



<u>Decision Ref:</u>	2019-0200
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Savings Account
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

This Complaint concerns the Respondent's notification to the Complainant of a Deposit Interest Retention Tax ("DIRT") deduction from his account.

The Complainant's Case

The Complainant holds an account with the Respondent. He states that in July 2014 during a meeting with an agent of the Respondent he was informed that DIRT would be deducted from accounts. He was not specifically told when this would happen, and he states he was not told that its introduction was imminent.

He expected that the Respondent would notify him in advance of DIRT deductions taking place on his account. In December 2014 DIRT was deducted from his account, taking him by surprise. The Complainant is exempt from DIRT and states that he was not informed that he had to fill out Form DE1 and submit it to the Respondent in order to avoid having DIRT deducted from his account. He has now been required to fill out and submit Claim Form 54 directly to Revenue for a refund of DIRT already deducted.

The complaint is that the Respondent failed to communicate in a clear and efficient manner with the Complainant, in particular that it failed to notify him of the date upon which DIRT

deductions would begin and that in order to avail of his exemption, he would have to submit Form DE1 in advance of DIRT deductions being applied.

The Complainant would like a refund of the DIRT deducted from his account, plus compensation.

The Respondent's Case

The Respondent states that arrangements in relation to DIRT deductions were notified to its members by advertising same in its AGM booklets for 2013 and 2014, and by displaying notices in branch. It also notes that the Complainant was reminded of the DIRT issue in his meeting with its agent in July 2014.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 7 June 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of additional submissions from the Complainant dated 18 June 2018, 29 June 2018 and 19 July 2018, all of which were furnished to the Respondent Provider for its consideration, but in respect of which the Provider elected to make no further observations, the final determination of this office is now set out below.

The Complainant holds an account with the Respondent.

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Deposit Interest Retention Tax (“DIRT”) is a tax liability on deposit accounts. It is deducted from a deposit account by a deposit taker (the Respondent) and paid to the Collector General of the Revenue Commissioners. The deduction of DIRT from a deposit account is authorised by section 257 of the Taxes Consolidation Act, 1997. DIRT is paid directly to the Revenue Commissioners by a financial institution. The financial institution does not retain or profit from the deduction of DIRT from a deposit account, as the retention tax deducted, is passed to Revenue.

As of January 1st 2014, credit union share dividends and deposit interest paid to members became subject to DIRT. Certain people are exempt from DIRT. The Complainant herein is one such exempted person.

Where a customer is exempt from DIRT, that person must furnish a Form DE1 to the financial institution, in order to have deposit interest paid without the deduction of DIRT. Where an exempted person believes they have been wrongly deducted DIRT, they may apply to Revenue for a refund using Claim Form 54.

There is therefore an onus on an exempt person to furnish Form DE1 in order to avoid having DIRT deducted at source. In this complaint, the Complainant states that he was not properly notified of this obligation by the Respondent.

The Respondent cites two AGM booklets, an in branch notice, and an interaction between the Complainant and an agent of the Respondent in July 2014 as adequate notification to the Complainant of the implications of the impending DIRT regime.

The 2013 annual report booklet contains a page headed with large prominent letters saying: “TAXATION OF DIVIDENDS FOR MEMBERS OVER 65”. It goes on to explain who is eligible for exemption, and the final paragraph states:

“If you do not complete the self-declaration form, the credit union will be obliged to deduct DIRT from your dividend or interest. You will then have to apply directly to the Revenue Commissioners for a refund of this DIRT (if you are eligible)”

The 2014 AGM Booklet contains a page with the heading “NOTICE TO MEMBERS ABOUT TAXATION OF CREDIT UNION SHARE DIVIDEND AND DEPOSIT INTEREST”. It contains identical explanations and warnings to those in the 2013 booklet, including the final paragraph:

“If you do not complete the self-declaration form, the credit union will be obliged to deduct DIRT from your dividend or interest. You will then have to apply directly to the Revenue Commissioners for a refund of this DIRT (if you are eligible)”

The Complainant notes that he would only have read certain portions of those booklets. However, in my opinion, such an approach places an unreasonable burden on a provider to attempt to predict which portions of a booklet each member will read. In providing all of the

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relevant information in a booklet, if a member elects not to read it, or to read only certain portions, then that member must accept some responsibility if pertinent information is not seen.

