Dividend Withholding Tax (DWT) – Details of Scheme

Part 06-08A-01

The intention of this Tax and Duty Manual is to provide background information on DWT and on how the scheme operates. This document should be read in conjunction with Part 6, Chapter 8A of the Taxes Consolidation Act 1997 (Sections 172A to 172M)

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Revenue

Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Part A: Introduction, legislation, definitions, contact information

1. Introduction (Scheme of Withholding Tax)

Dividends paid and other distributions ("relevant distributions") made by Irish-resident companies are generally liable to a dividend withholding tax (DWT) at a rate of income tax of 25%. This rate applies from the 1st of January 2020. DWT was introduced by Finance Act 1999.The Irish resident company making the distribution is required to withhold the tax and pay it over to Revenue. Where **company registrars** handle distributions on behalf of quoted companies their obligations are similar to those of the paying companies.

The legislation makes provision for an entity known as an "**authorised withholding agent**" (AWA) to act for the company making the distribution. If an AWA is involved, the paying company can pay the amount of the distribution gross to the AWA, who then takes over responsibility for applying the DWT rules. (See paragraph 9 of this Instruction for a detailed description of AWA).

The basic principle is that DWT must be deducted at the time the distribution is being made unless the company or the AWA has satisfied itself that the recipient is a non-liable person and is entitled to receive the distribution without the deduction of DWT. All DWT must be paid to Revenue by the 14th of the month following that in which the distribution is made.

Certain recipients of distributions are specifically excluded from the scope of the tax (see paragraph 6) while certain other persons are entitled to an exemption. A comprehensive list of categories of persons who can be exempted from DWT is given at paragraph 7 of this instruction. It should be noted that exemption is not automatic and must be established by means of an appropriate declaration of exemption, which must be completed by the applicant and accompanied by the required certification, if necessary. Full details of how an exemption can be obtained can be found at paragraph 11 of this Instruction.

Finance Act 2019 increased the rate of DWT to 25% effective from 1st of January 2020. It also provided that, in respect of relevant distributions made from 1st of January 2021, the company or intermediary that pays the relevant distribution shall obtain and keep a record of the "tax reference number" of the person(s) beneficially entitled to the relevant distribution.

2. Legislation

The legislation relating to Dividend Withholding Tax (DWT) is contained in Chapter 8A of Part 6 (sections 172A to 172M) and Schedule 2A of the Taxes Consolidation Act, 1997.

3. Definitions [Section 172A(1)(a) TCA 1997]

“dividend withholding tax”**,** in relation to a relevant **distribution**, means a sum representing income tax on the amount of the relevant distribution at a rate of income tax of 25%;

“intermediary” means a person who carries on a trade which consists of or includes—

(i) the receipt of relevant distributions from a company or companies resident in the State, or

(ii) the receipt of amounts or other assets representing such distributions from another intermediary or intermediaries,

on behalf of other persons;

“relevant distribution” means, in accordance with s172A (1)(a)—

(i) a distribution within the meaning of paragraph 1 of Schedule F in section 20(1), other than such a distribution made to—

(I) a Minister of the Government in his or her capacity as such a Minister,

(IA) the National Treasury Management Agency,

(IB) a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment Act 2014) of which the Minister for Finance is the sole beneficial owner,

(IIIA) the Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary,

(IV) the National Asset Management Agency, or a company referred to in section 616(1)(g), and

(ii) any amount assessable and chargeable to tax under Case IV of Schedule D by virtue of section 816;

“**specified person**”**,** in relation to a relevant distribution, means the person to whom the relevant distribution is made, whether or not that person is beneficially entitled to the relevant distribution;

“relevant territory” means—

(i) a Member State of the European Communities other than the State,

(ii) not being such a Member State, a territory with the government of which arrangements having the force of law by virtue of section 826(1) have been made, or

(iii) not being a territory referred to in subparagraph (i) or (ii), a territory with the government of which arrangements have been made which on completion of the procedures set out in section 826(1) will have the force of law;

"**collective investment undertaking**" means—

(i) a collective investment undertaking within the meaning of section 734,
(ii) an undertaking for collective investment within the meaning of section 738,
(iii) an investment undertaking within the meaning of section 739B, or
(iv) a common contractual fund within the meaning of section 739I,

not being an offshore fund within the meaning of section 743;

"**tax reference number**" means –

(i) in the case of an individual who is or was resident in the State, the Personal Public Service Number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) issued to the individual,
(ii) in the case of a person, not being a person to whom subparagraph (i) applies, or other body who or which is within the charge to income tax or corporation tax in the State, the reference number stated on any return of income form or notice of assessment issued to the person or other body by an officer of the Revenue Commissioners, and
(iii) in the case of any other person or body, the reference number stated on any return of income form or notice of assessment issued, or any other reference number allocated, to the person or body for the purposes of income tax or corporation tax or any tax which corresponds to income tax or corporation tax, by the tax authority of the country in which that person or other body is resident for the purposes of income tax or corporation tax or any tax which corresponds to income tax or corporation tax;",

"**ultimate payer**" means the company, authorised withholding agent, qualifying intermediary or other person from whom a relevant distribution, or an amount or other asset representing a relevant distribution, is receivable by the person beneficially entitled to the distribution as referred to in paragraph (a), (b), (c) or (d), as the case may be, of section 172BA(1).".

4. Contact information

All queries in relation to the DWT scheme should be addressed initially to: -

DWT Unit
Office of the Revenue Commissioners
St. Conlon's Road
Nenagh

Co. Tipperary
Ireland
Tel.: - +353-67-63400
Fax. -+353-67-33822
e-mail: infodwt@revenue.ie

Part B: Types of distributions liable to DWT, exempt persons, relevant distributions

5. Types of distributions liable to DWT - relevant distributions (Section 172B TCA 1997)

DWT at a rate of income tax of 25% applies to all relevant distributions made by Irish resident paying companies. For the purposes of the DWT legislation, relevant distributions are:

- Cash Distributions.
- Scrip Dividends. This is where a shareholder opts to take additional shares instead of a cash dividend in situations where the paying company gives its shareholders the option of taking either cash or additional shares. In such cases the shareholder who elects to take additional shares instead of cash is treated as if he or she received a distribution of an amount equal to the cash dividend, which the shareholder would have received if he or she had not elected to take the shares. When this happens, the distributing company is required, when issuing the additional shares to each shareholder (other than a shareholder exempted from DWT) to issue a reduced number of shares instead of withholding a cash amount from the distribution. The paying company must then pay to the Collector General's office an amount of DWT equal to tax at a rate of income tax of 25% on the cash amount, which the shareholder would have received if he or she had not elected to take the shares instead of cash (see Section 816 TCA "Taxation of shares issued in place of cash dividends" for further information).
- Distributions in a non-cash form (not a scrip dividend). This is where a paying company makes a distribution, which consists of something other than cash (but not a scrip dividend). In such cases the paying company which makes the non-cash distribution to the shareholder (other than a shareholder exempted from DWT) is liable to pay to Revenue an amount of DWT equal to the tax which would have been payable on the distribution if it had been in cash and taxed at a rate of income tax of 25%. For example, if a company makes a non-cash distribution amounting in value to €750 the company will be treated as having made a distribution of €1,000 and will be obliged to withhold and account for DWT of €250 on making the distribution.
- Furthermore, since no tax is actually withheld from the non-cash distribution the paying company is empowered to recover from each shareholder (other than shareholders exempted from DWT) an amount equal to the tax paid to Revenue in respect of that shareholder's non-cash

distribution. The intention is to ensure that expenses incurred by a close company in providing certain benefits or facilities for participators are to be regarded as distributions where these benefits are not benefits-in-kind [Section 436(3) TCA 1997]. In one instance, the provision of free accommodation to an associate or participator of a company was deemed a relevant distribution. It was confirmed that the market rental value of the premises being provided was to be treated as the net distribution.

