DIVIDEND WITHHOLDING TAX (DWT)

Technical Guidance Notes for
Paying Companies
Authorised Withholding Agents (AWAs)
Qualifying Intermediaries (QIs)

June 2022

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. Introduction

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%.

The Irish resident company making the distribution is required to withhold the tax and pay it over to Revenue. However, 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 7.3** for 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 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 6** of this document. 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 necessary certification. Full details of how an exemption can be obtained can be found at **paragraph 8.**

Finance Act 2019 made two significant amendments to the DWT legislation. Firstly, it changed the rate of DWT to 25%, this continues to be classed as " a sum representing" income tax. This increase in the rate is effective from the 1st of January 2020. Secondly, the legislation requires that where a relevant distribution is made, a record must be obtained and kept of the "tax reference number" of the person(s) beneficially entitled to the distribution.. The obligation applies in respect of relevant distributions made on or after 1 January 2021. However, following the announcement in May 2020 to postpone the introduction of DWT real-time reporting, the obligation to obtain tax reference numbers is currently suspended

2. About this document

This document provides guidance, in general terms, on the principles of DWT, based on legislation in force on the date of publication. While every attempt has been made to make the guidelines as comprehensive as possible it is inevitable that issues will arise from time to time which are not covered. For advice and help on any such issues you should contact Revenue at the address in **paragraph 3**. Finally, you should read this document in conjunction with the legislation (see **paragraph 4**).

3. Contact information

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

DWT Section

Office of the Revenue Commissioners

Government Offices

Nenagh

Co. Tipperary

Ireland

Tel.: - +353-67-63105

4. Legislation

The legislation relating to DWT is contained in Chapter 8A of Part 6 of, and Schedule 2A to, the Taxes Consolidation Act, 1999. It was introduced in Section 27 of the Finance Act, 1999 and since then some minor changes have been made. Copies of the legislation can be purchased as follows: -

Government Publications Office

Address 52 St Stephen's Green, Dublin

Phone: 016476834

Email: publications@opw.ie

5. Types of distributions liable to DWT - relevant distributions

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/she received a distribution of an amount equal to the cash dividend, which the shareholder would have received if he/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 Revenue 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/she had not elected to take the shares instead of cash.
- Distributions in a non-cash form. 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%. 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/facilities for participators are to be regarded as distributions where these benefits are not benefits-in-kind. In one instance, the provision of free accommodation to an associate/participator of a company was deemed a relevant distribution. It was confirmed that the market value of the rent for the premises being provided was to be treated as the net distribution.

6. Distributions not liable to DWT

6.1 Specific types of distributions on which DWT is not payable.

- Distributions made to
  - (i) Ministers of the Government in their official capacity,
  - (ii) National Treasury Management Agency,
  - (iii) a Fund investment vehicle of which the Minister of Finance is the sole beneficial owner,
  - (iv) Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary,
  - (v) National Asset Management Agency,

  are specifically excluded from the scope of the DWT legislation. Hence, DWT is not to be deducted from such distributions and they are not to be included in returns made to Revenue.
- Distributions falling within the scope of EU Parent/Subsidiary Directive - No DWT is to be deducted from any distribution made by an Irish resident subsidiary to its parent in another EU Member State where such tax is prohibited under the EU Parent/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 AWA is obliged to make to Revenue within 14 days of the end of the month in which the relevant distribution is made. [N.B. Although Switzerland is not an EU member state, it will, with effect from 1st July 2005, enjoy similar treatment regarding dividends paid by an Irish resident company to its parent company (25% holding) resident in Switzerland.]
- Stapled Stock arrangements - Where the shareholders of an Irish resident company elects, 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 made out of profits or gains from the occupation of woodlands, and the profits of certain mines are not liable to income tax in the hands of the recipients in accordance with sections 140 and 142 of the Taxes Consolidation Act, 1997. Such distributions are also exempt from DWT and a beneficiary requires no composite resident/non-resident form. 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 Taxes Consolidation Act, 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 distribution.

