# Response to the
# Revenue Public Consultation on
# Dividend Withholding Tax Real-Time Reporting

**12 December 2019**

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## 1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. With over 5,000 members in Ireland, along with the Chartered Institute of Taxation UK and The Tax Institute of Australia, we are part of the 30,000-strong international CTA network and a member of *CFE Tax Advisers Europe*, the European umbrella body for tax professionals.

Our members provide tax education and expertise to thousands of businesses, multinationals, and individuals in Ireland and internationally. In addition, many hold senior roles within professional service firms, global companies, Government, Revenue, state bodies and the European Commission.

After 50 years, the Institute remains deeply committed to the role it can play in education, tax administration and tax policy in Ireland and in building an efficient and innovative tax system that contributes to a successful economy and society. We are also committed to the future of the tax profession, our members and our role in serving Ireland's taxpayers and best interests in a new international world order. Our *Irish Tax Series* publications and online database *TaxFind* are respected and recognised as Ireland's most extensive tax information sources.

Irish Tax Institute - Leading through tax education.

## 2. Executive Summary

The Institute welcomes the opportunity to respond to this public consultation on developing a real-time reporting regime for Dividend Withholding Tax (DWT). Undoubtedly, transforming DWT administration in the manner proposed in the consultation document would have very significant implications for companies and Qualifying Intermediaries (QI) paying dividends (payors) and investors.

We believe that it would be critical, in the first instance, to fully examine the proposal to determine whether such a fundamental change to the administration of DWT is warranted. If it can be demonstrated that a real-time regime for DWT is necessary, then it would be important to fully consider how such a regime could be implemented in a way which would minimise consequential additional administrative burdens for businesses and investors.

We have prepared our response based on the feedback we have received from members who regularly advise both companies and investors on the operation of DWT and the tax system, more generally.

As illustrated in this submission, a significant number of concerns and questions arise on the practical operation of the proposed new regime. If Revenue intends to proceed with this development, it would be important to consult extensively with all relevant stakeholders throughout 2020 to ensure a smooth transition to any new regime.

**The Requirement for a DWT Real-Time Reporting Regime**

We understand that the policy rationale for implementing a new real-time reporting regime for DWT is based on a perceived “tax gap” that may exist between the amount of DWT remitted by companies and the amount of tax ultimately payable on this income by individual investors. However, the consultation paper does not include any data to demonstrate this potential “tax gap”.

We believe the entire profile of investors in Irish companies would need to be considered before any tax gap could be accurately assessed.

For example, the extent to which the proposed increase of the DWT rate to 25% from 1 January 2020 will address any risk of “tax leakage" should be considered. Many individual investors are standard income tax rate taxpayers, receiving a low level of dividend income. In addition, many of this cohort may qualify for an exemption from income tax (and PRSI) because of their age and income level and may also qualify for a reduced level of USC.

Furthermore, the extent to which non-resident investors qualify for exemption from DWT or are entitled to a refund of DWT because they are resident in a country with which Ireland has a Double Tax Agreement (DTA) should also be measured. It is possible that several such individuals may be unaware of their entitlement to a refund under a tax treaty and may not be currently claiming the appropriate refund of DWT.

**Recommendation 1:**
Revenue should fully examine the data available on the age, income distribution and residence status of individuals subject to DWT, together with an analysis of DWT refunded, to estimate the potential "tax leakage". If a gap is identified, only then, can a comprehensive cost/benefit analysis of the proposed new regime be conducted.

**Comprehensive Cost/Benefit Analysis**

Reforming the DWT regime would involve significant additional costs and administration for businesses in IT, training and procedures. It would also divert Revenue resources from other necessary projects, for example, modernising Professional Services Withholding Tax (PSWT) to address the cash-flow and administrative difficulties that this fully paper-based regime continues to create for businesses.

The international experience can often provide important perspectives when evaluating any measures that may increase the burden of administration for businesses. The Institute is not aware of a similar real-time reporting regime being adopted in any other jurisdictions around the world. In fact, the UK abolished DWT on most distributions in 2016 to simplify the tax administration system relating to dividends.

**Recommendation 2:**
If following Revenue's analysis of the relevant data, a "tax gap" is identified and quantified, a comprehensive cost/benefit analysis should be conducted to determine whether the estimated gap warrants the introduction of a real-time DWT regime in priority to other much-needed developments that have been flagged for a long period of time. The cost/benefit analysis would need to take account of the wider implications of Revenue's proposals. These would include the implications of additional costs, administration and data protection concerns for business and investment decisions and Ireland's competitiveness relative to other jurisdictions, such as the UK.

**Taxpayer Confidentiality and Circulation and Management of Personal Data**

The current proposal raises a number of concerns regarding the circulation of taxpayers' personal information. For example, a personalised withholding rate provided by Revenue to the paying company would indicate an individual's income level and perhaps their basis of assessment and their age (if PRSI is included in the rate). Arguably, this would be a breach of a taxpayer's right to confidentiality and a departure from the current practice in providing such a level of information, outside of the normal employer/employee relationship. Provision of this information to third parties would seem disproportionate to any perceived tax risk the regime is intended to address.