6. Distributions not liable to DWT

Specific types of distributions on which DWT is not payable:

Distributions made to Ministers of the Government and The National Pensions Reserve Fund Commission

- Dividends paid to Ministers of the Government holding shares in their official capacity and dividends made to the National Pensions Reserve Fund Commission are specifically excluded from the scope of the DWT legislation. Therefore, DWT is not to be deducted from such distributions and they are not to be included in returns made to Revenue [see definition of "relevant distribution" in paragraph 3 of this Tax Instruction and definition section 172A(1)(a) TCA 1997].

Distributions falling within the scope of EU Parent or Subsidiary Directive [Section 172B (6) TCA 1997]

- No DWT is to be deducted from any distribution made by an Irish resident subsidiary to its parent in another EU Member State (section 831 TCA 1997 refers) where such tax is prohibited under the EU Parent or Subsidiary Directive. The Directive applies to Irish resident companies both limited and unlimited. However, details of such distributions must be included in the return which the paying company or the Authorised Withholding Agent (AWA) is obliged to make to Revenue within 14 days of the end of the month in which the relevant distribution is made.

- [Note: although Switzerland is not an EU Member State, it enjoys, with effect from 1st July 2005, similar treatment regarding dividends paid by an Irish resident company to its parent company (25% holding) resident in Switzerland.]

Stapled Stock arrangements (Section 172L TCA 1997 refers). See paragraph 16 of this Instruction for further information

- Where the shareholders of an Irish resident company elect, under a stapled stock agreement, to receive their distributions from an associated non-resident company instead of from the Irish resident company no DWT is payable. However, the resident company is obliged to return details of such

distributions in their DWT returns within 14 days after the end of the calendar month in which shareholders receive such distribution.

Distributions which are not liable to income tax in the hands of the recipients

These include dividends and other distributions:

- Paid out of exempt profits or gains from stallion stud fees. This exemption was terminated on 31 July 2008. Part 3 Chapter 4 (ss 669G-669K) TCA provides for the taxation from 1 August 2008 of profits and gains arising from stallion stud fees [SI 160/2008 refers].
- In respect of stud greyhound service fees. The exemption from corporation tax on profits or gains from this source ceases to apply to profits or gains arising after 31 July 2008 to an owner or part-owner of a stud greyhound [see section 233(5) TCA].
- With regard to the occupation of woodlands (Section 140 TCA 1997).
- Certain distributions made out of income from certain patents where income has been disregarded for income tax purposes under section 234 TCA (Section 141 TCA 1997).
- Certain mining profits (Section 142 TCA 1997) are not liable to income tax in the hands of the recipients.
- In the case of companies, such dividends and distributions are treated as exempt income of the company for corporation tax purposes.
- Such distributions are also exempt from DWT [Section 172B(7) TCA 1997]. However, paying companies and AWAs are obliged to return details of such distributions in their DWT returns within 14 days after the end of the calendar month in which shareholders receive such distribution.

Distributions made by an Irish resident company to another Irish resident company of which it is a 51 per cent subsidiary

- The term "51 per cent subsidiary" is defined generally in section 9 of the TCA, 1997. Paying companies and AWAs are obliged to return details of such distributions in their DWT returns within 14 days after the end of the calendar month in which shareholders receive such distributions.

7. Categories of persons exempt from DWT (Section 172C TCA 1997)

7.1 Exempt Resident Persons ("Excluded Persons")

The following categories of persons are excluded persons exempted from the DWT legislation (all legislative references refer to the TCA 1997):

b) A company resident in the State.

c) 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.

d) A qualifying employee share ownership trust, which has been approved by Revenue.

e) 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).

f) A charity, which has been granted exemption from tax by Revenue.

g) An amateur or athletic sports body which has been granted an exemption from tax by Revenue.

h) A designated broker receiving relevant distributions as all or a part of the relevant income or gains of a special portfolio investment account (SPIA).

i) 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.

j) 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.

k) An Irish Exempt Unit Trust [within the meaning of S731(5)].

l) An Irish Personal Retirement Savings Account (PRSA) Administrator.

m) Certain other persons resident in Ireland, as follows:-

- 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;

- 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);

- 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;

- 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".

Before accepting that such persons are exempt the paying company or AWA must be satisfied that the person:

- If not a Qualifying Intermediary (QI), (see detailed description of QI under Part D of this Tax Instruction) is the person beneficially entitled to the distribution, and

- Has made the appropriate declaration of exemption to the company making the distribution (see Schedule 2A TCA 1997) or, if the distribution is being paid to the excluded person through a QI, to the QI.

7.2 Exemption from DWT for certain non-resident persons [Section 172D (3) TCA 1997]

"Relevant Territory"

Note: "relevant territory" in this paragraph and in the following paragraphs of this Instruction 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.

In addition to the exempt persons listed in paragraph 7.1, the following non-resident persons are also exempt from DWT:

- An unincorporated body of persons, such as a charity or superannuation fund, which is resident for the purposes of tax in a relevant territory.

- Individuals who are neither resident nor ordinarily resident in the State but are resident for the purposes of tax in a relevant territory.

- Companies resident for the purposes of tax in a relevant territory and which are not controlled by Irish residents.

- 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.
- 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.
- 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.

7.3 Non-Residents - Declarations to be made

As is the case with excluded persons, 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 (under Schedule 2A paragraph 8 TCA 1997) 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 (under Schedule 2A paragraph 9 TCA 1997)**.**

If the distribution is being paid to an exempt non-resident person through a QI or a chain of QIs, the declaration of exemption 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.

Finance Act 2010 (section 33) – Self-Certification for Non-Resident Companies

Certain arrangements apply to relevant distributions and declarations made by certain non-resident companies* (as defined below) on or after the passing of the Finance Act 2010 i.e. from 3 April 2010.

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. **Declarations/certificates provided by qualifying non-resident companies before 3 April 2010 for the purposes of claiming exemption from DWT will remain valid until their current expiry date has passed.**

Sections 172D, 172F and Schedule 2A of the Taxes Consolidation Act 1997 were amended to give effect to this change. Also the relevant declaration form (Non-resident Form V2B) has been updated to reflect this change and is available on the Revenue website Form V2B. This revised form applies to qualifying non-resident companies only. There is no change to arrangements for claiming exemption from DWT for non-resident individuals or non-resident groups of persons not being companies.

Non-resident companies

There are 3 types of **non-resident company** which qualify for exemption from DWT:

- A company resident for the purposes of tax in an EU Member State or tax treaty country and not controlled directly or indirectly by Irish residents;
- A company controlled directly or indirectly by a person or persons resident for the purposes of tax in an EU Member State or tax treaty country who are themselves not controlled by persons not so resident; and
- A company whose main shares, or the main shares of its parent company or companies, are substantially and regularly traded on a recognised stock exchange.

Part C: Main participants and their obligations (returns, payment and collection of DWT), Irish resident companies, Authorised Withholding Agents (AWA)

8. Main Participants and their obligations (Returns, payment and collection of DWT) [Section 172K TCA 1997]

8.1 Irish Resident Paying Companies - Returns and Payments

An Irish resident paying company making relevant distributions is obliged to deduct DWT (at a rate of income tax of 25%) unless the company has satisfied itself that:

- the recipient is a non-liable person and is entitled to receive the distribution without deduction of DWT, or
- the distribution is being made in the first instance to an AWA.

All DWT deducted by the paying company must be paid to Revenue by the 14th of the month following that in which the distribution is made. Payments must be accompanied by a DWT Declaration and by a return, which must be in an electronic format approved by Revenue and must show the following:

- The name and tax reference number of the company which actually made the distributions.
- If an authorised withholding agent is making the return, the name of that agent.
- The name and address of each person to whom a distribution was made or treated as made in the month concerned.
- The date on which the distribution was made to each such person.
- The amount of each such distribution.
- The amount of the DWT, if any, deducted from each such distribution or, in the case of scrip dividends and other non-cash distributions, the amount, if any, to be paid to the Collector-General as if it were a deduction of DWT in relation to each such distribution.
- The aggregate of all such amounts.