6.2 Categories of persons exempt from DWT

6.2.1 Exempt Resident Persons (Excluded Persons)

The following categories of persons are excluded persons exempted from the DWT legislation (all legislative references refer to the Taxes Consolidation Act, 1997): -

- A company resident in the State.
- 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.
- A qualifying employee share ownership trust, which has been approved by Revenue.
- 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.
- A charity, which has been granted exemption from tax by Revenue.
- An amateur or athletic sports body which has been granted an exemption from tax by Revenue.
- A designated broker receiving relevant distributions as all or a part of the relevant income or gains of a Special Portfolio Investment Account (SPIA).
- 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.
- Irish Exempt Unit trusts within the meaning of Section 731(5)(a) TCA.
- Irish Person Retirement Savings Account administrators.

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(3)(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 at **paragraph (7.4)**) is the person beneficially entitled to the distribution, and has made the appropriate declaration of exemption to the company making the distribution (or, if the distribution is being paid to the excluded person through a QI, to the QI).

6.2.2 Exempt non-resident persons

In this and the remaining paragraphs of these guidance notes a reference to the term "relevant territory" means a Member State of the European Union other than Ireland or, not being such a Member State, a country with which Ireland has a double taxation treaty.

For a link to a list of EU Member States on the website: Website link to a list of countries with which Ireland has a double taxation treaty:

In addition to the excluded persons listed in paragraph 6.2.1, 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 that are 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.

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 has made the appropriate declaration of exemption with supporting certification to the company making the distribution. If the distribution is being paid to an exempt non-resident person through a QI or a chain of QIs, the declaration of exemption and supporting certification must be made to the QI from whom the dividend will be received by the exempt non-resident individual.

7. Main Participants and their obligations

7.1 Irish Resident Paying Companies.

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. Companies must file a return and pay DWT by the due date using the Revenue Online Service (ROS) facility.

7.1.1 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.

7.2 Company Registrars –

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

7.3 Authorised Withholding Agent (AWA)

The DWT legislation makes provision for an entity known as an AWA. The AWA can receive distributions from the paying company without the deduction of DWT regardless of whether the ultimate beneficiary is a liable or an exempt person. However the AWA then takes over the responsibility of the paying company as far as DWT is concerned. It must apply DWT, where applicable, when paying on the distributions to its clients, 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.

7.3.1 Obligations of an AWA under the DWT scheme

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 must operate the DWT scheme as if it were the company making the distribution. Thus, the AWA must make the appropriate deduction of DWT when it pays on the distributions, or amounts representing the distributions, and must account for that tax to Revenue by the 14th of the month following that in which the distribution is made by the company.

7.3.2 Criteria which must be met in order to become an AWA

In order to become an AWA, a person must be an intermediary (an intermediary is defined in the DWT legislation as a person who carries on a trade which consists of or includes: the receipt of relevant distributions from a company or companies resident in the State, or the receipt of amounts or other assets representing such distributions from another intermediary).

An AWA must also:

- 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, and
- hold (or be wholly owned by a person who holds) a banking licence in Ireland or in a relevant territory, or
- 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 an AWA, and, enter into an authorised withholding agent agreement with Revenue and be authorised by Revenue to act as an AWA.

7.3.3 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 accept any declaration or notification given to it in connection with the DWT scheme and to retain such declarations or notifications for the longer of 6 years, or the period ending 3 years after it has ceased to receive distributions on behalf of the person who made the declaration or gave the notification.
- to exercise a duty of care and verification in relation to such declarations and notifications;

- to make available for inspection declarations of exemption and notifications made to the intermediary in connection with the DWT scheme;
- to operate the DWT scheme, including the making of returns to Revenue, in a correct and efficient manner,
- to pay to Revenue any DWT required to be included in such returns;
- to provide to Revenue an auditor's report on its compliance with the DWT scheme after it has been operating the AWA agreement entered into with Revenue for one year and to provide further auditor's reports when requested to do so by Revenue.
- to allow verification of its compliance with the DWT scheme by Revenue in any manner considered appropriate by Revenue.