In addition, multiple third parties would gain access to investors' PPS numbers which is a very sensitive piece of information. This could create a potential for significant data breach risks and access to public services and increase the data security obligations for both small and large businesses.

Concerns about data security and confidentiality also present operational issues. For example, in light of the media and political debates regarding the sharing of personal

information, some investors may be reluctant to share such personal information. The regime would need to provide for a default rate, in addition to personalised rates, in order to deal with such situations.

**Recommendation 3:**
Revenue should undertake a full analysis of the GDPR implications of the proposal. Consideration should be given to the provision of a designated DWT investor ID number by Revenue to investors. Investors could provide this number to third parties, instead of providing a PPS Number.

**Practical Considerations for Business in Designing the New Regime**

The consultation paper does not include any detailed information on the mechanics of the new regime. Consequently, we are not in a position to comment on the proposal in detail but instead, we can only outline the important design principles that need to be considered in order to provide certainty for businesses and help minimise the consequential additional costs and administration. These are outlined in our Recommendations 4 to 9 below.

**Recommendation 4:**
The electronic regime should apply to all recipients of distributions, not a single cohort (i.e. individual investors). Companies have a wide range of investors; corporates, individuals and institutional investors. Operating a separate DWT regime solely for individual investors would not be possible or cost-effective.

**Recommendation 5:**
There should be a maximum of **four** withholding rates applicable to individuals, perhaps zero withholding, a standard rate, a higher rate and a default rate. A default rate would be necessary if Revenue or the payor company do not have the required information on a taxpayer's status.

**Recommendation 6**:
Rate determinations should be made at set intervals, rather than changing on a daily basis to provide the necessary certainty for payors required to deduct DWT.

**Recommendation 7:**
The electronic system and notification should incorporate the DTA rates; exemptions; Revenue notification and refund processes relevant to all shareholders. This would allow a taxpayer to advise Revenue of their exempt status and/or generate a refund, where necessary.

**Recommendation 8:**
Engagement with stakeholders should take place at all stages of the development of the new regime to ensure stakeholders' requirements and concerns are addressed in the design of the new system.

**Recommendation 9:**
The new system should be fully tested in advance of implementation. This should include testing of ROS, to ensure that it can support the additional volume of activity, given the current demands on ROS from tax returns and payments submitted across all tax heads.

**Practical Considerations for Investors in Designing the New Regime**

It is not apparent whether the new regime would result in any reduction of administration for investors. The consultation paper proposes that the regime will help to collect *"the right tax at the right time"*[1] from individual investors. However, a taxpayer would continue to be obliged to file an income tax return in respect of that income.

DWT is merely a withholding mechanism not the final liability. Indeed, the "right tax" would only be ascertained when an individual makes their income tax return, reflecting all of their income and allowances for the full tax year.

To reduce the administration for individual investors, the regime should include a number of elements which are set out in our Recommendations 10 to 14 below:

**Recommendation 10:**
Include pre-population of the DWT reported to Revenue in the income tax Form 11 or Form 12. Taxpayers and their advisers should be able to rely on the accuracy of the information on the return.

**Recommendation 11:**
Implement a facility for taxpayers to view their record of gross dividends paid and tax deducted, similar to the information available on myAccount regarding employment income.

**Recommendation 12:**
Incorporate an option to request a "rate review". Taxpayers could update their information online, for example, to notify Revenue of their non-residence status or other information that would inform the rate determination.

**Recommendation 13:**
Introduce simplified refund and correction processes. For example, non-residents who are not within the charge to Irish tax should not be required to file a tax return to claim a refund. There should be an easy mechanism to generate a refund of DWT overpaid, without undue delay and without a requirement to obtain an Irish tax number, which is not currently required and will not be needed for any other purpose. Perhaps, a separate DWT marker ID could be on record to note non-resident status. The system would also need to be able to accommodate changes or corrections that may need to be made to DWT reports submitted by companies or intermediaries.

[1] Page 2 of the Consultation Document

**Recommendation 14:**
Support and assistance for investors who do not have access to or familiarity with online services, in particular, to ensure they avail of their entitlement to an exemption or refund, as appropriate.

## 3. The Requirement for a DWT Real-Time Reporting Regime

We understand that the policy rationale for implementing a new real-time reporting regime for DWT is based on a perceived "tax gap" between the amount of DWT remitted by companies and the amount of tax ultimately payable on this income by individual investors[2]. The consultation paper does not include any data to demonstrate this potential "tax gap". Instead, it put forwards a "solution" to address a perceived problem before quantifying it.

The current DWT regime has worked effectively since its introduction in Finance Act 1999. Redesigning the DWT regime will undoubtedly involve significant additional costs and administration for businesses.

It will also divert substantial Revenue resources, from necessary developments to modernise tax administration in Ireland, such as, reinvestment in ROS, "e"PSWT and improving the MyEnquiries platform for submitting queries to Revenue.

Currently, the administration of PSWT is fully paper-based in contrast with electronic and "real-time" regimes for PAYE, Tax Clearance and Revenue's debt collection systems. This archaic PSWT system is severely impacting the day-to day running of many businesses, resulting in the delay of refunds and unnecessary contact with Revenue to put a stop on the collection of tax in circumstances where tax is not due in totality (as the paper-based claims for PSWT deducted have not been offset within Revenue's system).