I have also been provided with a copy of the notice which the Provider says was affixed to the noticeboard in the Respondent's office. The Respondent has confirmed it only has one office. The copy typed notice furnished in evidence to this office, contains the following information:

[Name of Provider Redacted]

IMPORTANT:

DIRT NOTICE

From the 1st January 2014 all credit union share dividend and deposit interest paid to members will be subject to DIRT, with the exception of dividend or interest paid to members who are exempt from DIRT.

The only members who can be exempt are:

- 1. Members aged over 65 whose total income is less than the relevant limit (see www.revenue.ie for current limits). For married couples, only one of the spouses needs to be over 65. To avail of this exemption, you must sign a self-declaration form DE1. This form is available in your credit union and is a declaration that you (or your spouse) are aged over 65 and that your total income is less than the relevant limit.*
- 2. Members who are permanently incapacitated. Such members should either contact their local Revenue Commissioners office directly or contact a service body such as the Irish Wheelchair Association. Credit unions have no role in approving the exemption in these cases."*

If you do not complete the self-declaration form, the credit union will be obliged to deduct DIRT from your dividend or interest. You will then have to apply directly to the Revenue Commissioners for a refund of this DIRT (if you are eligible).

The Complainant takes issue with the absence of any evidence as to the size and scale of this notice on the notice board at the times material to this complaint. The Complainant states that a noticeboard would not ordinarily draw his attention. However, I must have cognisance of the fact that a noticeboard's entire purpose is to display notices that may be of interest to customers, and if a customer chooses to ignore the notices put in place, e.g. because that location also includes various notices posted by members of the credit union, he or she does so, at his or her own risk.

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The Complainant takes issue with the fact that he was not specifically notified of the date upon which DIRT deductions would commence. In his submission dated 18 June 2018 the Complainant states:-

“I was fully aware of the implications of the impending DIRT regime and did not need to be notified of same. What I was not aware of was the implementation date of the DIRT regime...”

The Respondent has explained why it was not in a position to provide a specific date by July 2014:

“...it was dependant [sic] on the following:

- *Financial accounts being finalised at year end by the Auditor*
- *Approval of the accounts by Central Bank of Ireland*
- *Setting a date for the AGM*
- *Approval of Dividend by members of the AGM”*

I accept these as reasonable grounds for not attaching a specific “implementation date” to the information furnished to customers at the time.

In circulating the information in booklets to all members, and placing it on the noticeboard in branch, I take the view that the Respondent discharged its duty to communicate in a clear and efficient manner and to provide its members with a reasonable period within which to submit a Form DE1, so as to avoid the deduction of DIRT. It is not reasonable to expect the Respondent to carry out an audit on every account it holds and notify each potentially exempt customer individually, nor was there any obligation on it to so do.

The Complainant says that it was at the meeting in July 2014 that *“I was informed about the issue for the first time at said meeting.”*, but he maintains that he was not advised at that time to submit a DE1 Form to the Credit Union. I do not consider it necessary to establish what exactly was said at the July 2014 meeting, since it is clear to me that the Respondent had, through its booklets and noticeboard, already provided sufficient information to its members in general, and the Complainant in particular, for significantly longer than a year prior to the DIRT deduction finally being applied in December 2014.

Accordingly, on the basis of the evidence available, I take the view that the Complainant had ample notice from the Respondent of his obligation to furnish Form DE1 prior to December 2014. Furthermore, if for any reason, he has not already done so, he is entitled to apply for a refund of any DIRT deduction from Revenue directly, to ensure that no loss arises.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

15 August 2018

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,**
- (ii) a provider shall not be identified by name or address,**

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.