Under the terms of the agreement, Revenue allows an AWA to notify paying companies of its status as an AWA and on foot of that notification to receive distributions without the deduction of DWT regardless of whether the ultimate beneficiary is a liable or an exempt person. (However the AWA then takes over the responsibility of the paying company as far as DWT is concerned and must deduct DWT, where applicable, when paying on the distribution to its clients, pay this DWT over to Revenue and make returns to Revenue).

An up-to-date list of currently-authorised AWAs can be found on the Revenue website

7.3.4 Applying to become an AWA

An application form is available from DWT Section on request (see **paragraph 3**). A copy of the application form can be downloaded at http://www.revenue.ie/en/companies-andcharities/documents/dwt/dwtawa00.pdf

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 form should be signed on both sides by the representative of the intermediary applying for authorisation. The reverse side of the form should bear an official stamp of the intermediary.

7.3.5 Length of Authorisation Process

Where the 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 posted to the intermediary plus a copy of the AWA agreement countersigned by Revenue.

7.3.6 Period of validity of AWA authorisation

The AWA 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, AWA agreement, nor does it prevent Revenue from authorising the intermediary as an AWA for a further 7-year period. However Revenue reserve the right to revoke an AWA's authorisation at any time where they are satisfied that the AWA has failed to comply with the AWA agreement or is otherwise unsuitable to be an AWA.

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.

7.4 Qualifying Intermediary (QI)

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.

7.4.1 Criteria for becoming a QI

In order to become a QI, an intermediary must:-

- be resident in Ireland,
- if not resident in Ireland, be resident for tax purposes in a relevant territory ,
- hold (or be wholly owned by a person who holds) a banking licence in Ireland or in a relevant territory, or
- 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,

and, enter into a QI agreement with Revenue and be authorised by Revenue to act as a QI.

7.4.2 QI agreement

Before an intermediary can be authorised to act as a QI it must enter into a QI agreement with Revenue. Under the terms of the QI agreement, the intermediary undertakes:-

- to operate the DWT scheme (including the making of returns to Revenue) in a correct and efficient manner,
- to accept any declaration or notification given to it in connection with the DWT scheme and to retain such declarations or notifications for the longer of 6 years, or

the period ending 3 years after it has ceased to receive distributions on behalf of the person who made the declaration or gave the notification,

- to exercise a duty of care and verification in relation to such declarations and notifications,
- to make available for inspection declarations of exemption and notifications made to the intermediary in connection with the DWT scheme;
- to provide to Revenue an auditor's report on its compliance with the DWT scheme after it has been operating the QI agreement entered into with Revenue for one year and to provide further auditor's 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. 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.

An up-to-date list of currently-authorised QIs can be found on the Revenue website

7.4.3 Applying to become a QI

An application form is available from DWT Section on request (**see paragraph 3**). A copy of the application form can also be downloaded at http://www.revenue.ie/en/companiesand-charities/documents/dwt/dwtqia00.pdf

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 form should be signed on both sides by the representative of the intermediary applying for authorisation. 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.

7.4.4 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 posted to the intermediary plus a copy of the QI agreement countersigned by Revenue.

7.4.5 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 is to be found at http://www.revenue.ie/en/companies-andcharities/documents/dwt/attorney.pdf

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.

7.4.6 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.

7.4.7 Obligations of a QI

A QI, which is to receive, on behalf of its clients, relevant distributions made by a company resident in Ireland, or amounts representing such distributions paid on to it by another QI, is required to maintain two separate funds in relation to such distributions and amounts, an “Exempt Fund” and a “Liable Fund”. 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.
The Liable Fund is to include the remainder of the QI's clients.

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.

7.4.8

Recognised qualifying intermediaries.

Finance Act 2020 introduced section 172FA which provided for Recognised qualifying intermediaries. This is relevant in situations where distributions are made though a qualifying intermediary which is also a recognised clearing system. A recognised qualifying intermediary is a qualifying intermediary that is also a recognised clearing system or is a qualifying intermediary that is also a person wholly owned by a recognised clearing system. The definition of recognised clearing system is contained in s246A(2)(a).