Given the substantial investment of time and resources that would be required by both Revenue and businesses, it is vital that the changes proposed to the DWT regime are warranted. The supporting evidence that there is "a tax gap" should be provided and "the gap" quantified. Only then, can a cost/benefit analysis be properly conducted to determine whether such a fundamental reform of the current regime is necessary.

The factors that should be considered to help identify and quantify any perceived "tax gap" would include the profile of investors in Irish companies and dividends paid to non-residents that qualify for an exemption or a refund of DWT.

### The Profile of Investors in Irish Companies

Traditionally, many individuals invest in a range of companies over time, to supplement their income and to cushion the substantial reduction of income on retirement. These individuals are often standard income tax rate taxpayers in receipt of small amounts of dividend income, which are subject to DWT at the standard rate of income tax. Following Finance Bill 2019, the standard rate of DWT will increase to 25% from 1 January 2020.

Indeed, many such individuals may be exempt from income tax because of their age and income level, exempt from PRSI and potentially liable to a reduced level of USC. A significant number may not even be aware of their right to a refund of DWT, where their taxable income is below the relevant thresholds.

[2] Financial Statement, Budget 2020

Revenue should undertake an exercise to profile the age and income distribution of taxpayers submitting income tax returns with dividend income, to establish the extent to which they are standard rate taxpayers or below the taxable income thresholds. The quantum of DWT refunded to individuals should also be examined to establish if there is a tax refund gap.

Currently, companies provide Revenue with detailed information on dividend recipients. Revenue has sophisticated data matching techniques which could be used to cross-check the amount of DWT returned against returns by taxpayers, to analyse the income profile of taxpayers who are not declaring dividends in an income tax return.

DWT accelerates the payment of income tax on distributions, which can result in a timing gap in the case of standard rate taxpayers. For example, DWT deducted from a dividend in January 2019 should have been paid to Revenue by 14 February 2019, even though the income tax return for 2019 is not due until mid-November 2020. It is only when the income tax return is filed that a taxpayer's overall tax position for the year will be known. This may result in an under or an overpayment of tax.

The time value of the use of the DWT to the Exchequer could also be considered, especially as a taxpayer does not receive any interest on any amount of DWT that is subsequently refunded.

**Dividends Paid to Non-Residents who qualify for Exemption or a Refund of DWT**

Non-resident individuals residing in a country with which Ireland has a DTA may qualify for an exemption from DWT or a refund of DWT deducted, provided that the relevant declarations and certifications are submitted to Revenue.

So far, Ireland has signed 74 DTAs. Therefore, it is likely that a substantial portion of non-resident individual investors do not ultimately have a DWT liability. In some cases, this can result in a timing difference between the deduction and reclaim of DWT. Indeed, many non-residents may not even be aware of their right to seek an exemption from DWT or be entitled to claim a refund of the withholding tax and do not exercise their entitlements.

Revenue should identify and confirm the extent to which DWT is deducted from distributions made to individuals that are resident in DTA jurisdictions, and the quantum of tax refunded to this cohort.

**Comprehensive Cost/Benefit Analysis**

If Revenue can establish that a substantial "tax gap" exists, having conducted the requisite analysis outlined above, a comprehensive cost/benefit analysis should be undertaken to determine how best to proceed. This cost/benefit analysis should take account of the anticipated costs to businesses and to the Exchequer of proceeding with the new real-time DWT regime as proposed.

The international experience can often provide important perspectives when evaluating any measures that may increase the burden of administration for businesses. The Institute is not aware of a similar real-time reporting regime being adopted in any other jurisdictions around the world. In fact, the UK abolished DWT on most distributions in 2016 to simplify the tax administration system relating to dividends.

Furthermore, Ireland already faces competitive pressures from the UK Stock Exchange. Many Irish public limited companies and smaller companies have chosen to maintain their primary listing on the London Stock Exchange, rather than the Irish Exchange, as it provides access to a wider pool of investors.

The level of administration and the additional associated costs will always be factors in business decisions and the risk that the additional administration, together with investor anxiety about the dissemination of their personal information, could further influence companies' decisions to list their shares in Ireland versus other countries. In addition, some investors may take the view that it would be preferable to invest in UK shares, in light of the cash-flow consequences of a personalised DWT rate, data protection risks and additional administration. These matters should be considered in the cost/benefit analysis of proceeding with the current proposal.

## 4. The Key Considerations When Designing a New DWT Regime

If it is determined that a DWT real-time regime should be developed, following a comprehensive cost/benefit analysis, there are a number of issues that should be considered when designing such a regime.

These are:

- Taxpayer confidentiality and the circulation and management of personal data
- Practical and operational considerations including:
    - Operational issues for companies and intermediaries making distributions (the payors), including adapting IT systems
    - The timeline for design and full testing in advance of implementation
    - Extensive engagement with stakeholders at an early stage in the process
    - Practical issues for investors relating to tax returns and refunds

### 4.1 Taxpayer Confidentiality and Circulation and Management of Personal Data

The proposal raises a number of concerns for both investors and payors regarding the provision of personal information, which would need to be fully considered.

