



LAW SOCIETY
OF IRELAND

Submission on a Dividend Withholding Tax Exemption for Investment Limited Partnerships

Department of Finance

16 June 2025

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About the Law Society

The Law Society of Ireland (the **Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland.

The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the *Solicitors Acts 1954 to 2015*. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council may delegate certain statutory functions. A separate organisation - the Legal Services Regulatory Authority - is responsible for regulating the provision of legal services by legal practitioners.

The Law Society delivers high-quality legal education and training and also places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

Introduction

The Law Society appreciates the opportunity to provide this submission to the Department of Finance (the **Department**).

We understand that the Irish financial services industry has called for Investment Limited Partnerships to be exempted from Dividend Withholding Taxes and that a proposal for the Minister for Finance is currently being progressed on this matter urgently by the Department. This submission aims to assist the Department in its consideration of this proposal. It is the position of the Law Society that that the Irish economy and overall investing landscape would strongly benefit from such an exemption.

Executive Summary

Dividend Withholding Taxes (**DWTs**) were introduced by the Finance Act 1999. The Finance Act 1999 is contained, in consolidated form, in Chapter 8A of Part 6 and Schedule 2A of the Taxes Consolidation Act 1997 (the **TCA 1997**).

Section 172C of the TCA 1997 confirms that a person shall be an "excluded person" for the purposes of DWT where the person is beneficially entitled to the distribution and falls within the list of entities identified in section 172C(2) of the TCA 1997. The definition of collective investment undertaking in section 172A of the TCA 1997 does not include Investment Limited Partnerships (**ILPs**).

It has been noted by the Department that the scope of the DWT exemption requires review and reform in order to strengthen the appeal of the ILP in Ireland. The Law Society supports this objective and would suggest exempting dividends paid to all regulated funds from DWT.

This could be introduced by adding ILPs to the list of “excluded persons” in section 172C(2) of the TCA 1997 to provide a DWT exemption for ILPs in all circumstances. Such an exemption would be consistent with the free movement of capital and EU non-discrimination practices.

In addition, we submit that:

- (a) No further tax needs to be levied where Ireland has already taxed the profits,
- (b) Where Ireland has not already taxed profits (say under a participation exemption) it is policy that no tax should be levied meaning it is counterintuitive to this policy to levy a DWT.

Furthermore, payments of dividends to other types of Irish regulated funds such as common contractual funds (**CCFs**) - which have the same tax transparent profile as ILPs - are exempt from DWT. The inclusion of ILPs in the exemption would avoid anomalous results that arise from the distinction between the two.

Finally, there are practical administrative advantages to including ILPs in the DWT exemption. At present, situations often arise where investors qualify for an exemption from DWT. Section 172D(3) of the TCA 1997 sets out the circumstances where a person shall be a “*qualifying non-resident person*” and confirms that DWT does not apply where the relevant distribution is made to a qualifying non-resident person beneficially entitled to it.

In order to be a qualifying non-resident person, the person, whether a company or otherwise, must be resident for the purposes of tax in that relevant territory. If such an exemption applies, the relevant partners must then each make a refund claim.

The inclusion of ILPs in the existing exemption under Section 172B of the TCA 1997 would relieve both the relevant partners and Revenue of this significant administrative burden.

Current Law

(a) Dividend Withholding Taxes

DWTs were introduced by Finance Act 1999 and the legislation is contained in Chapter 8A of Part 6 and Schedule 2A of the TCA 1997.

A DWT is defined as a sum representing income tax on the amount of the distribution at a rate of 25%. Section 172B of the TCA 1997 requires the deduction of DWT on relevant distributions to a “specified person”, i.e. the person to whom a relevant distribution is actually made whether or not that person is beneficially entitled to the distribution. As with other parts of the TCA 1997, in line with section 18(c) of the Interpretation Act 2005, a reference to a ‘person’ in the DWT provisions includes a reference to a partnership (including an ILP).

