

PART 3

EVASION OF REVENUE OBLIGATIONS: FICTITIOUS AND INCORRECTLY NAMED ACCOUNTS

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NIB PROCEDURES

Formal Guidance to Staff

The position at 1 January 1988 was governed by the account opening procedures set out in the Branch Procedures Manual of 1976. These provided that as regards current accounts the manager had “*to satisfy himself as to the identity, respectability and suitability of the proposed customer*” but as regards deposit accounts all that was required was that “*a specimen signature*” be obtained on a special signature card.

Subsequent guidance to staff is summarised below:

- The provisions of the 1976 Manual relating to current accounts were repeated in the Branch Procedures Manual of 1992 and were for the first time also applied to deposit accounts.
- The first mention of accounts in fictitious names in any Bank document occurs in the Code of Conduct/Policy and Staff Guidelines of February 1993. Section 3 of this document, at paragraph 3.2 under the heading “Prevention of Fraud”, provides as follows:

The Bank can at any time be a target for fraud. The sophistication of criminals is such, that fraud can sometimes be difficult to detect. Staff should be continually alert where unusual activities or requests are made by customers, non-customers and colleagues, irrespective of that colleague’s rank or position. Procedures are in force to protect both the Bank and staff and should be adhered to at all times. These procedures are detailed in the various procedural manuals, circulars and management instructions.

Accounts must not be opened or operated in fictitious names. Where any doubt exists, consult your immediate superior.

- On 21 April 1995 Special Circular No. S19/95 on money laundering was issued to all staff members prior to the coming into effect on 2 May 1995 of the money laundering provisions of the Criminal Justice Act, 1994 affecting the Bank. This circular states:

This Act now adds the full rigour of criminal law to the prohibition on opening/conduct of accounts in fictitious names referred to at Para. 3.2 in the Bank’s Booklet “Code of Conduct/Policy and Staff Guidelines” of February 1993.

- In September 1996 the Bank issued a Human Resources Policy & Procedures Manual. Section 3 set out the Code of Conduct for Bank employees and at

paragraph 3.6 under the heading “Prevention of Fraud” states:

Our bank can at any time be the target of fraud. Your actions and decisions can help prevent these attempts being successful. Staff should be continually alert where unusual activities or requests are made by customers, non-customers and colleagues, irrespective of that colleague’s rank or position. Accounts must not be opened or operated in fictitious names. This can be avoided by ensuring that the correct procedures for identifying customers are adhered to at all times. In particular the Money Laundering Provisions of the Criminal Justice Act must be adhered to at all times.

Poor adherence to procedures which permit fraud to occur will result in disciplinary action, which may include dismissal, against any employee.

- The prohibition on opening accounts in fictitious names is again reiterated in Part B of the 1996 Branch Procedures Manual (the relevant section was issued in January 1997). At paragraph 2.2, captioned “Outline of Requirements re Money Laundering”, it states:

Officials must always be alert to the possibility of accounts being used for Money Laundering purposes. Do not permit accounts to be opened in fictitious names or where any associated business cannot be seen to conform with ethical and legal standards.

EXISTENCE OF FICTITIOUS AND INCORRECTLY NAMED ACCOUNTS

In the light of the evidence received from Bank personnel and from customers of the Bank, the Inspectors are satisfied that fictitious and incorrectly named accounts existed in the Bank during the period the subject of the investigation, up until the end of 1996.

Illustrative evidence, which the Inspectors accept, is set out hereunder.

Extracts from Letters from Bank Personnel

At the outset of the investigation the Inspectors wrote to present and former employees of the Bank who, in the period from 1 January 1988 to 30 March 1998, held positions at the rank of manager or above, reciting the terms of the Order under which they were appointed, and requesting they furnish all information or documentation that might be relevant to the investigation. The following extracts from replies are relevant to the opening and maintenance of fictitious or incorrectly named accounts:

During my period as Deputy Manager, [named] Branch (1993 - to date) a small number of accounts (three or four) were brought to my attention by

cashiers etc as being in incorrect names. At my request they have all since been closed. All attracted DIRT tax at the normal rate prior to closure.

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There were a few irregular non-resident accounts and fictitious accounts at this office ([named]) when I arrived here and these have either been closed or regularised to the proper name/status.

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Prior to the requirement to seek proper identification, under the Money Laundering Act 1995 (sic), it may have been that accounts were opened on the basis of incorrect information from customers.

Bank Customer Interviews

Inspector: And who would have known about the existence of that account [in incorrect name]?

Customer: Myself and the manager.

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Inspector: There was money used [for investment in CMI] from an account in [correct names], the [branch name] account?

Customer: Yeah.

Inspector: And there was one in [incorrect names] in [different branch]?

Customer: Yeah.

Inspector: Who actually owned the account in the [different] branch?

Customer: We owned it, yeah.

SOURCE OF FUNDS FOR INVESTMENT IN CMI, SCOTTISH PROVIDENT INTERNATIONAL AND OLD MUTUAL INTERNATIONAL POLICIES

Data provided by the Bank disclosed that many investments in CMI, Scottish Provident International and Old Mutual International policies were funded, in whole or in part, from funds in fictitious or incorrectly named deposit accounts in the Bank's branch network, certain of which had DIRT deducted from interest earned.