**The Provision of Personal Data to Third Parties**

The consultation paper suggests that the personalised withholding rate provided to payors would be determined by the income level of the dividend recipient. It has been suggested by Revenue that it may also reflect a person's basis of assessment, for example, whether they are jointly or singly assessed. It has also been suggested that PRSI may be included in the personalised rates, which could provide indicators of a person's age. Effectively this means that sensitive personal information of a shareholder's income range, basis of assessment and age would be provided by Revenue to potentially multiple third parties paying dividends. Arguably, this would be a breach of taxpayer confidentiality and potentially inconsistent with GDPR. Providing such information to third parties would also appear to be disproportionate to any perceived tax risk the regime is intended to address.

Currently, the only situation where Revenue provide a third party with information on an individual's income is in the context of the PAYE regime, where an employer/employee relationship already exists. The employer is by the nature of the relationship in possession of personal data including the level of remuneration and needs this information to correctly deduct and remit the tax due. In other scenarios, where tax is withheld, a flat rate of withholding tax is applied or in the case of RCT, the rate reflects the subcontractor's compliance history (not their income).

Revenue may need a taxpayer's permission to disclose a personal withholding tax rate to a third party. Given the current debate in the media surrounding the sharing of personal information, it is likely that some taxpayers may refuse such a request. This

may be particularly relevant for individuals who are shareholders in widely held private companies. Shareholders' natural reluctance to share private information would have significant practical implications for the effectiveness of the regime. The option to impose a default withholding rate on a distribution would have to be incorporated into the new system to enable companies or intermediaries apply DWT to the payment. Consideration should be given to allowing shareholders opt to have the default rate applied to their payments. On initial implementation of the regime, the 25% rate introduced in Finance Bill 2019 could operate as the default rate.

**The Requirement to Provide a Tax Reference Number/PPS Number to Third Parties**

Investors would be required to provide their tax reference number/PPS Number to all entities from which they receive distributions. A tax reference number/PPS Number is a very sensitive and important piece of information. Supplying this information to multiple third parties would create a vast pool of sensitive information that could be at risk from security breaches and potential sale of this data on the dark web, or improper use of PPS Numbers in accessing public services.

Furthermore, all payors would need to intensify their data security practices and procedures to secure this sensitive information to satisfy the requirements of GDPR, given the serious consequences of a potential data breach. This would involve substantial investment in systems and training that would result in very significant costs for smaller to medium-sized companies, less experienced and resourced in cyber security measures.

Some individuals may resist providing such personal information to a third party. Again, a default withholding rate would need to be built into the regime. In addition, Revenue would still need to match the DWT paid to a taxpayer's record, using Revenue's data software tools for matching information.

## 4.2 Practical and Operational Matters

**Practical and Operational Issues for Businesses**

The current DWT regime is quite complex and onerous, involving substantial administration for businesses, with 38 pages of tax legislation and multiple administration requirements involving declarations and certifications. Appendix I illustrates some of the regime's complexity and the obligations on payors:

In summary, the payor must:

- Satisfy itself that the recipient is beneficially entitled to the dividend (unless the recipient is a Qualifying Intermediary).
- Check that the relevant certifications and declarations are in place and that they are current, before treating a payment as DWT exempt.
- Provide detailed information on the distribution and recipient within 14 days of the end of the month in which the distribution is made.

- Pay over the DWT at the time the related return is submitted.
- Retain all declarations and notifications received from shareholders and intermediaries for up to 6 years.

The consultation paper does not outline the mechanics of the proposed new regime. However, in our view, it would place significant additional obligations on payors. The paper refers to the new regime applying to individuals in receipt of dividends. It is important that the new regime would apply to all dividend recipients and not just to a single cohort.

From a practical perspective, companies and intermediaries may be making distributions to a wide range of shareholders, including Irish/non-Irish companies, institutional investors and pension funds. Therefore, it would not be workable in practice to operate parallel DWT regimes for individual investors and other categories of investors. In addition, it would not seem appropriate to single out a cohort of taxpayers for different tax treatment.

The new regime could be designed to incorporate the relevant rates, exemptions, Revenue notification and refund processes relevant to all shareholders. For example, a non-resident corporate or individual shareholder could make a single declaration to notify Revenue of their DWT exempt status. A "marker" could be recorded on ROS to indicate their status to payors in relation to all of their Irish shareholdings.

Members of the Institute have raised a number of additional questions on the potential operation of the new regime that would need to be considered, such as:

- Would it apply to all distributions, including distributions in specie, deemed distributions and scrip dividends?
- It has been suggested that the withholding will be personalised to take account of the person's income level and basis of assessment. Therefore, would there be multiple personal rates rather than perhaps, a zero rate, a standard rate, a higher rate and a default rate?
- Would ROS provide a calculation of the DWT to be remitted or simply provide a rate?
- Would different rates apply to self-assessment taxpayers (i.e. based on prior year returns)?
- Would the personalised rate be available in "real-time" or determined for a set period?
- If the personalised rate is continually changing, how would payors with huge numbers of shareholders deal with rates changing over the dividend payment dates?
- What will be the process for Revenue's notification of the withholding rate to the payor (and dividend recipient)?
- Could the system cater for the complexities of quoted companies, where shares are continually bought and sold? Revenue would not have real-time information on the shareholder to determine a personalised rate.
- Could a personalised rate work in nominee situations? Will a separate tax reference number be allocated in this scenario?

