16 June 2025

Business Taxes Stakeholder Forum (BTSF)
Consultation on a proposal for a Dividend Withholding Tax (DWT) exemption for Investment Limited Partnerships (ILPs)

The Irish Tax Institute welcomes the opportunity to provide feedback to the Department of Finance, via the newly established subgroup of BTSF, as it considers potential options for providing a DWT exemption for ILPs. We note that this matter is being progressed urgently with the intention of bringing a proposal to the Minister for Finance for his consideration for Finance Bill 2025.

The consultation paper issued by the Department last week sets out four options for consideration in respect of the DWT position of ILPs and poses a number of questions in respect of each option. The Institute's strong preference is for the introduction of a DWT exemption for ILPs in all circumstances (Option 4) as we firmly believe that such an exemption is necessary to enhance the attractiveness of ILPs as an investment fund structure.

We have outlined below the feedback we have received to date from members in respect of each of the four options proposed by the Department. However, it has not been possible to provide a detailed analysis in response to each of the questions raised by the Department within the five working days provided to respond to the consultation paper.

Option 1: Maintain the existing position

For most private asset fund structures, a partnership is typically used as a pooling vehicle as it allows a high degree of flexibility. With a partnership, different investors can have different economic arrangements and the fund management can receive a profit share based on the performance of the fund. The ILP is very attractive in this

context. Once funds have been established and the investors have committed capital to be deployed, the fund will then proceed to make investments which are made through acquisition entities. For commercial reasons, these acquisition entities are normally limited companies, usually located in the same jurisdiction as the fund. Limited companies are commonly used as their limited liability status allows investments to be segregated. They also facilitate the introduction of other investment or for third party financing to take place at a different level to the asset.

It is crucial that where an ILP establishes an Irish limited company as a lower-tier investment subsidiary that it can receive dividends from that wholly-owned subsidiary without deduction of tax.

The current position which requires that DWT must be applied on dividend payments to an ILP, even where the partners themselves qualify for an exemption from DWT, reduces the attractiveness of ILPs for fund managers.

Option 2: Introduce a provision to extend certain DWT exemptions to ILPs in circumstances where all underlying partners qualify for exemption

The second option outlined in the consultation paper would involve the introduction of an exemption from DWT for distributions made to ILPs in circumstances where all the underlying partners are entitled to a refund of their portion of that DWT. We understand that the exemption would be drafted in such a way that it should be possible to 'look through' multiple layers of partnerships for the purposes of applying the exemption where, for *bona fide* commercial purposes, there are multiple partnerships in an investment chain.

It is proposed that this option would represent a similar approach to that in Revenue's Tax and Duty Manual (TDM) Part 08-03-06 with respect to the operation of interest withholding tax on interest payments to partnerships. The approach outlined in TDM Part 08-03-06 is limited to circumstances where all the members of the Irish partnership or tax transparent foreign entity themselves would qualify for exemption from withholding tax if the interest had been paid directly to those members.

In our view, confining the exemption to ILPs where all underlying partners would be entitled to a refund of their portion of that DWT is too restrictive. Such an approach would mean that an ILP with retail investors would fall outside the scope of the exemption. Limiting the exemption to non-Irish exempt entities is also unnecessary. For example, what would the policy rationale be for excluding an Irish bank from benefitting from the exemption?

For the 'look through' approach to apply, TDM Part 08-03-06 requires that the Irish partnership or tax transparent foreign entity is considered to be tax transparent in its jurisdiction of residence (or, where the entity is not considered to be resident in any jurisdiction, its place of creation) and by all of the jurisdictions where the members of the tax transparent entity are resident. If such a condition were replicated in the context of DWT for ILPs, it would not be feasible to determine whether this condition has been met in the case of a widely held partnership. A preferable approach would be to rely on the existing protections in the tax code, in particular the anti-hybrid rules in Part 35C Taxes Consolidation Act (TCA) 1997.

Furthermore, we consider that the documentation requirements set out in TDM Part 08-03-06 with respect to the operation of interest withholding tax on interest payments to partnerships would be overly burdensome if similar requirements applied in the context of DWT for ILPs. For example, in a widely held partnership, requiring each of the non-resident investors to complete the Forms V2A, V2B or V2C as appropriate, and to have the form stamped by their local tax authority, would be overly burdensome.

Notably, where an exemption from investment undertaking tax applies, such as where the investor is neither resident nor ordinarily resident in Ireland, or the investor is a pension scheme or charity, it is possible for the fund to rely on the declaration made by the investor regarding their non-residence or exempt status at the time that the investor subscribes to the fund. Consideration could be given to adopting a similar approach to the documentation requirements in relation to DWT for ILPs.