Since a recognised qualifying intermediary, must be a qualifying intermediary it must —
• be resident for tax purposes in the EU or in a tax treaty country,
• enter into a qualifying intermediary agreement with Revenue, and • be authorised by Revenue as a qualifying intermediary.
In addition, the intermediary must —
• hold (or be wholly owned by a person who holds) a banking licence in an EU Member State or a tax treaty country,
• be a member of a recognised stock exchange in the EU or in a tax treaty country, or
• be a person whom Revenue considers suitable to be a qualifying intermediary.

A recognised qualifying intermediary is subject to the obligations of a qualifying intermediary as set out in the guidance notes to section 172F.

Recognised qualifying intermediary – conditions

A number of conditions must be satisfied if a person is to be a recognised qualifying intermediary. Firstly, the person must be a qualifying intermediary and must therefore satisfy the conditions to be a qualifying intermediary as set out in the guidance notes to section 172E. Secondly, the person must also be a recognised clearing system, within the meaning of section 246A(2)(a) or a person who is wholly owner by a recognised clearing system, within the meaning in section 246A(2)(a). These systems are listed in the definition in section 246A. (1) Exemption from DWT for relevant distributions received by recognised qualifying intermediaries DWT does not apply where relevant distributions are received by a recognised qualifying intermediary and paid to an authorised withholding agent or another recognised qualifying intermediary, so long as the recognised qualifying intermediary has obtained a notice in writing from the authorised withholding agent or the other recognised qualifying intermediary that it is an authorised withholding agent or a recognised qualifying intermediary in relation to those distributions.

8. Description of Exemption process

8.1 Documentation

As mentioned earlier, 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 and are contained at the following links on the Revenue website, For Irish residents:

http://www.revenue.ie/en/companies-and-charities/documents/dwt/dwt-res-v3.pdf

https://www.revenue.ie/en/companies-and-charities/documents/dwt/eut-exem.pdf

http://www.revenue.ie/en/companies-and-charities/documents/dwt/dwt-prsa-exe.pdf

For non-residents:

http://www.revenue.ie/en/companies-and-charities/documents/dwt/dwt-non-res-v2a.pdf for individuals, or, http://www.revenue.ie/en/companies-and-charities/documents/dwt/dwt-non-res-v2b.pdf for companies, or, http://www.revenue.ie/en/companies-and-charities/documents/dwt/dwt-non-res-v2c.pdf for groups of persons not being a company.

In the case of qualifying non-resident persons, the declaration must, where appropriate 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.

A declaration made by a non-resident company which is claiming the exemption on the basis that it is either:

- resident for tax purposes in a relevant territory and is not under the control, whether directly or indirectly, of a person(s) resident in Ireland,
- ultimately controlled by persons resident for the purposes of tax in a relevant territory, or,
- a company, the principal class of shares of which, or, of a company of which it is a 75 per cent subsidiary, and is substantially and regularly traded on a recognised stock exchange in a relevant territory, or
    - a company which is wholly owned by two or more companies, and each of whose principal class of shares is substantially and regularly traded on one or more recognised stock exchanges in a relevant territory.

(N.B. There is no strict legal definition of 'recognised stock exchange', however, Revenue is of the view that if reference is made to the particular stock exchange in publications such as the Financial Times or the Wall Street Journal, then provided that stock exchange is located in a relevant territory, it can be deemed to be 'recognised' for the purposes of DWT.)

8.2 Period of validity of exemption forms.

Exemption declarations for **resident (excluded) 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.

8.3 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/her shareholdings split between a number of QIs, then one declaration per QI is required.

8.4 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/QI.

8.5 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 9**).

9. American Depositary Receipts (ADRs).

9.1 Background

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

9.2 Simplified Procedures for ADRs

Certain investors who invest in Irish companies through American depositary 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 7.4**.), being an American depositary 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 depositary receipts as being located in the US.
- any specified intermediary (SI) 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 depositary 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 depositary 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.

9.3 Specified Intermediary

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:

- an SI does not have to be authorised by Revenue.