- How will multiple intermediaries be dealt with? In particular, where intermediaries are based outside Ireland.
- Could a default rate be imposed if insufficient information is available to Revenue or the payor for a personal rate to be applied?
- Would the system be able to cater for timely refunds if the rate changes in the time between final approval of the distribution and its issue?
- What is envisaged in the requirement for payors to take "all reasonable steps" to obtain and retain a PPSN?
- What would the process be for declaring an exemption?
- Will there be any changes to the rules for exemption? For example, currently dividends paid on American Depositary Receipts (ADRs) are treated as exempt from DWT where the qualifying intermediary is informed that the "specified intermediary" (e.g. a brokerage firm) has a US address on file for the ultimate beneficial owner of the shares[3]. Long-standing Revenue practice has been to extend this simplification procedure to shares traded through a Depositary Trust Company. Perhaps this practice could be codified into law as part of the legislative measures underpinning the regime.
- How would the system reflect the multiple rates that are included in our DTA network to ensure that taxpayers could generate a refund of overpaid DWT?
- How would the process for checking the validity of a non-Irish tax reference number work (i.e. would the documentation checks suffice)? It would seem to increase the administrative burden on non-Irish residents to require persons who are clearly non-resident to provide information, such as a tax reference number, when ultimately no Irish tax liability will arise on this income.

The above list is only a sample of the practical questions that arise. It would be necessary to fully consider all aspects of the design at an early stage, to provide sufficient time to plan and redesign the IT systems and processes and fully test the system.

Testing should also include capacity testing of ROS, to ensure that it can support the volume of online traffic from DWT, in addition to the multiple other online returns and payments being submitted across all tax heads.

In addition, the system would need to accommodate businesses of all-sizes, from PLCs paying dividends regularly to smaller businesses paying dividends just annually. Smaller businesses would have to dedicate additional resources and technology to alleviate the administration involved. Consequently, the system would need to be as simple and user-friendly as possible for this cohort of businesses.

Businesses would need a sufficient lead-in time to fully test their systems once the ROS system is designed. We believe the proposed implementation date of 1 January 2021 would appear to be an overly ambitious target, in view of the extensive considerations for businesses and Revenue, as a result of the proposed new system.

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[3] Section 172F TCA 1997

Unlike PAYE modernisation, "off the shelf" software packages may not be available, which would necessitate a transition period to develop and phase-in new software. Bespoke software used by companies and payors may not be able to easily integrate with ROS, as this is an untested area.

In addition, CREST (the electronic share trading platform) is being replaced by Euroclear Bank in March 2021. Therefore, businesses and shareholders will have to deal with complex issues relating to the migration of shares to a new platform at the same time as fundamental changes to DWT reporting.

Over the same period, businesses may also be preparing for customs duty and other implications from the UK's exit from the EU, with the resulting costs and investment of time and resources.

**Practical and Operational Issues for Investors**

It is not evident that the new real-time regime for DWT would result in a significant reduction of administration for investors, in particular for individual taxpayers. It is proposed in the consultation paper that the regime would help achieve the collection of *"the right tax at the right time"*. However, a taxpayer would continue to be obliged to file an income tax return in respect of that income.

DWT is a withholding mechanism, not the final liability. Indeed, the "right tax" would only be ascertained when an individual submits their income tax return, reflecting all of their income and allowances for the full tax year. To reduce the administration for individual investors, the regime should include:

- Pre-population of the DWT reported to Revenue in the income tax Form 11 or Form 12. Taxpayers and their advisers should be able to rely on the accuracy of the information on the return.

- A facility for taxpayers to view their record of gross dividends paid and tax deducted, similar to the information available on myAccount relating to employment income.

- An option to request a "rate review". Recipients of dividends whether resident or non-resident should also be able to update their information online, for example, to notify Revenue of their non-residence status or other information that would inform the rate determination.

- A simple process to generate refunds. For example, non-residents who are not within the charge to Irish tax should not be required to file a tax return to claim a refund. There should be an easy mechanism to generate a refund of DWT overpaid, without undue delay and without a requirement to obtain an Irish PPS Number. Perhaps, a separate DWT marker ID could be on record to note non-resident status.

**Investors Who Do Not Use Online Services**

The proposed system assumes a certain level of tax and IT competency among all investors. However, the profile of many investors in Ireland suggests that a significant number of individuals may not have access to a computer or be comfortable with using online systems to interact with Revenue or to obtain tax information.

An online system may result in taxpayers who are more astute when it comes to technology being at an advantage to those who are not as astute. This could result in a situation where a certain cohort of investors may not be in a position to avail of their refund entitlements or correct information on their records.