WHY WERE ACCOUNTS OPENED IN FICTITIOUS NAMES?

In the light of the evidence received, the Inspectors are satisfied that the main reason customers had accounts in fictitious names was to keep undeclared funds hidden from the Revenue and that branch managers were aware of this.

Illustrative evidence, which the Inspectors accept, is set out hereunder.

Branch Manager Interviews

Inspector: ... where people had accounts in the incorrect name what would you have thought the reason for that was?

Manager: I can surmise ... that there was probably a Revenue background.

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Inspector: What would your view be as to why somebody would have a fictitious account?

Manager: Well, my view would be to conceal money from ... maybe even from a family member or it could be from the Revenue Commissioners.

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Inspector: What would you have thought yourself as to why people chose to have the accounts in a second, in their second initial; would that relate to sensitivity?

Manager: We would have to take that as being a reason.

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Inspector: I would like to know whether or not you were aware of a practice in the bank of facilitating the opening up of fictitiously named accounts or bogus non-resident accounts?

Manager: Well, in my limited experience as a manager, I would say I have come across the issues.

Inspector: And in relation to people like Mr [incorrect customer name], or who had bogus non-resident accounts, would it be reasonable to assume that the Revenue didn't know about that money?

Manager: I would imagine in some of the cases it would be reasonable.

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Inspector: *What would have been the purpose of these [fictitious or incorrectly named] accounts?*

Manager: *Obviously they didn't want the Revenue to know about it.*

EFFORTS TO ELIMINATE FICTITIOUS AND INCORRECTLY NAMED ACCOUNTS

Memorandum from General Manager - Banking, 1995

On 7 December 1995 Michael Keane, General Manager – Banking, issued to all branch management a memorandum titled “Account Names/Descriptions”. The essence of the memorandum was that it informed branches that:

- *Opening or operating accounts in fictitious names is expressly forbidden in our Code of Conduct.*
- *Operating accounts in this manner does not fulfil our “Professionalism in our actions and ethics” value.*

and managers were asked to “*fulfil [their] personal responsibility*” in regard to such accounts

Memorandum from General Managers, 1996 and involvement of Head of Audit

The next step towards eliminating fictitious and incorrectly named accounts was initiated by Paul Harte, Head of Audit. This was a meeting held to discuss such accounts on 15 May 1996, attended by Frank Brennan, General Manager Administration, Michael Keane, General Manager Banking and Kevin Curran, Head of Retail Banking

Following this meeting, on 30 May 1996, Mr Keane and Mr Brennan issued a memorandum to all branch management titled “Fictitious/Incorrectly Named Accounts”. This memorandum informed the branches that “*all fictitious or incorrectly named accounts must be regularised and/or closed, even where there is a possibility that the business will be lost.*”

Mr Harte’s involvement with the issue continued as the memorandum required branch management to complete and return to the Audit Department by 15 June 1996 a declaration to the effect that:

- there were no fictitious or incorrectly named accounts at the branch,
- the branch manager had not instructed or authorised any other member of staff to open fictitious or incorrectly named accounts, and
- no fictitious or incorrectly named accounts had been closed in the previous three months.

In the event that any fictitious or incorrectly named accounts existed in the branch or had been closed in the previous three months, the memorandum required that these accounts be listed on the declaration, noting the account name, the customer's name and "Comments/Action Plan".

Review of Declarations from Branch Managers

On 22 July 1996 Mr Harte furnished to Mr Keane and Mr Brennan, with a copy to Mr Curran, a summary of the declarations returned and his recommendations arising therefrom. Mr Harte's report noted that 24 branches had disclosed fictitious accounts, and that the highest number of fictitious accounts in any one branch was 13.

Following receipt of the declarations, Mr Harte received from branch managers progress reports on their efforts to regularise these accounts. These reports indicate that included in the steps taken by the managers to resolve the problem of fictitious and incorrectly named accounts were:

- The funds in the account were transferred to CMI.
- The account was relocated in another branch of the Bank in the customer's correct name.

In the opinion of the Inspectors these proposed solutions were improper as they served to encourage the continued evasion of tax by the Bank's customers.

The Board Audit Committee

The Board Audit Committee of the Bank, meeting on 24 February 1997, "*noted that all falsely designated accounts have now been cleared*".

INSPECTORS' CONCLUSIONS

The Inspectors find:

1. Fictitious and incorrectly named accounts were opened and maintained by the Bank and existed throughout the branch network during the period of the investigation up until the end of 1996.
2. The opening and maintenance of such accounts by the Bank served to encourage the evasion of tax as it concealed the true ownership of the funds in the accounts.
3. Bank personnel were aware or ought to have been aware of the reason for the opening of such accounts.
4. In 1995 and 1996, when branch managers were directed that all fictitious and incorrectly named accounts must be regularised and/or closed, even where

there was a possibility that the business might be lost, managers sought to retain for the Bank the funds on deposit in such accounts by proposing to the customers that they invest in CMI, or by suggesting that they deposit the funds in another branch of the Bank in their correct names.

In the opinion of the Inspectors these “solutions” were improper because they served to encourage customers to continue to evade tax.