(b) “Excluded person” and “qualifying non-resident person”

Section 172C of the TCA 1997 confirms that a person shall be an “excluded person” for the purposes of DWT, where the person is beneficially entitled to the distribution and falls within the list of entities identified in section 172C(2) of the TCA 1997.

This list includes Irish tax resident companies and pension schemes as well as “collective investment undertakings” (defined for DWT purposes in section 172A of the TCA 1997), which are treated as beneficially entitled to the relevant distribution for DWT purposes. The definition of collective investment undertakings in section 172A of the TCA 1997 does not include ILPs.

Section 172D(3) of the TCA 1997 sets out the circumstances where a person shall be a “qualifying non-resident person” and confirms that DWT does not apply where the relevant distribution is made to a qualifying non-resident person beneficially entitled to it. In order to be a qualifying non-resident person, the person, whether a company or otherwise, must be resident for the purposes of tax in that relevant territory.

Many jurisdictions do not levy a DWT (for example, the UK) or otherwise have full tax exemptions for investment funds.

(c) Reform

In October 2024, the Minister for Finance published a (final) report entitled ‘*Funds Sector 2030: A Framework for Open, Resilient & Developing Markets*’ (the **Funds Review Report**).¹ The Funds Review Report sets out 42 recommendations across a wide range of areas to support growth in the funds and asset management sector.

The third recommendation of the Funds Review Report recommendeds that: “...*a package of measures is taken forward by the Tax Division of the Department of Finance to improve the attractiveness of the ILP. This should include ... a review of the scope of the DWT exemption.*”²

Rationale for Exemption Extension

There are a number of arguments in favour of introducing an exemption from DWT for ILPs. Such an exemption would contribute to ensuring that Ireland offers a comprehensive and competitive range of products for attracting EU and global private equity investment. The application of DWT to ILPs undermines the attractiveness of the ILP as an investment vehicle and hinders the free movement of capital.

DWT at 25% is a significant cost that is not typically incurred in private fund structures in other jurisdictions. Furthermore, where Ireland has taxed the profits, we propose no further tax needs to be levied; and where Ireland has not taxed them (say under a participation exemption) it is policy that no tax should be levied so it is counterintuitive to levy a DWT in this instance.

¹ Available at: <https://assets.gov.ie/static/documents/funds-sector-2030-a-framework-for-open-resilient-and-developing-markets.pdf>

² See Page 39.

Since other entities with tax-transparent profiles benefit from a DWT exemption, there is no policy justification for the exclusion of ILPs. Following the reclassification of the ILP from opaque to tax transparent in the Finance Act 2013, ILPs should benefit from a DWT exemption in a similar manner to entities such as CCFs.

Situations often arise where investors in Irish ILPs are resident in tax treaty partner jurisdictions or other jurisdictions that qualify them for a refund of DWT. The application process for such refunds places an unnecessary administrative burden on all parties involved. Revenue's willingness to grant concessions from the operation of DWT on dividends paid to partnerships where all the partners qualify for an exemption does little to alleviate this burden, especially where a new concession will be required if there is any change in the partnership.

Imposing DWT and then offering a reclaim means that investors may value the fund with a 25% haircut on the dividend return, even where it is repayable. This is because the fund typically reports its Net Asset Value excluding any tax refund available to shareholders.

Potential Issues with Introducing an Exemption from DWT for ILP – Outbound Payments Defensive Measures and Non-Compliance

Partners in an ILP are 'connected persons' under section 10 of the TCA 1997 and therefore issues may arise in respect of outbound payments defensive measures applicable to different partners. For this reason, we propose disapplying the connected party rule in respect of partnerships in an ILP as a regulated vehicle.

We believe that concerns regarding non-compliance may be assuaged by the fact that if any Irish resident investors are in receipt of returns from an Irish ILP, they will be fully assessable to tax and Revenue will be expressly notified of such in the Irish tax returns (including Foreign Account Tax Compliance Act, Common Reporting Standard and Anti-Money Laundering documentation and returns) filed by the ILP. Indeed, the Form ILPI could be amended to require inclusion of details of any distributions received by the ILP from Irish resident companies.

