

Revenue Information Notice

Deposit Interest – Whether a Trading Receipt?

The purpose of this statement is to clarify Revenue's position in relation to deposit interest arising to companies generally and, in particular, to specific classes of financial services companies. Revenue considers that the views expressed in this Notice are in line with the relevant case law on this subject, including *J.A. Browne (Inspector of Taxes) v Bank of Ireland Finance Ltd.* 3 ITR 644 and *Nuclear Electric v Bradley* 68 TC 670.

General Rule

The general position in relation to deposit interest is that it is *prima facie* passive income and is assessable as Case III/Case IV income. In order for alternative treatment to apply, there is a very high burden of proof on the taxpayer.

Exceptions

Revenue accepts that deposit interest arising in the following specific circumstances is assessable as Case I income: -

1. Regulatory Capital Requirement

Where a company is required by Irish or foreign regulatory authorities, e.g. the Central Bank of Ireland, the Department of Enterprise, Trade and Innovation, to retain a certain level of permanent capital in the business, any deposit interest which derives from the investment of such regulatory capital is assessable Case I. To take account of a company's need for flexibility in circumstances of fluctuating regulatory capital requirements, the Revenue Commissioners will allow up to 120% of the regulatory capital requirement to be invested and for the deposit interest to be assessed as Case I.

2. Capital which is integral to the trade

Deposit interest arising from deposits held by banks and insurance companies (life and non-life, including reinsurance) is chargeable as Case I income on the grounds that such deposits are integral to the trades of banking and insurance.

The same treatment applies to deposits held by the following classes of financial services companies: -

- Agency treasury company
- Standalone treasury company
- Captive finance company
- Asset finance company (where deposits are an integral part of the financing arrangement)
- Leasing company (where deposits are an integral part of the lease arrangement)
- Investment trader.

In the case of managers of financial services and other similar type companies, deposit interest on deposits held will not be regarded as arising in the course of the company's trading operations and will be taxable at the full rate of corporation tax unless the company can satisfy the very high burden of proof that the deposits are integral to its trade. In this regard, the company must be able to demonstrate that the holding of the deposit is an essential part of the business of the company and that they are necessarily held in the course of that business. The funds on deposit must be actively employed and at risk in the business.

Examples of managers of financial services and other similar type companies are: -

- Insurance Manager/Reinsurance Manager
- Insurance broking company
- Fund management/administration company
- Trustee/Custodian company
- Agency treasury manager/Captive finance company manager.

IFSC Certificates – Clarification

While the views expressed in the previous paragraphs have always been Revenue's position on the circumstances in which deposit interest would be acceptable for inclusion as trading income for tax purposes, it is acknowledged that, in the context of some financial services companies trading in the IFSC, there may have been some confusion regarding the scope of the certificates issued by the Minister for Finance under Section 446 TCA 1997. It should be noted, however, that the following proviso is included in all such certificates: -

'any income arising from the trading operations....is chargeable to tax under Case I of Schedule D as part of the Company's trading income. [The question of whether or not the Company is trading, and if so, whether any of its particular operations are trading operations and therefore chargeable to tax under Case I of Schedule D is primarily one of fact to be determined after the events in question have taken place.]'

For the sake of clarity, the Revenue view is re-stated hereunder: -

- the return on funds which are merely placed on deposit is not regarded as constituting income taxable under Case I in its own right – section 18(2) TCA 1997 refers;
- while it may be the case that the management and investment of funds on behalf of clients is an integral part of the activities of IFSC certified companies which act as managers of financial services companies, there is a clear distinction between this activity, which is after all part of the service for which the company is paid, and the making of deposits by the company out of fee income received and share capital;
- the proviso contained in the IFSC certificate ensures that unless a source is, of its own right, part of the Case I profits, it cannot become so simply by being included in the overall trading operations described in the certificate.

Other Points

1. Where deposit interest is regarded as trading income assessable under Case I rules, it will be regarded as such for all of the purposes of the Taxes Acts.
2. In considering the question of the tax treatment of interest income, Revenue will look at each case on the facts and circumstances of that case. Account will not be taken of the fact that a company is part of a larger group nor will Revenue have regard to the activities of the group but will make its determination solely on the basis of the specific circumstances surrounding the placement of funds on deposit by the company itself.
3. Revenue will not, under any circumstances, regard deposit interest which arises from the proceeds of a sinking fund for potential future liabilities, as trading income even where the liabilities being provided for relate to a future occurrence or event such as the replacement of a wasting asset.
4. Where part of the deposit interest arising to a company is regarded as trading income and part is regarded as non-trading income, the total of such interest income may be apportioned on a suitable basis e.g. the proportion of regulatory capital to total capital invested.

Effective Date

In regard to cases where there has been ongoing debate, it should be noted that it is Revenue's intention to apply the above rules **for accounting periods commencing on or after 1 January 2001.**

This statement replaces any previous practices which were applied in dealing with this matter.

Further Information

Any person who has a query on the application of this information notice or requires an opinion in relation to a particular set of circumstances should contact their local Revenue Technical Service, Queries Management Officer.

If the query or request for an opinion relates to a company that is dealt with by Large Cases Division your query should be addressed to Large Cases Division, Setanta Centre, Nassau Street, Dublin 2 Telephone Number 6470 710 e-mail: largecasesdiv@revenue.ie