



**AC Ref: 09TACD2016**

**NAME REDACTED**

**Appellant**

**-and-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Background**

1. The Appellant is a sports club and operates as an unincorporated association. The Appellant has at all material times been an "*approved body of persons*" within the meaning of section 235(1) of the Taxes Consolidation Act, 1997, namely a body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports. As such an approved body of persons, the Appellant enjoys an exemption from income tax in respect of so much of its income as is applied to the sole purpose of promoting amateur games or sports.
2. Following a period of fund-raising intended to generate funds for a planned redevelopment of the Appellant's clubhouse, the Appellant found itself in a position where it had relatively significant sums of money on deposit with its bankers. During the years under appeal, namely 2010 to 2013 inclusive, the Appellant received gross interest on the deposited



funds amounting to some € **SUM REDACTED**. The Appellant suffered DIRT at the prevailing rates (from 25% to 33% during the years under appeal) on that gross interest.

### **Matter under appeal**

3. The Appellant has appealed against the deduction of DIRT amounting to € **SUM REDACTED** from the gross interest payable on its deposits during the four years under appeal. In essence, the Appellant contends that DIRT is a form of income tax and, because the Appellant is exempted from income tax by virtue of the provisions of section 235 of the Taxes Consolidation Act, 1997, the Appellant submits that it ought not to be liable to DIRT.
4. The Appellant further sought what was described in its written submissions as *"clarification regarding the tax treatment of deposit interest going forward."* At the hearing of this appeal, I was advised that what was sought was a *"non-binding recommendation"* in relation to the Appellant's liability to DIRT in respect of the years subsequent to the years under appeal.

### **Hearing and evidence**

5. At the hearing of the appeal, I heard evidence from **NAME REDACTED** Honorary Treasurer of the Appellant. I further heard legal submissions from Counsel for the Appellant and from representatives of the Respondent.

### **Relevant legislation**

6. The provisions of section 235 of the Taxes Consolidation Act, 1997 relevant to this appeal are the first two subsections, which provide as follows:-



*“(1) In this section, “approved body of persons” means—*

*(a) any body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports, and*

*(b) (i) any body of persons that, as respects the year 1983-84 or any earlier year of assessment, was granted exemption from income tax under section 349 of the Income Tax Act, 1967 , before that section was substituted by section 9 of the Finance Act, 1984 , or*

*(ii) any company that, as respects any accounting period ending before the 6th day of April, 1984, was granted exemption from corporation tax under section 349 (before the substitution referred to in subparagraph (i)) of the Income Tax Act, 1967 , as applied for corporation tax by section 11 (6) of the Corporation Tax Act, 1976;*

*but does not include any such body of persons to which the Revenue Commissioners, after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, give a notice in writing stating that they are satisfied that the body—*

*(I) was not established for the sole purpose specified in paragraph (a) or was established wholly or partly for the purpose of securing a tax advantage, or*

*(II) being established for the sole purpose specified in paragraph (a), no longer exists for such purpose or commences to exist wholly or partly for the purpose of securing a tax advantage.*

*(2) Exemption from income tax or, as the case may be, corporation tax shall be granted in respect of so much of the income of any approved body of persons as is shown to the satisfaction of the Revenue Commissioners to be income which has been or will be applied to the sole purpose specified in subsection (1)(a).”*



7. The Appellant further relied upon sections 12 and 18 of the 1997 Act which provide, *inter alia*, that income tax shall be charged under Schedule D Case III in respect of:-

*“any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable in or outside the State, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Case V of Schedule D...”*

8. The Appellant submitted, in reliance on sections 12 and 18, that interest on a bank deposit was a form of income, and accordingly any tax on interest was an income tax. Counsel for the Appellant further submitted that the fact that DIRT was deducted at source did not change the nature of the tax; rather, it was simply a more convenient collection method.

