

PART 4

EVASION OF REVENUE OBLIGATIONS: SPECIAL SAVINGS ACCOUNTS

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LEGISLATIVE REGIME

On or after 1 January 1993, Section 37A of the Finance Act, 1986 as introduced by Section 22 of the Finance Act, 1992 permitted the opening by individuals of bank accounts designated as Special Savings Accounts (“SSA’s”), the interest on which benefited from a reduced rate of Deposit Interest Retention Tax (“DIRT”), being 10% up to 5 April 1995 and 15% from 6 April 1995 to 5 April 1998, provided certain conditions were met and a declaration confirming compliance with those conditions, in a form prescribed or authorised by the Revenue Commissioners, was made by the deposit holder to the bank.

The conditions attaching to such accounts in the period from 1 January 1993 to 30 March 1998 are detailed in Section 37A of the Finance Act, 1986, now Section 264 of the Taxes Consolidation Act, 1997. These conditions, in addition to the requirement that the completed declaration referred to above was held by the bank, were:

- The account shall be opened and held in the name of the individual beneficially entitled to the interest;
- The account shall not be opened or held in the name of an individual who is not at least 18 years of age or married;
- The balance in the account shall not at any time exceed IR£50,000 including relevant interest;
- Except in the case of a couple married to each other, the account shall not be a joint account;
- An individual may have only one SSA at any time except that a couple married to each other may have two joint accounts with a maximum balance of IR£50,000, each opened and held jointly by them;
- No withdrawal of money shall be made from the account within the period of three months commencing with the date on which it is opened, and
- The terms on which the account is opened shall require the individual to give a minimum of 30 days’ notice to the relevant deposit taker in relation to the withdrawal of any money from the account.

Interest on SSA’s is not returnable by the account holder as income for the purposes of the Income Tax Acts and accordingly the reduced rate of DIRT deducted from interest payable on SSA’s is regarded as satisfying the individual’s full liability to tax in respect of that interest and furthermore the interest payable is ignored for the purposes of PRSI, Health Contribution and Employment Levy.

An account ceases to be an SSA if any of the conditions attaching to such accounts cease to be satisfied with the effect that:

- The bank must deduct tax at the standard rate then in force from all interest paid or credited on the deposit on or after the date the account ceases to be an SSA, and
- The individual is liable for PRSI, Health Contribution and Employment Levy on such interest.

If a withdrawal is effected in the period of three months from the date of opening of the account then the account has never satisfied the conditions for its operation as an SSA and the bank is therefore required to deduct DIRT at standard rate from all interest paid or credited from the date of opening of the account.

RETURNS TO REVENUE COMMISSIONERS

In the annual returns which a bank is required to make to the Revenue Commissioners (see page 24 above) are included details of the DIRT appropriate to the interest paid or credited on SSA's in the year of assessment. Set out below is a summary of information based on the annual returns of NIB to the Revenue Commissioners pursuant to Section 33 (2) of the Finance Act, 1986:

Year of Assessment	Interest on SSA's IR£	DIRT Rate on SSA's	DIRT on SSA's IR£
1992/1993	2,685,229	10%	268,523
1993/1994	6,602,412	10%	660,241
1994/1995	8,612,682	10%	861,268
1995/1996	5,912,505	15%	886,876
1996/1997	6,291,738	15%	943,761
1997/1998	11,498,842	15%	<u>1,724,826</u>
			<u>5,345,495</u>

This table shows the amount of the reduced DIRT paid by the Bank on the total of the SSA's in each of the six years between 1992 and 1998. As it is clear from the findings of the DIRT Theme Audit of December 1994, summarised at pages 76 and 77 below, that the samples of SSA's tested in the branches showed that 20% of the declarations were missing or incomplete, and that there was a high rate of failure in observing the requirement to give a minimum of thirty days' notice for every withdrawal, it follows that a significant proportion of the SSA's were not entitled to benefit from DIRT at the reduced rate.

NIB PROCEDURES

The procedures laid down by the Bank for the opening and operation of SSA's were communicated to Bank personnel principally by the issue of Special Circulars. The undernoted Special Circulars deal with the qualifying criteria for the operation of deposit accounts as SSA's and each of them clearly refers to the prohibition on withdrawals from SSA's within the first three months following their opening and to the requirement for a minimum of 30 days' notice of withdrawals:

- Special Circular No. S26/92 dated 15 December 1992, addressed to branch managers and heads of departments.
- Special Circular No. S1/93 dated 6 January 1993, addressed to branch managers and heads of departments.
- Special Circular No. S4/93 dated 22 February 1993, addressed to all staff.
- Special Circular No. S27/93 dated 9 June 1993, addressed to branch managers and heads of departments.