DWT payment date

As stated above, the DWT required to be included in the return is due at the same time as the return itself, that is, within 14 days of the end of the month, and is payable to the Collector-General without the making of an assessment. However, an assessment may be made on the company where DWT or any part of it is due and has not been paid.

Estimated assessments

An inspector may make an estimated assessment of DWT on a company or AWA if it appears to him or her that a distribution has been omitted from the return or if he or she is otherwise dissatisfied with a return. The tax under such an assessment is, for the purpose of interest payable on unpaid tax, treated as having become payable at the time when it would have been payable had a correct return been made.

Incorrect returns

Where a distribution is incorrectly included in a DWT return, an inspector may make all necessary assessments, adjustments or set-offs so as to secure that the resultant liabilities to tax of the company or AWA, or of the person beneficially entitled to the distribution, are the same as they would have been if the distribution had not been incorrectly included in the return.

Due date for assessed DWT

While, normally, DWT is due and payable without the making of an assessment, the due date for the payment of DWT in respect of which an assessment has issued is one month after the date of the assessment. However, that due date cannot displace an earlier due date which would have been applicable under section 172K (2) TCA. If the assessment is appealed, the appropriate earlier due date continues to apply. Any tax overpaid on determination of an appeal against such an assessment will be repaid.

Supplementary provisions

- The provisions of the Income Tax Acts relating to assessments, appeals, collection and recovery of income tax and interest thereon apply equally to the assessment, collection and recovery of DWT.

- Any amount of dividend withholding tax payable without the making of an assessment shall carry interest at the rate of 0.0274 per cent for each day or part of a day from the date when the amount becomes due and payable until payment.

- Subsections (3) to (5) of section 1080 (Interest on overdue tax) shall apply in relation to interest payable under section 172K (6)(b) as they apply in relation to interest payable under section 1080.

- Where an assessment to DWT is made so that the normal interest charge would arise under section 1080, that section will apply with the omission of subsection (1)(b) which deals with the date as from which interest is payable in a case where there is an appeal against an income tax assessment. That provision is not required in the case of an assessment to DWT because the due date for payment of interest in such a case is set out in subsection (5) of section 172K which applies whether or not there is an appeal against such an assessment.

Electronic returns

In general, the DWT return must be made in an electronic format approved by Revenue.

Written return acceptable in certain circumstances

In exceptional circumstances, where Revenue are satisfied that the paying company does not have the facilities to make a return in electronic format, they should contact the DWT Unit.

Retention of records by paying companies

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. The company shall furnish all such declarations and notifications to the Revenue Commissioners as may be required in a notice issued by the Commissioners (Section 172B 4A).

Company Registrars

Where company registrars handle distributions on behalf of quoted companies their obligations are similar to those of the paying companies.

9. Authorised Withholding Agent (AWA) [section 172G]

9.1 General

The DWT legislation makes provision for an entity known as an AWA. DWT does not apply where an Irish resident company (the paying company) makes a relevant distribution to an AWA for the benefit of a person who is beneficially entitled to the distribution, not being the AWA itself. This is regardless of whether the ultimate beneficiary is a liable or an exempt person.

Section 172H TCA 1997 provides that the AWA must effectively step into the shoes of the company and operate the DWT scheme when it is paying on the distribution. The AWA takes over the responsibility of the paying company as far as DWT is concerned. The AWA must pay this DWT over to Revenue and make returns to Revenue, in the same way as

paying companies. An AWA must be authorised to act as such by Revenue (see also paragraph 9.8 “Obligations of an AWA under the DWT scheme in relation to distributions received” for further information).

9.2 Essential Criteria necessary in order to become an AWA (Specific Conditions)

There are a number of specific conditions which must be satisfied if a person is to be an AWA. The person must first of all be an **intermediary**, that is, a person whose trade consists of or includes the receipt, on behalf of other persons, of relevant distributions from Irish resident companies or amounts or other assets representing such distributions from qualifying intermediaries. In addition, the person must:

- Be resident in Ireland for tax purposes, or
- If not resident in Ireland, be resident for tax purposes in a relevant territory and carry on, through a branch or agency in Ireland, a trade which consists of or includes the receipt of relevant distributions from a company or companies resident in Ireland on behalf of other persons;
- Have entered into an authorised withholding agent agreement with Revenue;
- Be authorised by Revenue to act as an AWA.

9.3 AWA Agreement

As part of the authorisation process, an AWA must enter into a formal agreement with Revenue. Under an AWA agreement, an intermediary must undertake:

- To keep and retain all declarations (and accompanying certificates) and notifications (other than notices from Revenue) made or given to the intermediary in accordance with the DWT scheme. Such documents must be kept and retained by the intermediary for the longer of 6 years or the period which, in relation to the relevant distributions in respect of which the declaration or notification is made or given, ends not earlier than 3 years after

    the date on which the intermediary has ceased to receive relevant distributions on behalf of the person who made the declaration or gave the notification to the intermediary

    - When requested to do so by notice in writing from Revenue, an intermediary must make available to Revenue, within the time specified in the notice, all such declarations, certificates or notifications or such class or classes of such declarations, certificates or notifications as may be specified in the notice,
    - To inform Revenue if the intermediary has reasonable grounds to believe that a declaration or notification made or given to the intermediary was not, or may not have been, a true and correct declaration or notification at the time it was made or given to the intermediary,

- To inform Revenue if at any time the intermediary has reasonable grounds to believe that a declaration made to the intermediary would not, or might not, be a true and correct declaration if made to the intermediary at that time,
- To operate the provisions of section 172H (which sets out the obligations of an AWA in relation to the DWT scheme) in a correct and efficient manner,
- To provide to the Collector-General the return required under section 172K(1), and to pay to the Collector-General any DWT required to be included in that return, within the prescribed time,
- As part of the QI agreement, the intermediary must undertake to produce an auditor's report on its compliance with the DWT scheme after it has been operating the agreement for one year. The report must be furnished to Revenue within 3 months after the end of that year. Further such reports have to be provided by the intermediary only on written notice from Revenue and in relation to such other period of its operation of the agreement as is specified by Revenue in that notice, and
- To allow for the verification by Revenue of the intermediary's compliance with the agreement and the DWT scheme in any manner considered necessary by Revenue.

9.4 Practicalities of applying to be an AWA

An application for AWA status is made to DWT Unit, Office of the Revenue Commissioners, St. Conlon's Road, Nenagh, Co. Tipperary (see paragraph 4 of this Instruction). The AWA application form. The obverse side of the form comprises the application, while the reverse side of the form deals with the specific terms of the AWA agreement. The representative of the intermediary applying for authorisation should sign the form on both sides. The reverse side of the form should bear an official stamp of the intermediary.

Generally, the authorisation process should be completed within a few days.

9.5 Authorisation of an intermediary as an authorised withholding agent

Revenue shall not authorise an intermediary to be an AWA unless the intermediary is:

- (a) a company which holds 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 relevant territory which corresponds to that section,
- (b) a person who is wholly owned by a company or person referred to in paragraph (a),
- (c) a member of the Irish Stock Exchange Ltd or of a recognised stock exchange in a relevant territory, or

- (d) in the opinion of the Revenue Commissioners a person suitable to be an AWA for the purposes of DWT.

Provision is also made under section 172G TCA for the maintenance by Revenue of a list of AWAs which can be made available to any person.

9.6 Duration of authorisation as authorised withholding agent

An authorisation ceases to have effect after 7 years. This, however, does not prevent Revenue and the intermediary from agreeing to renew the AWA agreement or to enter into a further such agreement. Nor does it prevent a further authorisation by Revenue of the intermediary as an AWA for the purposes of the DWT scheme.