In many cases, the amount of dividend income and tax deducted may be small, and so the possibility of a refund may not be sufficient to encourage such individuals to engage with the online system. It would be important in the interest of fairness that Revenue would support this cohort of taxpayers in making them aware of and helping them to claim their entitlements, so that they are not disadvantage compared to other taxpayers and that the Exchequer does not benefit unintentionally at their expense.

## Appendix I

**Summary of Rules relating to DWT Exemption and Documentation Requirements[4]**

*Distributions not liable to DWT*

There are a number of types of distributions on which DWT is not payable and they are as follows:

- Distributions made to Ministers of the Government and The National Pensions Reserve Fund Commission
- Distributions falling within the scope of EU Parent/Subsidiary Directive
- Stapled Stock arrangements
- Distributions which are not liable to income tax in the hands of the recipients
- Distributions made by an Irish resident company to another Irish resident company of which it is a 51 per cent subsidiary

The paying company, or Authorised Withholding Agent (AWA), must be satisfied that the above listed distributions are not liable to DWT. Apart from distributions made to Ministers of the Government and The National Pensions Reserve Fund Commission, details of such distributions must be included in the return which the paying company or the AWA is obliged to make to Revenue within 14 days of the end of the month in which the relevant distribution is made.

*Resident persons exempt from DWT*

1. A company resident in the State.
2. A pension scheme, which is an exempt approved scheme within the meaning of section 774 or a retirement annuity contract or trust scheme to which sections 784 and 785 apply.
3. A qualifying employee share ownership trust, which has been approved by Revenue.
4. A collective investment undertaking within the meaning of section 734, an undertaking for collective investment within the meaning of 738, and an investment undertaking within the meaning of section 739B. However, if any such undertaking is also an offshore fund within the meaning of section 743, the exemption does not apply (see Definitions section under paragraph 3 of this Tax Instruction for a definition of a Collective Investment Undertaking).
5. A charity, which has been granted exemption from tax by Revenue.
6. An amateur or athletic sports body which has been granted an exemption from tax by Revenue.
7. A designated broker receiving relevant distributions as all or a part of the relevant income or gains of a special portfolio investment account (SPIA).
8. A qualifying fund manager who is receiving relevant distributions as income arising in respect of assets held in an approved retirement fund (ARF) within the meaning of section 784A or in an approved minimum retirement fund (AMRF) within the meaning of section 784C.

[4] Material from Dividend Withholding Tax (DWT) – Details of Scheme, Revenue Tax and Duty Manual

9. A qualifying savings manager, within the meaning of section 848B, who is receiving relevant distributions in relation to Special Savings Incentives Accounts (SSIAs) within the meaning of section 848M.
10. An Irish Exempt Unit Trust [within the meaning of S731(5)].
11. An Irish Personal Retirement Savings Account (PRSA) Administrator.
12. Certain other persons resident in Ireland, as follows:
    a. Permanently incapacitated individuals who, by virtue of section 189(2), are exempt from income tax in respect of income arising from the investment of compensation payments made by the courts, or under out-of-court settlements, in respect of personal injury claims;
    b. The trustees of “qualifying trusts”, the funds of which were raised by public subscriptions on behalf of individuals who are permanently incapacitated from maintaining themselves, where the income arising to the trusts from the investment of trust funds is exempt from income tax under section 189A(2);
    c. Permanently incapacitated individuals who, by virtue of section 189A(4)(b), are exempt from income tax in respect of payments received from “qualifying trusts” within the meaning of that section, and in respect of income arising from the investment of such payments;
    d. Thalidomide victims who, by virtue of section 192(2), are exempt from income tax in respect of income arising from the investment of compensation payments made by the Minister for Health and Children or the “Thalidomide Victims Foundation”.

*Certain non-resident persons exempt from DWT*

1. An unincorporated body of persons, such as a charity or superannuation fund, which is resident for the purposes of tax in a relevant territory.
2. Individuals who are neither resident nor ordinarily resident in the State but are resident for the purposes of tax in a relevant territory.
3. Companies resident for the purposes of tax in a relevant territory and which are not controlled by Irish residents.
4. Companies not resident in the State which are under the ultimate control of persons who are neither resident nor ordinarily resident in the State but are resident for the purposes of tax in a relevant territory.
5. Companies the principal class of shares of which (or of a company of which it is at least a 75 per cent subsidiary) is substantially and regularly traded on a recognised stock exchange in a relevant territory.
6. Companies which are wholly owned by two or more companies, each of whose principal class of shares are substantially and regularly traded on one or more recognised stock exchanges in a relevant territory.

“Relevant territory” means a Member State of the EU other than Ireland or not being such a Member State, a country with which Ireland has a double taxation treaty.

*Declarations*

Before accepting any resident persons are exempt from DWT the paying company or AWA must be satisfied that the person:

- If not a Qualifying Intermediary (QI), is the person beneficially entitled to the distribution, and
- Has made the appropriate declaration of exemption to the company making the distribution or, if the distribution is being paid to the excluded person through a QI, to the QI.

A declaration (Form V3, Form for Irish EUT & Form for Irish PRSA Administrator) must be made in writing to the paying company or AWA, and must list, among other things, that the person is beneficially entitled to the distribution and be signed by the declarer.