9. The Respondent had, in its refusal of the Appellant’s claim for a refund of the DIRT suffered on the gross interest payable, relied upon sections 256 and 267 of the 1997 Act. Section 256 sets forth the definitions to be applied when construing and applying Chapter 4 of Part 8 of that Act (which governs the imposition of DIRT). Although those definitions were changed in a number of respects during the years under appeal, the key provisions relevant to this appeal were fundamentally unaltered and, as of the 2010 Finance Act, provided, *inter alia*, that:-

*“appropriate tax”, in relation to a payment of relevant interest, means a sum representing income tax on the amount of the payment –*

*(a) in the case of interest paid in respect of a relevant deposit or relevant deposits held in -*

*(i) a special savings account, or*

*(ii) a special term account,*

*at the rate of 25 per cent,*

*(b) subject to paragraph (c), in the case of interest paid in respect of any other relevant deposit, at the rate of 25 per cent, and*



- (c) in the case of interest paid in respect of a relevant deposit, being a deposit made on or after 23 March 2000, other than interest which is –*
- (i) referred to in paragraph (a),*
  - (ii) payable annually or at more frequent intervals, or*
  - (iii) specified interest within the meaning of section 260, at the rate of 28 per cent”*

...

*“relevant deposit” means a deposit held by a relevant deposit taker, other than a deposit –*

- (a) which is made by, and the interest on which is beneficially owned by—*
- (i) a relevant deposit taker,*
  - (ii) the National Treasury Management Agency,*
  - (iii) the State acting through the National Treasury Management Agency,*
  - (iiia) the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009)),*
  - (iiib) the State acting through the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009)),*
  - (iiic) the National Development Finance Agency,*
  - (iiid) The National Asset Management Agency,*
  - (iiie) the State acting through the National Asset Management Agency,*
  - (iv) the Central Bank of Ireland,*
  - (v) The Investor Compensation Company Limited, or,*
  - (vi) Icarom plc,*
- (b) which is a debt on a security issued by the relevant deposit taker and listed on a stock exchange,*



- (c) which, in the case of a relevant deposit taker resident in the State for the purposes of corporation tax, is held at a branch of the relevant deposit taker situated outside the State,*
- (d) which, in the case of a relevant deposit taker not resident in the State for the purposes of corporation tax, is held otherwise than at a branch of the relevant deposit taker situated in the State,*
- (e) which is a deposit denominated in a foreign currency made—*
  - (i) by a person other than an individual before the 1st day of January, 1993, or*
  - (ii) by an individual before the 1st day of June, 1991,**but, where on or after the 1st day of June, 1991, and before the 1st day of January, 1993, a deposit denominated in a foreign currency is made by an individual to a relevant deposit taker with whom the individual had a deposit denominated in the same foreign currency immediately before the 1st day of June, 1991, such a deposit shall not be regarded as a relevant deposit,*
- (f) (i) which is made on or after the 1st day of January, 1993, by, and the interest on which is beneficially owned by—*
  - (I) a company which is or will be within the charge to corporation tax in respect of the interest, or*
  - (II) a pension scheme,**and*
  - (ii) in respect of which the company or pension scheme which is the beneficial owner of the interest has provided the relevant deposit taker with that person's tax reference number (within the meaning of section 885) or where, in the case of a pension scheme, there is no such number, with the number assigned by the Revenue Commissioners to the employer to whom that pension scheme relates,*
- (g) in respect of which –*
  - (i) no person resident in the State is beneficially entitled to any interest, and,*
  - (ii) a declaration of the kind mentioned in section 263 has been made to the relevant deposit taker,*
- (h) (i) the interest on which is exempt –*
  - (I) from income tax under Schedule D by virtue of section 207(1)(b), or*



*(II) from corporation tax by virtue of section 207(1)(b) as it applies for the purposes of corporation tax under section 76(6),*

*and*

*(ii) in respect of which the beneficial owner of the interest has provided the relevant deposit taker with the reference number assigned to that person by the Revenue Commissioners in recognition of that person's entitlement to exemption from tax under section 207 and known as the charity (CHY) number,*