9.7 Revocation of authorisation as authorised withholding agent

Revenue are empowered to revoke a person's authorisation as an AWA where Revenue is satisfied that the person has failed to comply with the AWA agreement or the DWT scheme in general or that the person is otherwise unsuitable to be an AWA. Notice of a revocation must be served in writing by registered post, and the revocation takes effect from the date specified in the notice.

Notice of a revocation of an authorisation as an AWA must be published in Iris Oifigiúil.

9.8 Obligations of an AWA under the DWT scheme in relation to relevant distributions [Section 172H TCA 1997]

An AWA must give notice in writing to each paying company (from which it is to receive relevant distributions on behalf of other persons) of the fact that it is an AWA. This allows those companies to make the distributions to the AWA without applying DWT. In the absence of such notification, the company must apply DWT to the distributions.

On receiving the distributions, the AWA effectively steps into the shoes of the company which made the distributions. It must operate the DWT scheme as if it were the company which had made the distributions and as if the paying-on of the distributions, or amounts representing the distributions, to its clients were the making of the distributions by the AWA at the time the distributions were actually made by the company. Thus, the AWA must, if appropriate, deduct DWT when it pays on the distributions, or amounts representing the distributions, to its clients and must account for that tax to the Collector-General [Section 172H(2) TCA 1997].

An Irish resident company which makes a relevant distribution to an AWA for the benefit of another person cannot treat the distribution as having been so made unless it has received from the AWA the written notice required under section 172H. This is the notice by the AWA of the fact that it is such an agent. In the absence of this notice, the company must deduct DWT from the distribution.

An up-to-date list of currently authorised AWAs can be found on the Revenue website: List of currently approved QIs and AWAs.

9.9 Difference between an AWA and a Qualifying Intermediary (QI)

The main difference between an AWA and a QI is that distributions can be made by companies to an AWA without the deduction of DWT. The AWA then has the responsibility and power to deduct DWT from the distributions and pay it over to Revenue. A QI does not have this power.

Part D: Qualifying Intermediaries (QI) Section 172E

10. Qualifying Intermediary (Section 172E TCA 1997)

10.1 General

A substantial portion of investment in Irish companies is made through an intermediary (e.g. bank or stockbroking firm) or, indeed, through a chain of intermediaries. This is recognised in the DWT legislation, which makes provision for exemption at source in such cases provided the intermediary accepts an additional administrative burden. In order for an intermediary to receive dividends gross on behalf of non-liable clients, the intermediary must have entered into a "Qualifying Intermediary Agreement" with Revenue. In doing so the intermediary becomes a "Qualifying Intermediary" (QI) under the DWT legislation.

10.2 Requirements needed to be a Qualifying Intermediary (QI)

To be a qualifying intermediary, an intermediary must be a person who [Section 172E (2) TCA 1997]:

- Is resident in Ireland,
- If not resident in Ireland, be resident for tax purposes in a relevant territory,
- Has entered into a QI agreement with Revenue and
- Has been authorised by Revenue to act as a QI.
- In addition, the intermediary must:
- Hold (or be wholly owned by a person who holds) a banking licence in Ireland or in a relevant territory
- Be a member of the Irish Stock Exchange or a recognised stock exchange in a relevant territory, or
- Be, in the opinion of Revenue, a person suitable to be a QI.

Applications to become a qualified intermediary are dealt with by DWT Unit, Office of the Revenue Commissioners, St. Conlon's Road, Nenagh, Co. Tipperary, an application form is available: QI Application form.

10.3 Qualifying Intermediary Agreement between Revenue and an intermediary [Section 172E (3) TCA 1997]

A qualifying intermediary agreement is an agreement entered into between Revenue and an intermediary under which the intermediary undertakes certain obligations, namely —

- To keep and retain all declarations (and accompanying certificates) and notifications (other than notices from Revenue) made or given to the intermediary in accordance with the DWT scheme. Such documents must be kept and retained by the intermediary for the longer of 6 years or the period which, in relation to the relevant distributions in respect of which the declaration or notification is made or given, ends not earlier than 3 years after the date on which the intermediary has ceased to receive relevant distributions on behalf of the person who made the declaration or gave the notification to the intermediary,

- To make available to Revenue, within the time specified in the notice (from Revenue), all such declarations, certificates or notifications or such class or classes of such declarations, certificates or notifications as may be specified in the notice,

- To exercise a duty of care and verification in relation to such declarations and notifications,

- To operate the DWT scheme (including the making of returns to Revenue) in a correct and efficient manner,

- To provide an auditor’s report to Revenue, on the intermediary’s compliance with the QI agreement, after the intermediary has been operating the agreement for one year, and to provide further auditors’ reports when requested to do so by Revenue,

- To allow for the verification of its compliance with the DWT scheme by Revenue in any manner considered appropriate by Revenue.

The agreement may also, in certain circumstances, require the provision of a bond or guarantee by the intermediary to protect the Exchequer against fraud or negligence in the operation of the QI agreement and the DWT scheme.

Revenue will allow QIs to create and maintain 2 separate and distinct categories of funds known respectively as exempt and liable funds (see paragraphs 10.9 and 10.10). In advance of a distribution being made, the QI may accept declarations of exemption from non-liable persons and notifications from other QIs and, on foot of these declarations and notifications, notify the paying company in writing whether the distribution is for the benefit of non-liable or liable persons. The distributions for non-liable persons can then be paid gross by the paying company and will go into the QI’s exempt fund while the distributions for liable persons will go into the liable fund.

Provision is also made for the maintenance by Revenue of a list of QIs which can be made available to any person, and for the revocation of an authorisation of a person as a QI.

An up-to-date list of currently authorised QIs can be found on the Revenue website: List of currently approved QIs and AWAs.

10.4 Applying to become a QI

An application form is available from DWT Section on request (see paragraph 4 of this Instruction) and on the website at: QI Application form. The obverse side of the form comprises the application, while the reverse side of the form deals with the specific terms of the QI agreement. The representative of the intermediary applying for authorisation should sign the form on both sides. The reverse side of the form should also bear an official stamp of the intermediary.

Additional information should accompany the application such as:-

- details of the number of clients that hold Irish Securities and the number of Irish Securities held;
- the flow of a typical dividend i.e. how the dividend gets from the Irish Paying Company to the applicant and;
- confirmation that work on a test QI electronic return will be prepared as soon as possible after the QI authorisation has been granted.

10.5 Length of authorisation process

Where an application form is completed correctly, the authorisation process should generally be completed within a few days of receipt of the form. A letter of authorisation from Revenue will be sent to the intermediary with a copy of the QI agreement countersigned by Revenue.

10.6 Intermediaries operating through nominee companies

In some instances an intermediary may operate through one or more nominee companies and may wish to have these nominee companies covered by the QI authorisation. While this is possible, it can only be allowed where, when applying for authorisation, the intermediary advises Revenue in writing of any nominee companies who wish to operate under the terms of the QI agreement and must state that each nominee company is 100% owned by the QI. Each such nominee company must also execute a power of attorney granting the principal full power to enter into a QI agreement with Revenue on their behalf. A sample of an acceptable format of power of attorney: Power of Attorney. A copy of this power of attorney must accompany the application for QI authorisation. The letter of authorisation from Revenue will make specific reference to these nominee companies and only those nominee companies so mentioned will be covered by the QI agreement.

10.7 Period of validity of QI authorisation

The QI authorisation will expire after 7 years. This does not prevent Revenue and the intermediary from agreeing to the renewal of, or the entering into of a new, QI agreement, nor does it prevent Revenue from authorising the intermediary as a QI for a further 7 year period. However, Revenue reserve the right to revoke a QI authorisation at any time where it is satisfied that the QI has failed to comply with the QI agreement or is otherwise unsuitable to be an QI.

Where revocation occurs, the intermediary will be notified in writing served by registered post and the revocation will have effect from the date specified on that written notice. The fact that the authorisation has been revoked will also be published in "Iris Oifigiúil", the official Irish Government gazette.