Special Circular No. S9/93, issued to all branches on 11 March 1993, introduced a Retention Tax Compliance Report which, *inter alia*, required branch staff to examine all accounts designated as SSA's to ensure that they met the qualifying criteria and that an appropriate declaration was held for each such account, in default of which interest paid or credited was to be subject to DIRT at the standard rate.

As noted in Part 2, Special Circular No. S11/95, which was issued to all branches on 8 March 1995 following the DIRT Theme Audit of December 1994, replaced all previous circulars in relation to DIRT. It clearly sets out the rules applicable to the operation of deposit accounts as SSA's and a DIRT guide summarising the contents of this Circular was issued for use by cashiers and other branch staff on 15 May 1995. The Circular also advised branch personnel of the availability of Notice of Withdrawal of Funds forms which were to be attached to the withdrawal slip when the withdrawal had been effected. This was the first time such forms were made available to the branches.

As also noted in Part 2, 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 SSA's or, where a proper statutory declaration was not held, detailed the action which the branch manager proposed to take to rectify the situation.

DIRT THEME AUDIT, DECEMBER 1994

Conclusion

The results of the DIRT Theme Audit of December 1994 were rated as unsatisfactory. As noted in Part 2 the following overall conclusion was 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.

Scope of Audit Testing

Twelve branches were selected for the Theme Audit. In the area of SSA's, internal audit staff were directed to carry out the following work at each branch:

- *Ensure that properly completed SSA declaration forms were held for [each of a sample of] 30 SSA's.*
- *Briefly review the listing of branch SSA's for apparent inconsistencies (e.g. sole and joint accounts held by same person, joint account held by persons not married to each other).*
- *Discuss understanding of SSA notice requirements with two members of branch staff.*
- *Review withdrawal notices for selected SSA withdrawals (e.g. notice period, amount of withdrawal and signature of account holder(s)).*

Findings

The major findings of the Theme Audit on the main issues affecting all aspects of DIRT compliance are set out in Part 2 at page 55. In relation to the operation of SSA's the report's major findings were:

- *... an unacceptably high proportion of declarations were (sic) missing or incomplete – approximately 20% of SSAs.*
- *SSA notice requirements are not being properly imposed – 91% of withdrawals reviewed breached the notice requirements. The profile of this issue needs to be raised again; a number of initiatives should be undertaken including use of standard documentation.*
- *Our review of 136 SSA withdrawal notices showed:*
 1. *Notices were not sighted for 79% of withdrawals.*
 2. *55% of notices found were invalid e.g. no notice date, notice < 30 days.*

3. *None of the accounts in breach of the notice requirements had been subject to 27% DIRT from the date the requirements were breached.*
- *Many branches are finding it difficult to impose SSA notice requirements due to:*
 - (a) *Fear of losing deposits.*
 - (b) *No standard procedure/documentation for implementing notice requirements.*
 - (c) *Lack of understanding of notice requirements.*
 - *Approximately 20% of SSA declarations selected contained some errors/omissions.*
 - *Our review of 372 SSA declarations showed:*
 1. *SSA declaration forms were not sighted for 7% of accounts.*
 2. *9% of the declarations were not dated.*
 3. *5% of the declarations were not properly completed (e.g. no address, no account name).*
 - *A high level review of SSAs in the selected branches showed that 29 SSAs did not comply with SSA qualifying conditions (e.g. sole and joint accounts held by same person, joint account held by persons not married to each other). It should be noted that this was a high level review which would only highlight very obvious inconsistencies.*

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

Interview with Head of Audit

Asked whether any consideration was given to expanding the scope of the DIRT Theme Audit to encompass all branches, Paul Harte, Head of Audit at the time the Theme Audit was carried out, stated:

If the business needed more assurance and needed more work on that, then they should have done it themselves; as far as I was concerned I had done a proper sample, I had identified these issues and nobody questioned the veracity of those issues.