An alternative approach to Option 2 which could be considered would be to allow the DWT rules to be operated on a 'look through' basis as if the distribution were paid directly to the partners of the ILP in circumstances where the paying company is at least a 51% subsidiary of the ILP. This would mean that where the partner is an Irish individual, DWT would apply on a distribution from the company to that partner, whereas, if the partner is exempt from DWT, no DWT would be applied to the distribution.

The mechanics of how such an approach would operate in practice would need to be explored further in discussions at the BTSF subgroup. For example, difficulties may arise where there are different categories of investors in the ILP. For instance, Category A partners may have to be paid off to a certain level before a distribution is made to Category B partners.

In addition, some investors may opt to exclude themselves from specific investments meaning they would also be excluded from any dividend paid in respect to those investments. The potential impact of this approach on the attractiveness of an ILP compared with similar vehicles in other jurisdictions would also need to be considered.

We do not believe this alternative approach would give rise to freedom of capital issues as DWT would continue to be withheld on distributions to partners where appropriate.

Option 3: Introduce a provision to allow for ILPs to be treated in a similar manner to qualifying intermediaries (QIs) or authorised withholding agents (AWAs) for DWT purposes

In our view, requiring a fund manager to seek authorisation for each ILP to be considered as a QI or AWA is not a feasible option. The QI and AWA regimes are administratively burdensome and are intended for entities that trade in securities. A very significant overhaul of the QI or AWA regime would be required in order for it to be a workable solution in respect of the application of DWT to ILPs.

The consultation paper refers to Revenue's 'good working relationship' with the existing QIs and AWAs and notes that a relaxation of the conditions or requirements for ILPs has the potential to have an adverse impact on Revenue's relationships with the existing QIs and AWA. In our view, the appropriate policy solution to the concerns raised regarding the application of DWT to ILPs should be based on economic considerations including potential risks to the Exchequer. Revenue's relationships with existing QIs and AWAs should not be a determining factor.

Option 4: Introduce an exemption from DWT for ILPs

The consultation paper outlines that Option 4 would involve including ILPs in the list of "excluded persons" in section 172C(2) TCA 1997 to provide a DWT exemption for ILPs in all circumstances. We firmly believe that such an exemption from DWT for ILPs should be introduced to enhance the attractiveness of ILPs as an investment fund structure.

This approach would be in line with the Programme for Government commitment to ensure the financial services sector is supported to innovate and enhance its competitiveness. It would also align with the existing approach adopted in respect of other regulated investment funds such as Common Contractual Funds.

The consultation paper states that a potential barrier to progressing Option 4 is that it has the potential to reduce tax receipts due to the risk associated with non-compliance. As DWT would not be collected on the payment of a distribution to an ILP, any Irish tax due by the partners in respect of the distribution would only be collected where the income is returned, and the appropriate tax on this income paid, by the partners.

There is significant amount of information made available to Revenue in respect of the partners of an ILP which would mitigate against any potential risk to the Exchequer that might exist where for example, the partner is an Irish resident individual.

For instance, an ILP is required to submit a Form ILP1 annually to Revenue which sets out details of each of the partners of the ILP including their name and address, their tax reference number and their share of income, gains and losses. We understand that in many cases the partners in ILPs are institutional investors and/or are located in DTA jurisdictions and therefore, they would generally not be liable to Irish tax on the dividends.

As regards non-Irish resident investors, it must be noted that an ILP is required to comply with annual reporting requirements under Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS). The interaction of an exemption from DWT for ILPs with the outbound payments defensive measures would also need to be considered.

As outlined be in our response to Option 1, ILPs typically make their investments through wholly owned subsidiaries. Therefore, one possible approach which could be taken to alleviate any concerns that policymakers may have regarding the potential for non-compliance, is to limit the availability of the exemption to circumstances where the company paying the dividend is at least a 51% subsidiary of the ILP. This would ensure that the exemption would not apply in circumstances where, for example, the ILP holds an investment in an Irish plc.

We understand that an exemption from the equivalent to DWT for regulated funds exists in other EU Member States including France, Germany and Italy.

Conclusion

We would urge that an exemption from DWT for ILPs, as outlined under Option 4 of the consultation paper, is introduced in Finance Bill 2025 to enhance the attractiveness of ILPs as an investment fund structure. The Institute looks forward to discussing the matters raised in this submission further at the upcoming meeting of the subgroup of the BTSF on 26 June.