10.8 Obligations of QI in relation to distributions received [Section 172F TCA 1997)

A QI which is to receive, on behalf of its clients, relevant distributions made by a company resident in the State, or amounts representing such distributions paid to it by another QI, is required [Section 172F(1) TCA 1997] to maintain two separate funds in relation to such distributions and amounts, an **"Exempt Fund"** and a **"Liable Fund".**

10.9 Exempt Fund [Section 172F (2) and (3) TCA 1997]

The **Exempt Fund** is to include:-

- excluded persons and qualifying non-resident persons who have made to the QI the appropriate declaration of exemption, and;
- other QIs who have advised the QI that the distributions, or amounts representing such distributions, to be paid on to them by the QI are to be received by the other QIs on behalf of persons in their Exempt Funds.

Also to be included are only those clients who are:

- Non-liable persons who have made to the QI the appropriate declaration of exemption referred to in Schedule 2A TCA 1997; and
- Other QIs who have advised the QI that the distributions, or amounts representing such distributions, to be paid on to them by the QI are to be received by them on behalf of persons in their Exempt Funds.

  Under Section 172F(3)(a) TCA 1997 a QI must not include a person beneficially entitled to the relevant distribution in its Exempt Fund unless it has received from that person the appropriate declaration of exemption (see Schedule 2A).

Qualifying Non-resident person

In this context, it should be noted (see paragraph 8(f) of Schedule 2A) that a declaration of exemption made by a qualifying non-resident person, not being a company, must be accompanied by a certificate of tax residence from the tax authority in the country of the person's residence.

The certificate given in accordance with paragraphs 8(f) of Schedule 2A is effective only for the period from the date of issue until 31 December in the fifth year following the year in which the certificate was issued. Consequently, if the non-resident person is to continue to be eligible for inclusion in the Exempt Fund the certificates have to be renewed at the end of such period.

Qualifying Non-resident company

Certain arrangements apply to relevant distributions and declarations made by non-resident companies on or after the passing of the **Finance Act 2010** i.e. from 3 April 2010 (see paragraph 7.3 for details).

It should also be noted that if the qualifying non-resident person is a trust, the declaration must (see paragraph 8(g) of Schedule 2A) be accompanied by two documents, namely, a certificate signed by the trustee or trustees of the trust showing the names and addresses of the beneficiaries and settlors of the trust and a notice by Revenue stating that it has noted the contents of the certificate.

Under Section 172F (3)(b) TCA 1997 the QI must not include a further QI in its Exempt Fund unless it has received the notification from the further QI made under [Section 172F(1) TCA 1997]. This is the notice to the effect that the distributions or payments representing such distributions which are to be paid on to the further QI by the QI are to be received by the further intermediary for the benefit of persons included in its Exempt Fund.

10.10 Liable Fund [Section 172F (4) TCA 1997]

The Liable Fund is to include the remainder of the QI's clients. The qualifying intermediary must include in its Liable Fund all persons on whose behalf it is to receive the distributions or payments representing the distributions other than such of those persons as are included in its Exempt Fund.

10.11 Obligation of QI in relation to Exempt and Liable Funds

A QI must notify the company making the distributions or, if the distributions are made through a chain of QIs, the QI (if any) immediately above it in the chain, by way of notice in writing, as to whether the distributions to be received by it from the company or the other QI, as the case may be, are to be received for the benefit of persons in its Exempt Fund or Liable Fund. The QI must keep its Exempt and Liable Funds up to date and must notify the company, by way of notice in writing, of updates as often as may be necessary. The

company must apply DWT to a distribution unless it has been notified by the QI that the distribution is to be received by the QI for the benefit of a person in its Exempt Fund.

10.12 Annual return by QI on request from Revenue [Section 172F (7) TCA 1997]

For each tax year beginning with the year 1999–2000 the QI, on being requested by written notice from Revenue, must make a return to Revenue within the time specified in the notice. The return must show —

- the name and address of each resident company from which it received, on behalf of other persons, relevant distributions in the year concerned,
- the name of each other person from whom it received, on behalf of other persons, payments representing distributions made by resident companies in the year concerned,
- the amount of each such distribution,
- the name and address of each person to whom such a distribution, or a payment representing such a distribution, was given by the qualifying intermediary, and
- the name and address of each such person in respect of whom the qualifying intermediary has received a declaration of exemption from DWT [Section 172F(7)(a) TCA 1997].

A return which is required to be so made by a QI may be confined to such class or classes of relevant distributions as may be specified in the notice given to the qualifying intermediary by Revenue [Section 172F(7)(b) TCA 1997].

10.13 Electronic Returns and return filing date

The annual return must be made in an electronic format approved by Revenue and must be accompanied by a declaration made by the QI, on the prescribed or authorised form, to the effect that the return is correct and complete [Section 172F(8) TCA 1997].

10.14 Written return acceptable in certain circumstances

The return can be made in writing where Revenue are satisfied that the QI does not have the facilities to make the return in the required electronic format. A written return must be in a form prescribed or authorised by Revenue and must be accompanied by a declaration made by the QI on the prescribed or authorised form, to the effect that the return is correct and complete [Section 172F(9) TCA 1997].

Part E: Exemption Process

11. Description of Exemption process

11.1 Documentation

Exemption from DWT is not automatic and must be established by means of an appropriate declaration of exemption, which must be completed by the applicant. This declaration has to be in a form approved by Revenue.

Composite Resident Form V3 for qualifying resident categories is available on the Revenue website.

Non-Resident Forms are available on the Revenue website at "Dividend Withholding Tax (DWT)" under Related forms.

In the case of qualifying non-resident persons, the relevant declaration of exemption where appropriate must be supported by documentary evidence. The supporting documentation is as follows:

- 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.
- A declaration by the trustee or trustees of a non-resident discretionary trust must be accompanied by:
  - a certificate given by the tax authority of the country in which the trust is, by virtue of the law of that territory, resident for the purposes of tax certifying that the trust is resident in that territory,
  - a certificate from the trustee or trustees showing the names and addresses of the settlers and beneficiaries of the trust, and
  - a certificate from Revenue indicating that they have seen the certification and have noted its contents.

In this context it should be noted that the DWT legislation defines the term “beneficiary” in a wide manner. The term means any person who, (directly or indirectly), is beneficially entitled under the discretionary trust, (or may, through the exercise of any power or powers conferred on that person or any other person or persons, reasonably expect to become beneficially entitled under the trust) to income or capital or to have any income or capital applied for that person’s benefit or to receive any other benefit.

Non-resident companies

Certain arrangements for non-resident companies (see paragraph 7.3 of this Instruction) apply from 3 April 2010 (date of the passing of the Finance Act 2010). Non-Resident Form V2B has been amended to reflect these new arrangements.

11.2 Period of validity of exemption forms.

Exemption declarations for excluded resident persons remain valid until such time as:

- the excluded person notifies the paying company or the QI that they have ceased to be an excluded person, or
- the paying company or QI becomes aware, for whatever reason, that the person who made the declaration has ceased to be an excluded person.

Exemption declarations for qualifying non-resident persons remain valid for a maximum period of 6 years. This period of validity is determined by the date on which the relevant certificates accompanying the exemption declarations are issued. The legislation confirms that these certificates remain valid for the period from the date of issue until 31 December in the fifth year following the year in which the certificate was issued, thus providing for a maximum period of validity of 6 years where a certificate was issued on 1 January in a particular year.

Note: Non-resident companies: Declarations or certificates provided by qualifying non-resident companies before 3 April 2010 for the purposes of claiming exemption from DWT will remain valid until their current expiry date has passed (see paragraph 7.3).

11.3 Number of exemption declarations required

Where a QI holds all the shares of a particular client, in a nominee capacity, then only one exemption declaration is necessary, regardless of the number of different companies whose shares that client holds. If, on the other hand, that person were to hold those shares directly with the paying companies, then one declaration per company would be necessary unless the share registers for the companies in question happen to be managed by the same registrar. In that case, one declaration per registrar would suffice. Where a client has his or her shareholdings split between a number of QIs, then one declaration per QI is required.