*(i) which is a deposit referred to in subsection (1A),*

*(j) which is a deposit referred to in subsection (1B), or*

*(k) which is made by, and the interest on which is beneficially owned by, a PRSA provider where the PRSA provider has provided the relevant deposit taker with the number assigned to that provider by the Revenue Commissioners;*

*...*

*"relevant deposit taker" means any of the following persons –*

*(a) a person who is a holder of a licence granted under section 9 of the Central Bank Act, 1971, or a person who holds a licence or other similar authorisation under the law of any other Member State of the European Communities which corresponds to a licence granted under that section,*

*(b) a building society,*

*(c) a trustee savings bank within the meaning of the Trustee Savings Banks Acts, 1863 to 1989,*

*(ca) a credit union,*

*(cb) a specified intermediary in relation only to a specified deposit,*

*(g) the Post Office Savings Bank;"*

**10. Section 267 then provided that:-**

*(1) In this section, "relevant person" means an individual who proves to the satisfaction of the inspector or, on appeal, to the Appeal Commissioners that—*

*(a) at some time during the relevant year the individual or his or her spouse was of the age of 65 years or over, or*



*(b) throughout the relevant year the individual or his or her spouse was, or as on and from some time during the relevant year the individual or his or her spouse became, permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself.*

*(2) Notwithstanding section 261(b), repayment of appropriate tax in respect of any relevant interest shall be made to a person entitled to exemption in respect of that interest—*

*(a) from income tax under Schedule D by virtue of section 189A(2) or section 207(1)(b), or*

*(b) from corporation tax by virtue of section 207(1)(b) as it applies for the purposes of corporation tax by virtue of section 76(6).*

*(3) Where in any year of assessment (in this subsection referred to as “the relevant year”) the total income of a relevant person includes any relevant interest or would, but for the provisions of section 189(2), section 189A(4) or section 192(2), have included relevant interest, and apart from section 261(b) the relevant person would be entitled to repayment of the whole or any part of the appropriate tax deducted from that relevant interest, then, notwithstanding section 261 (b), the repayment to which the relevant person would be so entitled may be made to the relevant person on the making by the relevant person to the inspector, not earlier than the end of the relevant year, of a claim in that behalf.*

**11.** The Respondent contended in its written submissions that because the Appellant’s deposits did not fall within any of the excluded categories in the definition of “*relevant deposits*” contained in section 256(1), those deposits constituted relevant deposits for the purposes of Chapter 4 and the Appellant’s bank was accordingly obliged to deduct DIRT at source.

**12.** The Respondent’s written submissions further contended that the only entitlement to a repayment of deducted DIRT was that conferred by section 267. As the Appellant did not fall within the parameters of section 267, no entitlement to such a repayment could arise.





- 13.** The Respondent further sought to rely on a Revenue Precedent published on the 23<sup>rd</sup> of July 1992, which stated as follows:-

*“Sporting bodies and DIRT: Whether a sporting body entitled to exemption under TCA97 s 235 would be entitled to receive interest without deduction of tax on the basis of a declaration under TCA97 s265?*

*No; since the sporting body would not be within the charge to corporation tax in respect of the interest. Also, the body in question could not complete a declaration to the effect that the interest will be included in the profits of the company on which it will be charged to corporation tax, as required by section 265.”*

- 14.** By way of response to the aforesaid contentions of the Respondent, the Appellant did not contend that it was entitled to a repayment of tax pursuant to section 267. However, it argued that the provisions of section 235(2) conferred upon it an absolute exemption from income tax, and this exemption was not in any way qualified by the provisions of section 267. It was submitted on behalf of the Appellant that the interpretation of the legislation contended for by the Respondent could only succeed if section 235 commenced with the words “*Subject to section 267...*”. The Appellant further submitted that it was not seeking a repayment of deducted DIRT pursuant to the provisions of section 267, but was instead claiming an entitlement to such a repayment under the general repayment of tax provisions contained in section 865 of the 1997 Act.