Before accepting that non-resident persons are exempt, the paying company, or AWA, must be satisfied that the person, if not a QI, is the person beneficially entitled to the distribution and;

- in the case of a qualifying non-resident person not being a company has made the appropriate declaration of exemption with supporting certification to the company making the distribution, and
- in the case of a qualifying non-resident person being a company has made the appropriate declaration of exemption to the company making the distribution.

If the distribution is being paid to an exempt non-resident person through a QI or a chain of QIs, the declaration of exemption (Form V2A, Form V2B and Form V2C) and supporting certification (necessary in the case of a non-resident person not being a company) must be made to the QI from whom the dividend will be received by the exempt non-resident individual.

A declaration made by a non-resident person (not being a company) must be accompanied by a certificate of residence from the tax authority in the country of the person's residence. Section 33 Finance Act 2010 removed the requirement for certain non-resident companies receiving dividends from Irish resident companies to provide a tax residence and/or auditor's certificate in order to obtain exemption from Dividend Withholding Tax (DWT) at source.

Instead, a self-assessment system applies under which it will be sufficient for a non-resident company to provide a declaration containing certain information to the dividend paying company or intermediary to claim exemption from DWT.

The declaration will include:

- An undertaking from an authorised signatory that the named company is beneficially entitled to the distribution in respect of which the declaration is made,
- Details of the tax residency of the named company and,
- An undertaking to provide any further supporting documentation relating to the residency or control of the company to Revenue upon request.

The declaration will extend for a period of up to 6 years after which a new declaration must be provided for a DWT exemption to apply.

*Retention of records*

The paying company is obliged to retain all declarations and notifications received from shareholders and intermediaries for the longer of 6 years or the period ending 3 years after it has ceased to pay distributions to the person who made the declaration or gave the notification to the paying company.

## Appendix II

**Summary of Withholding Tax Rates on Dividends Under Irish Double Tax Agreements with Other Contracting States**

| Country | General rate under treaty[1] | Reduced tax rate | Minimum shareholding for reduced tax rate |
|---|---|---|---|
| Albania | 10%[2] | 5% | 25% (direct or indirect holding) |
| Armenia | 15% | 0%/5% | 25% capital (direct holding) / 10% capital (direct holding) |
| Australia | 15% | n/a | n/a |
| Austria | 10% | n/a | n/a |
| Bahrain | 0% | n/a | n/a |
| Belarus | 10%[3] | 5% | 25% capital (direct holding) |
| Belgium | 15% | n/a | n/a |
| Bosnia & Herzegovina | 0% | n/a | n/a |
| Botswana | 5%[4] | n/a | n/a |
| Bulgaria | 10% | 5% | 25% capital (direct holding) |
| Canada | 15% | 5%[5] | 10% voting power (direct or indirect) |
| Chile | 15% | 5% | 20% voting power (direct holding) |
| China | 10% | 5% | 25% voting power (direct holding) |
| Croatia | 10% | 5% | 10% voting power (direct holding) |
| Cyprus | 0% | n/a | n/a |
| Czech Republic | 15% | 5% | 25% voting power (direct holding) |
| Denmark | 15% | 0% | 25% capital (direct holding) |
| Egypt | 10% | 5% | 25% capital (direct holding) |
| Estonia | 15% | 5% | 25% voting power (direct holding) |
| Ethiopia | 5% | n/a | n/a |
| Finland | 15%[6] | 0% | 10% voting power[7] |

| Country | General rate under treaty[1] | Reduced tax rate | Minimum shareholding for reduced tax rate |
|---|---|---|---|
| France | 15% | 10% | 50% capital (direct holding) |
| Georgia | 10% | 5% | 10% voting power (direct or indirect)[8] |
| Germany[9] | 15% | 10% | n/a |
| Ghana | 7%[10] | n/a | n/a |
| Greece | 15% | 5% | 25% voting power (direct holding) |
| Hong Kong | 0% | n/a | n/a |
| Hungary | 15% | 5% | 10% capital (direct holding) |
| Iceland | 15% | 5% | 25% capital (direct holding) |
| India | 10% | n/a | n/a |
| Israel | 10% | n/a | n/a |
| Italy | 15% | n/a | n/a |
| Japan | 15% | 10%[11] | 25% voting power (direct holding) |
| Korea | 15% | 10% | 10% voting power[6] |
| Kuwait | 0% | n/a | n/a |
| Latvia | 15% | 5% | 25% voting power (direct holding) |
| Lithuania | 15% | 5% | 25% voting power (direct holding) |
| Luxembourg | 15% | 5% | 25% voting power (direct holding) |
| Macedonia | 10% | 5% / 0%[12] | 10% / 25% voting power (direct holding) |
| Malaysia | 10% | n/a | n/a |
| Malta | 15%[13] | 5% | 10% voting power (direct holding) |
| Mexico | 10% | 5% | 10% voting power (direct holding) |
| Moldova | 10% | 5% | 25% voting power (direct or indirect) |
| Montenegro | 10% | 5%[14] | 10% capital (direct or indirect) |
| Morocco | 10% | 6% | 25% capital (direct |