11.4 Minimum requirements for exemption declarations.

The exemption declarations from excluded or qualifying non-resident persons can only be accepted where the declaration forms have been fully completed and signed and where the recipient of the declaration (paying company, AWA or QI) has no reasonable grounds to believe that the declaration (and any accompanying certificates) is not true or incorrect. All registrars and QIs must take due care when checking exemption declarations. If signatures, dates or stamps have been omitted (i.e. where a form is partly completed) the exemption declaration must be returned to the shareholder for correction and their holding should remain liable until such time as the amended exemption declaration form has been returned to the registrar or QI.

11.5 Description of Certification Chain

Where a distribution is to be made directly to an exempt shareholder by the company or by the AWA, the shareholder must provide evidence of entitlement to exemption to the company or the AWA. If the distribution is to be made through a QI, the evidence of entitlement to exemption must be given to the QI. That QI will then notify the company of the amount of the distribution to be received on behalf of exempt persons. Where a distribution is to be made to an exempt shareholder through a series of QIs, the evidence of entitlement of the shareholder to an exemption must be given to the QI from whom the shareholder will finally receive payment. In this case that QI will convey to the QI immediately above it, the amount to be received on behalf of exempt persons. That second QI will then convey details (of the amount of the distribution to be received by it which will ultimately be passed on to shareholders who are exempt) to the company. This chain approach applies through any number of intermediaries, provided that they are all QIs. If any intermediary in the chain is not a QI, withholding tax will apply. The only exception to this rule is American Depositary Receipts (ADRs), to which special arrangements apply (see paragraph 12).

Part F: American Depositary Receipts (ADR)

12. American Depository Receipts (ADRs)

12.1 American Depository Receipts (ADRs) - Background

ADRs are US dollar denominated securities issued by a Depository bank in the US and represent ownership of non-US shares. The procedure is that the Depository bank buys shares on the foreign markets (including Ireland), deposits them with a local custodian and then issues a corresponding number of ADRs to investors.

12.2 Simplified Procedures for ADRs

Certain investors who invest in Irish companies through American depository banks by way of ADRs can avail of a simplified procedure to allow for the receipt of dividend income without the deduction of DWT. The procedure is that a QI (see paragraph 10), being an American depository bank, is allowed to receive and pass on the dividend from the Irish company gross to:

- any person on whose behalf it is to receive such distributions, or on whose behalf it is to receive from another QI payments representing such distributions, provided the address of the person beneficially entitled to the distributions is recorded on the QI register of depository receipts as being located in the US.

- any specified intermediary (SI) [see paragraph 12.3] to which such distributions or payments (or amounts or other assets representing such distributions or payments) are to be given by the QI and are to be received by that SI for -

  - the benefit of persons who are beneficially entitled to such distributions or payments and whose address on that SI's register of depository receipts is located in the US,

  - any further SI who is receiving the distributions or payments (or amounts or other assets representing such distributions or payments) for the benefit of persons who are beneficially entitled to such distributions or payments and whose address on that further SI's register of depository receipts is located in the US.

This means that in the case of ADRs exemption can be granted on the basis that the share register address of the person beneficially entitled to the distributions is in the US. No declarations of exemption have to be completed by the shareholder in these cases nor have any certificates of tax residence to be provided.

Note: ADRs are explained in more detail in the references to sections 172E and 172F in the

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12.3 Specified Intermediary (SI) – general information [Section 172F TCA]

In order to facilitate this simplified procedure the legislation makes provision for an entity known as a **"specified intermediary"** (SI). In many respects an SI is similar to a QI but there are a number of significant differences. Amongst these are:

- A SI does not have to be authorised by Revenue.
- A SI does not have to enter into an agreement with Revenue and accordingly does not have to provide an auditor's report relating to the intermediary's compliance with an agreement.

However an SI does have to enter into an agreement with the QI (or with another SI if it receives distributions through that other SI) under which it undertakes to supply the QI or the other SI (for ultimate transmission to Revenue), or, if preferred supply directly to Revenue, returns showing details, such as name and address information and amounts of any distributions, or classes of distributions, which Revenue has asked for. Such information must be furnished by the SI within 21 days of the receipt of a notice requesting such information.

Revenue reserves the right to revoke the right of an SI to be treated as an SI for the purposes of the DWT scheme where they are satisfied that the SI has failed to comply with its obligations with regard to the DWT scheme and particularly the obligation to furnish details such as name and address information and amounts of any distributions, or classes of distributions which Revenue has asked for. Where revocation occurs, the intermediary will be notified in writing and the revocation will have effect from the date specified on that written notice. Revenue also reserve the right to inform any QI (being a depositary bank holding shares in trust for, or on behalf of, holders of ADRs) that the SI's authorisation to act as an SI has been revoked.

12.4 SI - Definition

The circumstances in which an intermediary is to be treated as a SI for the purposes of section 172F are set out in Section 172F(3)(e).

- The intermediary must not be a QI but must be a person within paragraph (a), (b), (c), or (d) of section 172E(4) [see last 3 dot points of paragraph 10.2 of this Tax Instruction] who is operating as an intermediary in an establishment situated in the United States of America [Section 172F(3)(e)(i) TCA 1997].
- Under [Section 172F(3)(e)(ii) TCA 1997], the intermediary must create and maintain an Exempt Fund and a Liable Fund for the distributions or payments representing distributions which it is to receive, on behalf of other persons, from a QI or another SI. These Funds must be created and maintained in accordance with [Section 172F(1) and (5) TCA 1997] as if the intermediary were a QI, but this requirement is subject to the rules of subparagraphs (iii) and (iv) below.

12.5 SI – Obligations

Section 172F(3)(e)(iii) TCA 1997

The intermediary must include in its Exempt Fund only —

- those persons who are beneficially entitled to the distributions or payments in question and who are ADR holders whose address on the intermediary's ADR register is located in the United States of America, and
- any further SI to which the distributions or payments are to be given by the intermediary and are to be received by that further SI for the benefit of persons included in that further SI's Exempt Fund.

Section 172F(3)(e)(iv) TCA 1997

The intermediary must include in its Liable Fund all its ADR holders except those included in its Exempt Fund.

Section 172F(3)(e)(v) TCA 1997

The intermediary must notify, in writing or by electronic means, the QI or the further SI from which it is to receive the distributions or payments as to whether the distributions or payments to be received by it are for the benefit of persons included in its Exempt Fund or persons included in its Liable Fund.

Section 172F(3)(e)(vi) TCA 1997

The intermediary must enter into an agreement with the QI or the further SI from whom it is to receive relevant distributions for its American depositary receipt holders. Under the terms of this agreement it must agree that if and when required to comply with section 172F (7A) TCA 1997 ("Information on recipients to be provided by QIs where distributions made through SIs") it will do so.

Section 172F(3)(f) TCA 1997

Where under the special arrangements for ADRs, a person is included in the QI's or SI's Exempt Fund and, apart from those arrangements, that person would not be a non-liable person in relation to distributions or payments representing distributions to be received on the person's behalf by a QI or a SI, then, the person is to be treated as a non-liable person in relation to those distributions. In effect, this dispenses with the need for the person to make a declaration of exemption as set out in Schedule 2A.

12.6 SI - Revenue Notices

[Section 172F(3)(g) TCA 1997]

Notwithstanding Section 172F(3)(e) TCA 1997 (which sets out the conditions for qualification as a SI) where Revenue is satisfied that a SI or other SI referred to in subsection (7A) has failed to comply with that subsection —

- Revenue may, by written notice, notify it that it will cease to be treated as a SI from such date as is specified in the notice, and
- notwithstanding “confidentiality obligations”, Revenue may make available to any QI (being a depositary bank holding shares in trust for, or on behalf of, the holders of American depositary receipts) or SI a copy of such notice.

