording of the existing declaration form is ambiguous and does not support the objective of ensuring full compliance with DIRT regulations.*

INSPECTORS' CONCLUSIONS

The Inspectors find:

1. Bogus non-resident deposit accounts were opened and maintained by the Bank and were widespread in the branch network during the period the subject of the investigation.
2. The opening and maintenance of such accounts by the Bank constituted an unlawful and improper practice which served to encourage the evasion of Revenue obligations by third parties, both on the funds deposited and on interest earned.
3. Up until May 1995 senior Bank management failed to inform branch staff in clear terms of the relevant provisions of the Finance Act, 1986 – that non-resident deposits had to be treated as deposits in respect of which DIRT had to be deducted from the interest unless the Bank was satisfied that the person beneficially entitled to the deposit was non-resident. In addition, senior Bank management failed to have a review conducted at that time to ensure that all existing non-resident accounts were genuine.

4. At branch level the Bank failed to deduct DIRT from bogus non-resident accounts and from non-resident accounts where a properly completed declaration in a form prescribed or authorised by the Revenue Commissioners was not held by the branch.
5. Although senior management was aware of the existence of bogus non-resident accounts, the Bank failed to account to the Revenue Commissioners for the DIRT properly payable on the interest paid or credited on such accounts.
6. The Bank failed to account to the Revenue Commissioners for DIRT payable on the interest paid or credited on non-resident accounts where the Bank did not hold a properly completed declaration in a form prescribed or authorised by the Revenue Commissioners.