Consequently, extending the exemption from DWT to ILPs, in line with other Irish regulated funds, should pose no risk to the Irish Exchequer.

Concerns in relation to non-compliance could be further mitigated by the inclusion of a targeted anti-avoidance provision detailing that a DWT exemption will not apply where the main purpose or one of the main purposes of the arrangement is to enable those who are not exempt from DWT to receive dividends gross/without DWT.

Proposed Implementation Model

Regarding an approach that could be adopted to implementation, we propose that ILPs be included in the list of "excluded persons" in section 172C(2) of the TCA 1997 so as to provide a DWT exemption for ILPs in all circumstances. A minimum shareholding requirement could be included to limit the exemptions to cases where the paying Irish company was established by the ILP. We would also propose disapplying the connected party rule and introducing an

anti-avoidance provision for the reasons outlined above. Finally, it might also be worth considering an exemption from withholding tax on interest which is not available to CCFs but is available to other funds.

Potential Options for DWTs in Ireland

(a) Option 1 – maintain the existing position:

Doing nothing will mean that the ILP remains relatively unattractive to investors.

(b) Option 2 - introduce a provision to extend certain DWT exemptions to ILPs in circumstances where all underlying partners qualify for exemption:

Introducing a provision to extend certain DWT exemptions to ILPs in circumstances where all underlying partners qualify for exemption poses challenges in terms of administrative overload. This particularly applies when there are changes in membership and where the investors in the ILP are themselves investment funds that are transparent (such as other partnerships).

(c) Option 3 – introduce a provision to allow for ILPs to be treated in a similar manner to a Qualified Intermediary (QI) or Authorised Withholding Agent (AWA) for DWT purposes:

Introducing a provision to allow for ILPs to be treated in a similar manner to a QIs or AWAs for DWT purposes is unlikely to work in practice. AWAs and QIs are typically present for listed shares and operate under the control of securities clearing systems so rely on the legal and operational framework of such systems. They are not used, however, in other jurisdictions to manage tax obligations with respect to dividends paid to investment funds.

Imposing such obligations or requiring them to be created where they do not exist in relation to ILPs would facilitate making DWT exempt distributions to the ILP but it would not make the ILP more attractive given the additional cost, risk and compliance costs compared to other jurisdictions.

(d) Options 2 and 3:

The possibility that the income of the fund is allocated differentially to investors holding the same class of interest is deeply problematic. If, for example, an ILP has gross dividend income of 100 and 10% of investors are non-qualifying; under options 2 and 3 the fund will receive 90 after DWT. All investors share pro-rata in the income of the fund so there is potential for non-qualifying investors to get a disproportionate (for tax purposes) shares of the 90 of income.

A possible solution would be to have different classes of interests in the ILP (qualifying and non-qualifying) and to track different streams of income. This becomes administratively very difficult when considering how equalization arrangements and a changing investor base interact with the disconnect between accruals-based accounting and the imposition of DWT on a point in time basis.

As a result, anything other than a blanket exemption will result in an ILP (even if all investors claim and get a refund) appearing to have a return that is 25% lower than the same fund in a competitor jurisdiction and having a disproportionate administrative burden. The result would be a failure of the reform to achieve the objective of increasing the use of ILPs.

As a result, we consider that Options 1, 2 and 3 would be ineffective in achieving the policy objective and that Option 4 below is the only realistic option.

(e) Option 4 - introduce an exemption from DWT for ILPs:

On this basis and for the reasons outlined above, we strongly propose the inclusion of ILPs in the list of “excluded persons” in section 172C(2) of the TCA 1997 to provide a DWT exemption for ILPs in all circumstances, i.e. a similar treatment to a CCF.

Conclusion

We trust that the above proposals are of assistance to the Department in considering the potential for an exemption for ILPs from DWT.

We, in particular through members of our Taxation Committee, are happy to expand upon any aspect of this submission and are available to meet with the Department should that be of assistance to you.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie



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