[Section 172F(3)(h) TCA 1997]

Where subsequently Revenue is satisfied that the intermediary has furnished the information required under subsection (7A) and will in future comply with that subsection if and when requested to do so, Revenue may, by further written notice, revoke the notice given to the intermediary under paragraph (g) from such date as may be specified in the further notice, and a copy of that further notice must be given by Revenue to any person to whom a copy of the notice under paragraph (g) was given.

12.7 Information on recipients to be provided by QIs where distributions made through SIs –Section 172F(7A) TCA 1997

Special arrangements apply where a QI has been required by Revenue notice to make a return to Revenue under subsection (7)(a) and a relevant distribution, the details of which are required to be included in that return, has been given by the QI to a SI [Section 172F(7A)(a) TCA 1997].

In such circumstances, the QI must, immediately on receiving the notice under subsection (7)(a), request the SI, by way of written notice or in electronic format, to notify the QI or Revenue of the name and address of each person to whom the SI gave such a distribution and of the amount of each such distribution [Section 172F(7A)(b) TCA 1997].

The SI is required to furnish, within 21 days of the receipt of such notice, to the QI or, at the discretion of the SI, to Revenue, by way of notice in writing or in electronic format, the information so required [Section 172F(7A)(c) TCA 1997]

Where the SI furnishes the information so required to the QI, the QI is to include that information in the return required to be made by it under subsection (7)(a). If the information is furnished direct to Revenue by the SI, the SI must, by way of written notice or in electronic format, immediately advise the QI of that fact and the QI must then include in its return under subsection (7)(a) a statement to the effect that it has been so advised by the SI [Section 172F(7A)(d) TCA 1997)].

If any person to whom a SI gives such a distribution is another SI, the SI must, immediately on the receipt of such notice, request the other SI, by way of written notice or in electronic format, to notify the SI or Revenue of the name and address of each person to whom the other SI gave such a distribution and of the amount of each such distribution [Section 172F(7A)(e) TCA 1997].

Where this happens, the other SI must, within 21 days of the receipt of such notice, furnish to the SI or, at the discretion of the SI, to Revenue, by way of written notice or in electronic format, the information so required [Section 172F(7A)(f) TCA 1997].

Where the other SI furnishes the information so required to the SI, the SI must immediately transmit that information to the person (being the QI or Revenue) to whom it furnishes the information required to be furnished by it under paragraph (b) of this subsection [Section 172F(7A)(g) TCA 1997].

If that person is the QI, the QI must include that information in the return required to be made by it under subsection (7)(a). If that person is Revenue, the SI must immediately notify the QI, in writing or in electronic format, of the fact that the information required to be furnished by the other SI under paragraph (e) of this subsection has been furnished to the SI and transmitted by the SI to Revenue. The QI must then include in its return under subsection (7)(a) a statement that it has been so advised by the SI.

If the other SI furnishes the information directly to Revenue, it must, by way of written notice or in electronic format, immediately advise the SI of that fact, the SI must in turn, by way of similar notice or in similar format, immediately advise the QI of that fact and the QI must then include in the return required to be made by it under subsection (7)(a) a statement to the effect that it has been so advised by the SI.

Where the SI or the other SI furnishes information to Revenue in an electronic format, that format must be agreed in advance with Revenue [Section 172F(7A)(h) TCA 1997].

Part G: General Information

13. Statement to be given to recipients of relevant distributions [Section 172I TCA 1997]

Every Irish resident company which makes a relevant distribution, and every AWA which is treated as making a relevant distribution, is required to give each recipient of such a distribution a statement in writing showing the following details in relation to the distribution —

- the name and address of the company making the distribution,
- if an AWA is involved, the name and address of that agent,
- the name and address of the person to whom the distribution is made,
- the date the distribution is made,
- the amount of the distribution, and
- the amount of the DWT (if any) deducted from the distribution (subsection 1).

The requirement to furnish the statement under subsection (1) can be satisfied in the case of a statement that is delivered electronically to an intermediary, provided that the following conditions are met:

- the statement must contain the codes and unique number, as defined in section 172A(1)(a) for electronic vouchers. It must also have the date the distribution is made, the amount of the distribution and the amount of DWT (if any) deducted from the distribution,
- the intermediary must accept the electronic delivery, and
- the Revenue Commissioners must agree to the use of the electronic voucher (subsection 1A).

Under [subsection 2] the requirement to furnish the statement under subsection (1) can also be satisfied by including the information required on the dividend counterfoil issued in accordance with section 152(1) TCA 1997***.***

Under [subsection (3)] a person who fails to comply with subsection (1) is liable to a penalty of €200 for each failure, subject to a maximum penalty of €2,000 in respect of offences connected with any one distribution of dividends.

Note: certain arrangements with regard to this statement apply to relevant distributions on or after the passing of the Finance Act 2010 i.e. from 3 April 2010. ***Section 33 Finance Act 2010*** **now provides for electronic transmission of dividend statements to all recipients (but only if the recipient so elects) - previously the facility was confined to**

intermediaries only. Sections 172I and 172J(4) TCA are amended to give effect to this change

14 Section 172J TCA 1997 - Credit for, or repayment of, dividend withholding tax borne

Where a person, beneficially entitled to a relevant distribution, is within the charge to income tax for a year of assessment and has suffered DWT referable to that year of assessment, the person may claim to have the DWT set off against the person's liability to income tax for that year and, if the DWT exceeds that liability, to have the excess refunded.

If such a person is not within the charge to income tax, a claim may be made for a refund of the DWT deducted.

If such a person has suffered DWT in a year of assessment (individual) or in an accounting period (company) and is a non-liable person in relation to DWT, or would be such a person if the requirement to make the necessary declaration of exemption set out in Schedule 2A TCA had not been necessary, the person may claim a refund of DWT.

Claims for refund may be submitted, using the Dividend Withholding Tax Refund Claim Form (available under the Revenue Commissioner's web site www. revenue.ie - Forms/Claims) - and submitting it to Dividend Withholding Tax Unit, Office of the Revenue Commissioners, St. Conlon's Road, Nenagh, Co. Tipperary, Ireland.

All refund claims should be accompanied by:

- the original dividend voucher(s) [or a statement in electronic format in accordance with section 33(1)(d) Finance Act 2010] and/or subsidiary tax certificate(s).
- nominee companies will be required to furnish statements to the effect that they hold the relevant shares in a nominee capacity only.
- DWT Unit also require letters of authorisation from the underlying clients to the effect that the nominee companies are empowered to claim refunds of DWT on the clients' behalf.
- In order to establish entitlement to a refund, it will be necessary to provide a copy of the relevant certified composite non-resident form information.

15. Four Year Limit on Tax Repayment Claims (Section 865 TCA 1997)

Section 865 TCA 1997 (as inserted by section 17 Finance Act 2003) imposes a 4 year time limit on claims for repayment of tax. Therefore, claims for repayment of DWT withheld in a particular tax year must be submitted by the end of the fourth tax year after the tax year it was withheld, e.g. tax withheld in February 2012 must be received by Revenue no later than 31 December 2016.

16. Reporting of distributions made under stapled stock arrangements [Section 172L TCA 1997] – paragraph 6 refers

Stapled stock arrangements

Section 172L provides for the reporting of distributions made under stapled stock arrangements. A small number of Irish resident companies have arrangements with associated non-resident companies whereby shareholders can elect to take distributions either from the resident company or the non-resident company. These arrangements are generally referred to as “stapled stock arrangements”.

The circumstances in which a distribution will be treated as being made under a stapled stock arrangement are set out in this section. The circumstances are where a non-resident company makes a distribution to a person and the person has under any agreement, arrangement or understanding, whether made or entered into on, before or after 6 April, 1999, exercised (whether directly or indirectly) a right to receive distributions from the non-resident company instead of receiving relevant distributions from an Irish resident company and that right has not been revoked.

