



**Patent Royalties Withholding Tax
Non-Resident Declaration for the purposes of Section 238 TCA 1997**

Declaration to be completed by a Non-Resident Individual

1. To be completed by the Non-Resident Individual

Name of Individual:

Address of Individual:

Tax reference number in country of residence (where relevant)

- A. I declare that I am –
- not resident for the purposes of tax in Ireland,
 - not receiving a royalty payment in connection with a trade or business which is being carried on in Ireland through a branch or agency, and
 - tax resident in (insert name of country) which is a “relevant territory”¹.

B. I confirm that the Royalty Article of Ireland’s Double Taxation Agreement with (insert name of country) provides that Ireland does not impose a tax on royalties / imposes tax at a rate not to exceed % on royalties [please delete as appropriate]².

C. I declare that I am beneficially entitled to the royalty payment being made by ³ (insert name of company making the royalty payment) in respect of which this declaration is made.

D. I declare that I am entitled to relief under the Double Taxation Agreement (referred to in B.) in respect of the full royalty payment (referred to in C.).

E. I undertake that in the event that if there is any change in my circumstances I will inform, by written notice, (insert name of company making the royalty payment) immediately.

Signature of Individual:

Date:

D	D	M	M	Y	Y	Y	Y
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If you are attaching a Certificate of Residence [Form 6166] in lieu of having this form certified by the US tax authorities please enter this box⁴

If you are attaching a certificate of residence in lieu of having this form certified by the relevant Tax Authority please enter this box⁵

Please see section 2, certification by the Non-Resident’s Tax Authority, on the next page.

¹Refer to note 3.

²Refer to note 5.

³The company making the royalty payment should refer to Note 6 before making the payment.

⁴Refer to note 7.

⁵Refer to note 8.

2. To be completed by the Non-Resident's Tax Authority

I certify that the above named is a resident of (insert name of country) for the purposes of the royalty article of the Double Tax Agreement with Ireland.

The relevant tax reference number is

Signed:

Date:

OFFICIAL STAMP

Notes

The purpose of this declaration is to provide that the reliefs of the Royalty Article of Ireland's Double Taxation Agreements can be granted automatically without recourse to the Revenue Commissioners.

1. Conditions for Self-Certification to apply

The Self-Certification can only be made in the following circumstances:

- Absent the self-certification, the payment would be subject to withholding tax under the provisions of section 238 and the payment being made would not be entitled to an exemption from withholding tax under any other provision.
- The payee is:
 - a) an individual who is not resident in the State and the royalty payment is not being made in connection with a trade or business which is being carried on in the State through a branch or agency;
 - b) the beneficial owner of the royalty payment;
 - c) resident in a country with which Ireland has entered into a DTA and the DTA rate provided for under the Royalty Article of the DTA that will apply on payment of royalties to residents of the treaty partner is lower than 20%, and
 - d) entitled to relief under the DTA in respect of the royalty payment, such that any tax withheld would be fully, or partially, refundable.

2. Tax Residence

Whether an individual is tax resident status in Ireland depends on the number of days the individual is present in Ireland during a tax year.

A person is resident in Ireland for tax purposes if they are in Ireland for a total of:

- 183 days or more in a tax year
- or
- 280 days or more in a tax year plus the previous tax year taken together, with a minimum of 30 days in each year.

A day means any part of a day.

3. Relevant Territory

A "relevant territory" for the purposes of this declaration is:

- a country (other than Ireland) which is a member of the European Union,
- a country with which Ireland has a Double Taxation Agreement, or
- a country with which Ireland has entered into a Double Taxation Agreement which has not yet been ratified.

4. Double Taxation Treaties

For up-to-date information on the countries with which Ireland has a Double Taxation Agreement please refer to the Revenue website at: <https://www.revenue.ie/en/tax-professionals/tax-agreements/index.aspx>

5. Royalties Article

The Royalties Article of Ireland's Double Taxation Agreements is used to determine if tax is payable in Ireland in respect of royalty payments being made. The terms of the applicable Royalties Article will determine whether the royalties can be paid gross i.e. without deduction of withholding tax at 20% as required under section 238 TCA 1997 or whether the royalties can be paid at a reduced rate of tax stipulated in the relevant Double Taxation Agreement.

This is illustrated by the following examples:

1. The Royalties Article [Article 13] of the Double Taxation Agreement between Ireland and Sweden provides as follows:

“1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.”

Accordingly, in the case of royalty payments being made to an Individual beneficially entitled to the royalty payment who is resident in Sweden, no withholding tax is to be deducted on the royalty payment in Ireland and the royalty can be paid gross [i.e. without the deduction of withholding tax as required under section 238 TCA 1997] to the payee.

2. While the Royalties Article [Article 14] of the Double Taxation Agreement between Ireland and New Zealand provides as follows:

“1. Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 10% of the gross amount of the royalties.”

Accordingly, in the case of royalty payments being made to an Individual beneficially entitled to the royalty payment who is resident in New Zealand, withholding tax, at the rate of 10% [rather than suffering withholding tax at the rate of 20% as required under the provisions of section 238 TCA 1997] is required to be deducted on the royalty payment being made to the payee.

6. Company making the royalty payment

In advance of making the royalty payment either without the deduction of withholding tax or at a reduced rate of withholding tax the company making the royalty payment should refer to Tax and Duty Manual 08-03-06 <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-08/08-03-06.pdf> to ensure that all the conditions pertaining to the royalty payment have been satisfied.

7. Residents of the United States of America

Revenue acknowledge that residents of the United States of America may encounter difficulties having the Form 08-03-06 Patent Royalties certified by the US tax authorities therefore Revenue will consider a certificate of residence for United States tax purposes (Form 6166) acceptable in lieu of having the Form 08-03-06 Patent Royalties certified by the US tax authorities.

The Form 6166 and fully completed uncertified Form 08-03-06 Patent Royalties should be given to the person making the royalty payments. The Form 6166 must be valid as at the date of the declaration.

A Form 6166 is available from the Department of the Treasury, Internal Revenue Service, Philadelphia, PA 19255, USA.

Please go to www.irs.gov to apply for Form 6166.

8. Residents of the Treaty Partner jurisdictions where foreign tax administrations may not sign and stamp declarations

Revenue understands that there may be circumstances whereby foreign tax administrations may not sign and stamp declarations which facilitate the application of the withholding tax rate contained in a double taxation agreement between those jurisdictions and Ireland. In such circumstances, Revenue will consider a certificate of residence from the tax administration of the treaty partner jurisdiction which confirms that the non-resident person is resident in that jurisdiction for the purposes of the double taxation agreement in force between that jurisdiction and Ireland acceptable in lieu of having the Form 08-03-06 Patent Royalties certified by those Tax Authorities.

The certificate of residence and fully completed uncertified Form 08-03-06 Patent Royalties should be given to the person making the royalty payments. The certificate of residence must be valid as at the date of the declaration.

The Revenue Commissioners collect taxes and duties and implement customs controls. Revenue requires customers to provide certain personal data for these purposes and certain other statutory functions as assigned by the Oireachtas. Your personal data may be exchanged with other Government Departments and agencies in certain circumstances where this is provided for by law. Full details of Revenue's data protection policy setting out how we will use your personal data as well as information regarding your rights as a data subject are available on our **Privacy** page on www.revenue.ie. Details of this policy are also available in hard copy upon request.

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.