| Country | General rate under treaty[1] | Reduced tax rate | Minimum shareholding for reduced tax rate |
|---|---|---|---|
| | | | holding) |
| Netherlands | 15% | 0% | 25% voting power (direct holding) |
| New Zealand | 15% | n/a | n/a |
| Norway | 15% | 5%[2] | 10% capital (direct holding) |
| Pakistan | 10% | 5% | 25% capital[16] (direct holding) |
| Poland | 15% | 0% | 25% voting power (direct holding) |
| Portugal | 15% | n/a | n/a |
| Qatar | 0% | n/a | n/a |
| Romania | 3% | n/a | n/a |
| Russia | 10% | n/a | n/a |
| Saudi Arabia | 5% | 0% | 25% capital (direct holding) [15] |
| Serbia | 10% | 5% | 25% voting power (direct or indirect) |
| Singapore | 0% | n/a | n/a |
| Slovak Republic | 10% | 0% | 25% voting power (direct holding) |
| Slovenia | 15% | 5% | 25% capital (direct holding) |
| South Africa | 10% | 5% | 10% capital (direct holding) |
| Spain | 15% | 0% | 25% voting power[17] (direct or indirect holding) |
| Sweden | 15% | 5% | 10% voting power (direct) |
| Switzerland | 15% | 10% | 25% voting power (direct or indirect) |
| Thailand | 10% | n/a | n/a |
| Turkey | 15% | 5% / 10%[18] | 25% voting power (direct holding) |
| Ukraine | 15% | 5% | 25% capital (direct holding) |
| United Arab Emirates | 0% | n/a | n/a |

| Country | General rate under treaty[1] | Reduced tax rate | Minimum shareholding for reduced tax rate |
|---|---|---|---|
| United Kingdom | 15% | 5% | 10% voting power (direct or indirect holding) |
| United States | 15%[19] | 5%[20] | 10% voting power (direct holding) |
| Uzbekistan | 10% | 5% | 10% capital (direct holding) |
| Vietnam | 10% | 5% | 70% voting power (direct holding) |
| Zambia | 0% | n/a | n/a |

1. These are the treaty provisions only - in practice, domestic law of the treaty partner country or the EU Parent-Subsidiary Directive may provide lower tax rates.
2. Exemption applies for dividends beneficially owned by the Government of either Contracting State. This includes, for Ireland, the Central Bank of Ireland, the National Treasury Management Agency, the National Pension Reserve Fund, and a statutory body or any institution wholly or mainly owned by the Government of Ireland as may be agreed from time to time between the Competent Authorities of the Contracting States.
3. Exemption applies where the recipient of the dividend is the National Treasury Management Agency, the National Pension Reserve Fund or any organisation, agency or institution wholly or mainly owned by the Government as may be agreed from time to time.
4. This does not apply where the dividend is paid to, and beneficially owned by, the Government of Botswana
5. This does not apply where the dividend is paid by a non-resident-owned investment corporation that is a resident of Canada.
6. On the dividend and tax credit.
7. This can be on a standalone basis or together with associated companies.
8. Must also have invested more than €100k in the company paying the dividend for the reduced rate to apply. Exemption applies where recipient controls at least 50% (direct or indirect) of the voting power and has invested at least €2million in the capital of the company paying the dividend.
9. The lower rate of 10% applies when the German tax rate on distributed profits ceases to be lower than that on undistributed profits or the difference between the two rates is 5% or less. Higher rates (15% to 25%) will apply if the differential between German tax rates on undistributed profits and distributed profits exceed 15%. There is currently no differential in the tax rate in Germany on distributed and undistributed profits, so a 10% rate applies on German dividends paid to Ireland.
10. Exemption applies for dividends beneficially owned by the Government of either Contracting State or a public body, a political subdivision or a local authority thereof or the Central Bank of either Contracting State, or any agency or instrumentality (including a financial institution) owned or controlled by the Government of either Contracting State.
11. Minimum six months ownership requirement before the dividend is paid.

12. 0% rate also applies for recognised pension funds.
13. Malta tax on the gross amount of the dividend shall not exceed that chargeable on the profits out of which the dividends are paid.
14. 0% where paid to the Government.
15. Exemption applies for dividends beneficially owned by the Government of either Contracting State. This includes, for Ireland, the Government of Ireland, the Central Bank of Ireland and any institution, agency or fund wholly owned by the Government of Ireland.
16. Recipient must be a public company and certain other conditions apply.
17. Subject to compliance with the conditions of the EU Parent-Subsidiary Directive.
18. Reduced 5% rate can apply where the profits out of which the dividends are paid have been fully subject to tax in Turkey provided the recipient holds directly at least 25% of the voting power of the company paying the dividends.
19. This rate applies to dividends paid by a Regulated Investment Company (RIC) but not by a Real Estate Investment Trust (REIT) unless:
    - the beneficial owner of the dividends is an individual holding an interest of not more than 10% in the REIT.
    - the dividends are paid with respect to a publicly traded class of stock, of which the beneficial owner holds not more than 5%; or
    - the beneficial owner of the dividends holds not more than 10% of the REIT and the REIT is diversified.
20. The reduced rate does not apply to dividends paid by a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) in accordance with art 10, para 4.