- 15.** The Appellant further argued that the Revenue Precedent published on the 23<sup>rd</sup> of July 1992 was relevant to companies only, and was of no relevance to an unincorporated association or body of persons such as the Appellant.

- 16.** In the course of the hearing of the appeal, the Respondent’s representative made reference to the provisions of section 261(b). The relevant portions of that section provide as follows:-

*Notwithstanding anything in the Tax Acts –*

...



*(b) except where otherwise provided for in section 267, no repayment of appropriate tax in respect of any relevant interest shall be made to any person receiving or entitled to the payment of the relevant interest who is not a company within the charge to corporation tax in respect of the payment;*

### **Analysis and findings**

- 17.** Having heard the evidence and submissions offered on behalf of the Appellant, I am satisfied, and find as material facts, that the Appellant is an unincorporated association, is an approved body of persons for the purposes of section 235 and that the interest received by the Appellant on its bank deposits in respect of the four years under appeal has been or will be applied for the sole purpose of promoting amateur games or sports. I should record that these points were not contested by the Respondent at the hearing of the appeal.
- 18.** It was conceded by the Appellant's Counsel at the hearing of the appeal that the Appellant was not entitled to receive the bank interest the subject of the appeal gross of DIRT, and that its bankers, as a "*relevant deposit taker*", were correct in deducting DIRT from the payments of interest made to the Appellant. Accordingly, the net issue for determination in this appeal is whether or not the Appellant is entitled to repayment of the DIRT deducted at source during the years under appeal.
- 19.** If the legislation was silent on the issue of the circumstances in which DIRT ought to be repaid to a taxpayer, it could certainly be argued that there was some merit to the Appellant's contention that the provisions of section 267 do not operate to limit the exemption from income tax conferred on the Appellant by section 235, especially when the latter section does not contain any words of limitation or qualification in relation to the former. I agree with the Appellant that the Revenue Precedent referred to above is of limited, if any, assistance in circumstances where the Appellant is not a company, and where the Precedent was, in any event, concerned with the potential effect of a section (the



then section 265) which was renamed and substituted in its entirety by the Finance Act, 2002.

- 20.** However, the legislature has circumscribed the circumstances in which DIRT can be repaid to a taxpayer by enacting section 261(b). That subsection provides that, except where otherwise provided for in section 267, no repayment of DIRT shall be made to any person receiving payment of relevant interest who is not a company within the charge to corporation tax in respect of the interest payment. I find the wording of section 261(b) to be plain, precise and unambiguous.
- 21.** I think it is relevant that section 261 begins with the words “*Notwithstanding anything in the Tax Acts...*”; that preface lends the section a quality of primacy, and I find that that primacy is not displaced by the provisions of section 235.
- 22.** Having regard to the foregoing, to the fact that the Appellant is not entitled to a repayment of DIRT pursuant to section 267 and to the fact that the Appellant is not a company in whose hands the bank interest received would be subject to corporation tax, I find that the Appellant is not entitled to the repayment of the DIRT the subject of this appeal.
- 23.** In closing, I wish to make reference to the ‘additional relief’ sought by the Appellant, namely the “*clarification*” or the “*non-binding recommendation*” in relation to the repayment of DIRT deducted at source from payments of interest made to the Appellant in years subsequent to the years under appeal. I believe that the determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of the 1997 Act, as amended. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. Accordingly, even had I found in favour of the Appellant on the substantial issues before me, I believe that granting the additional relief sought in relation to future years would have been *ultra vires*.



### **Determination**

- 24.** Having carefully considered all of the evidence before me and the submissions made by the parties, I find, for the reasons detailed above, that the decision by the Respondent to refuse the Appellant's claim for repayment of the DIRT it had deducted at source during the years 2010 to 2013 inclusive was correct, and I refuse the Appellant's appeal against that decision.

**APPEAL COMMISSIONER**

**April 2016**