BRANCH INTERNAL AUDIT REPORTS

Branch audit reports, both in the period prior to the DIRT Theme Audit and thereafter, were consistently critical of the level of branches' compliance with the requirement to

hold a properly completed declaration form for each account designated as an SSA. Deficiencies noted included:

- Forms not sighted for a number of accounts;
- Forms not fully completed;
- Incorrect forms used;
- Forms not dated;
- Amended or incorrect account numbers noted on declaration;
- In the case of joint accounts, declarations signed by one party only.

In addition, audit reports noted instances where account holders were not entitled to avail of Special Savings Account status.

In the period after the DIRT Theme Audit and after the issue of Special Circular No. S11/95 to all branches on 8 March 1995, branch audit reports at the dates listed below noted breaches of notice requirement provisions:

January 1996 (circulated to Barry Seymour, Michael Keane, Kevin Curran)

1. Several instances were noted where withdrawals were permitted within the initial ninety day period and the tax deduction status code on the relevant accounts was not amended to "C" i.e. standard 27% DIRT.
2. A few instances were noted where withdrawals were processed and the required written thirty day notice of withdrawal was not obtained.

January 1996 (circulated to Barry Seymour, Michael Keane, Kevin Curran)

1. From an examination of the Tax Deduction Compliance section of the Managers Morning report since 4th January 1996, eleven instances were noted where withdrawals were permitted on "SP" accounts within the initial ninety day period and the tax deduction status code on the relevant accounts was not amended to "C" i.e. standard 27% DIRT.
2. A number of instances were noted where withdrawals were processed and the required written thirty day notice of withdrawal was not obtained.

May 1996 (circulated to Barry Seymour, Michael Keane, Kevin Curran)

From an examination of the Tax Deduction Compliance section of the Managers Morning report, a small number of instances were noted where withdrawals were permitted on SSA accounts within the initial ninety day period and the tax deduction status code on the relevant accounts was not amended to "C" i.e. standard 27% DIRT.

July 1996 (circulated to Philip Halpin, Michael Keane, Kevin Curran)

By enquiry, it was established that on a small number of occasions, withdrawals were permitted on SSA accounts within the initial ninety day

period and the tax deduction status code on the relevant accounts were (sic) not amended to "C" i.e. standard 27% DIRT.

In each of the four above-noted reports, branches were reminded of the statutory provisions relating to the withdrawal of funds from SSA's.

THEME AUDIT – TAXATION OF CREDIT INTEREST, JANUARY 1999

As noted in Part 2, during August and September 1998 the European Audit Division of National Australia Bank undertook an audit of compliance with tax legislation and internal procedures at the Bank. Testing was carried out on a sample of ten SSA's in each of ten randomly selected branches; no stratification by value took place.

The overall conclusion of the audit was that the standard of compliance in the Bank was rated as unsatisfactory. In relation to SSA's it was noted that:

- *21% of sampled SSA accounts were in error against legislative requirements and in this instance there is the possibility that up to 4% of the customers may be ineligible for these accounts.*
- *The major weaknesses identified were lack of understanding by branch staff of the eligibility requirement for joint accounts; failure to evidence that the identification of customers had been verified and in 79% [39 of the 49 withdrawals made in 1998 from the accounts reviewed during the audit] of the sample tested withdrawals from accounts being allowed without the required notice period being given.*
- *The branch declaration process [to confirm that DIRT requirements were being met on an ongoing basis] was ... inaccurately reporting the level of compliance with D.I.R.T. regulations across the sample of declarations tested.*

The 21% error rate noted above was analysed as follows:

- 5% *no declaration held*
- 3% *joint account for unmarried customers*
- 1% *2 accounts for the same customer*
- 2% *declaration unsigned*
- 10% *full customer name not on declaration*

RETROSPECTIVE DIRT LIABILITY TO THE REVENUE COMMISSIONERS

The Bank has confirmed to the Inspectors that it has found no evidence that, on discovering breaches of the conditions applicable to the operation of deposit accounts as SSA's, 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.

INSPECTORS' CONCLUSIONS

The Inspectors find:

1. The Bank failed to deduct Deposit Interest Retention Tax ("DIRT") at the standard rate from interest paid or credited on accounts designated as Special Savings Accounts where the branch did not hold a properly completed declaration in a form prescribed or authorised by the Revenue Commissioners or where there had been a breach of the statutory requirements relating to withdrawals.
2. Although senior management was aware of the breaches of the relevant statutory requirements, the Bank took no steps to calculate and remit to the Revenue Commissioners arrears of DIRT due, being the difference between tax at the standard rate, which ought to have been deducted, and tax at the reduced rate actually applied.