Returns of distributions made under stapled stock arrangements

Where a non-resident company makes distributions in any month under a stapled stock arrangement, the Irish resident company must make a return to Revenue within 14 days of the end of the month showing its name and tax reference number; the name and address of the non-resident company which made the distributions; the name and address of each person to whom a distribution was made in the month concerned; the date the distribution was made to that person; and the amount of that distribution.

Electronic returns

In general, the return must be made in an electronic format approved by Revenue. It must also be accompanied by a declaration made by the company concerned, on the prescribed or authorised form, to the effect that the return is correct and complete.

Written return acceptable in certain circumstances

If Revenue are satisfied that the company concerned has not got the facilities to make the return electronically, the return may be made in writing in a form prescribed or authorised for that purpose by Revenue. A written return must also be accompanied by a declaration made by the company concerned, on the prescribed or authorised form, to the effect that the return is correct and complete.

17. Deduction of dividend withholding tax on settlement of market claims [Section 172LA TCA 1997]

Summary

This section gives statutory backing, from 10 February 2000, to the administrative arrangements for dealing with DWT in the case of market claims, i.e. where dividends are incorrectly paid to a person due to delays in updating share registers. Thus, brokers and other intermediaries who are settling market claims are legally obliged to deduct DWT in all such cases where DWT was not deducted when the distribution was originally made, pay all amounts so deducted to Revenue, and make an annual return containing details of DWT so deducted during the previous tax year.

Definition

“stockbroker” is a member firm of the Irish Stock Exchange or of a recognised stock exchange in another country.

When a market claim is treated as arising

A market claim is deemed to arise where—

- a resident company has made a relevant distribution to a person (the “recorded owner”) on the basis of the information on the share register of the company at a particular date,
- it later transpires, as a result of an event (the “specified event”), being a sale or purchase of the shares or other securities in respect of which the relevant distribution was made, or another event or the failure to happen of another event in relation to those shares or securities, that another person (the “proper owner”) was actually entitled to receive the relevant distribution, and
- a person (an “accountable person”), being the relevant stockbroker who has acted for the recorded owner or, if the recorded owner is a QI or an AWA, that intermediary or agent, is obliged to pay the relevant distribution the proper owner or, as may be appropriate, to the stockbroker who has acted for the proper owner, which action is referred to as the “settlement of the market claim”.

Consequences of a market claim arising

Where a market claim arises, then, if DWT has not already been deducted from the relevant distribution made by the resident company to the recorded owner —

- the accountable person must, on the settlement of the market claim, deduct DWT out of the amount of the relevant distribution,

- the proper owner or, as may be appropriate, the stockbroker who has acted for the proper owner in the specified event must allow this deduction on receiving the residue of the relevant distribution, and
- the accountable person is acquitted and discharged of so much money as is represented by the deduction as if that amount of money had actually been paid to the proper owner or, as may be appropriate, the stockbroker who has acted for the proper owner in the specified event.

Settlement of market claims

The accountable person must, on the settlement of the market claim, give the proper owner or, as may be appropriate, the stockbroker who has acted for the proper owner in the specified event a statement in writing showing—

- the name and address of the accountable person,
- the name and address of the company which made the relevant distribution,
- the amount of the relevant distribution, and
- the amount of DWT deducted from the relevant distribution.

Payment of market claims to Collector-General

DWT so deducted by an accountable person must be paid by the accountable person to the Collector-General within 14 days of the end of the month in which that tax was required to be so deducted. DWT so due is payable without the making of an assessment, but DWT which has become so due may be assessed on the accountable person if that tax or any part of it is not paid on or before the due date.

Statement to accompany payment

Any such DWT payment must be accompanied by a statement in writing from the accountable person showing the name and address of the accountable person, the name and address of the company or companies which made the relevant distribution or distributions to which the payment relates and the amount of the DWT payment.

Returns for market claims

An accountable person must make a return to Revenue for each year of assessment (being the year of assessment 1999–2000 or any subsequent year of assessment) in which a market claim arises. The return, which must be made not later than 15 February following the year of assessment, must show the following details in relation to each market claim arising in that year:

- the name and address of the resident company which made the relevant distribution to which market claim relates

- the amount of that distribution, and
- the amount of DWT deducted from that distribution by the accountable person.

In general, the return must be made in an electronic format approved by Revenue. It must also be accompanied by a declaration made by the accountable person, on the prescribed or authorised form, to the effect that the return is correct and complete.

If Revenue are satisfied that the accountable person has not got the facilities to make the return electronically, the return may be made in writing in a form prescribed or authorised for that purpose by Revenue. A written return must also be accompanied by a declaration made by the accountable person, on the prescribed or authorised form, to the effect that the return is correct and complete.

18. Delegation of powers and functions (Revenue Commissioners)

The Revenue Commissioners may (section 172M TCA 1997) delegate their powers and functions under the DWT scheme to nominated officers. Consequently, if title to exemption from DWT is to be maintained, the certificates (if required) will have to be renewed at the end of such period. It should also be noted that if the qualifying non-resident person is a trust, the declaration of exemption must [paragraph 8(g) of schedule 2A] be accompanied by two certificates, namely, a certificate signed by the trustee or trustees of the trust showing the names and addresses of the beneficiaries and settlors of the trust and a certificate by the Revenue Commissioners certifying that the first certificate has been furnished to them and that they are satisfied that this is true and correct.

19. Administrative Practice – Certain Interest Payments Deemed to be Distributions under S.130(2)(d)(iv) TCA 1997, annual "return" where no DWT payment is due

In accordance with s130(2)(d)(iv) TCA 1997, certain interest payments are deemed to be distributions and thus are subject to DWT in the normal fashion.

There may be some limited instances where an interest payment is treated as a distribution, but no DWT is required to be withheld. This might occur for example in a corporate group situation where the recipients of the interest are companies that are not tax resident in the State, the EU, or countries with which Ireland has a Double Taxation Agreement (DTA), but where the corporate group parent is tax resident in a EU/DTA country (and not controlled by a person or persons who is or are resident in the State) and where the required DWT exemptions declarations (as set out in Schedule 2A TCA 1997) are in place. In such instances a monthly return would be required but no DWT would be payable.

In the interest of relieving the administrative burden that might arise in respect of submitting monthly DWT returns where there is a nil DWT liability, Revenue may agree to accept an annual DWT "return" in relation to interest payments in such circumstances. Such an annual DWT "return" should include all of the information that would otherwise be contained in the normal monthly DWT returns.

The administrative practice for submitting such an annual DWT “return” must be agreed with Revenue before the payer can cease their obligation to submit monthly DWT returns. Requests to avail of the administrative practice described here are to be sent to DWT unit in Nenagh. Such requests should provide all relevant information in respect of the interest payments, group structure etc. that would reasonably be required to make a decision on the matter.

Where it has been agreed by Revenue that an annual “return” can be made, this annual return should be filed on ROS within 14 days of the end of the month in which the accounting period of the company ends.

Please note that the facility for submitting an annual DWT “return” is to apply only where Revenue has agreed to this. This annual filing practice can only be granted in the case of nil liability DWT in the circumstances described.

20. Revenue offences and penalties

Section 1078 TCA 1997 includes in the list of “Revenue offences” failure to deduct DWT from relevant distributions and failure to pay DWT to the Collector-General and

Schedule 29 TCA 1997 renders liable to penalties a person who fails to make a DWT return or a resident company who fails to make a return of distributions made by an associated company under a stapled stock arrangement.

Further information is available on the Revenue website in “DWT Technical Guidance Notes”:

Queries in relation to DWT Returns and Repayments and any Technical questions may be made to DWT Unit, Office of the Revenue Commissioners, St. Conlon’s Road, Nenagh, Co. Tipperary, Tel 00 353 67 63400, Fax 00 353 67 33822 e-mail Refund Queries refunddwt@revenue.ie and all other enquiries infodwt@revenue.ie

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