- an 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 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.

Part B - Specific Technical Questions

10. Commentary

Since the introduction of DWT, various technical questions have been raised by intermediaries with regard to how DWT might impact on their clients. The following is a list of those questions which have arisen most frequently and the relevant replies. This list will be updated from time to time as further technical issues arise.

Technical Questions of particular interest to Paying Companies

10.1 How do non-resident trusts get exemption from DWT?

In the case of a trust, the person on the share register or on the intermediary's records will normally be the trustee. Eligibility for exemption will depend on the type of trust involved. In the case of discretionary trusts, it is in order to treat the trustee as being beneficially entitled to the dividend. Consequently, non-resident trustees of a discretionary trust, who are resident in a relevant territory may make a declaration of exemption to gain exemption from DWT. It should be noted that the declaration of exemption must be accompanied by a certificate from the trustees containing information regarding the settlors and beneficiaries of the trust.

In the case of non-discretionary trusts, the trustee will not be beneficially entitled to the dividend. Consequently, the trustee would not be in a position to make a declaration in order to claim exemption. Neither would the beneficiary be in a position to make a declaration as he/she would not appear on the company's or the intermediary's record as the shareholder. In the circumstances DWT will apply to the dividends paid to such trusts unless the trustee is a QI. The ultimate underlying beneficiaries if so qualifying, can apply for a refund of DWT.

10.2 How are non-resident mutual funds treated under the DWT Scheme?

Mutual Funds may be regarded as being beneficially entitled to the distributions they receive on behalf of the unit holders and Revenue will not "look through" such funds. Thus, provided that non-resident "mutual funds" meet the necessary conditions they will be entitled to an exemption from DWT.

The necessary conditions are residence of the fund for the purposes of tax in a relevant territory if the fund is a non-corporate entity or, if the fund has corporate status, that it is resident in a relevant territory and not controlled by Irish residents, or that it is ultimately controlled by residents of relevant territories, or that its principal class of shares is substantially and regularly traded on one or more stock exchanges in a relevant territory etc.

10.3 How are co-operative societies and friendly societies, resident in Ireland, treated under the DWT Scheme?

These societies are deemed bodies corporate. However, they are not registered in Ireland in the Companies Office but with the Registrar of Friendly Societies. As a body corporate, a society is within the meaning of "company" for corporation tax purposes and, thus can obtain exemption from DWT on completion of a declaration of exemption. It should also be noted that a payment of share interest or loan interest by such a society is not treated as the payment of a distribution by the society and, thus, is not liable to DWT.

10.4 Are capital distributions made by liquidators to companies liable to DWT?

No. They do not meet with the definition of a "relevant distribution" for the purposes of the DWT scheme.

10.5 How are distributions to be paid to Irish semi-state bodies to be treated for the purposes of DWT?

Where those bodies are deemed to be corporate entities, they are entitled to an exemption from DWT on completion of a declaration of exemption.

10.6 How are interest payments, which are treated as distributions to be dealt with under the DWT scheme?

Where interest, paid by an Irish-resident company to its non-resident parent, and which is treated as a distribution under Section 130(2)(d)(iv) of the Taxes Consolidation Act, 1997, is nonetheless allowable as a deduction in computing the company's trading income, and the recipient of the interest is a qualifying non-resident person under Section 172D(3) of the Act, the return which falls to be made under Section 172K of the Act may be made on an annual basis, within 14 days after the end of the month in which the accounting period of the company ends. However, where the interest payments are not tax-deductible, the return and payment must be filed by the due date.

10.7 How far must one look in considering whether a company, seeking an exemption from DWT, is controlled by persons resident in a relevant territory?

Where the company seeking the exemption is the last link in a chain of companies, then it is necessary to follow the chain of companies to the "opposite end". For example:- a company resident in a EU country, other than Ireland, (second EU country) received a dividend from a company resident in Ireland; the company in receipt of the dividend is controlled by a company resident in a third EU country; the company resident in the third EU country is controlled by a company in a fourth EU country;

this latter company is controlled by a company resident outside the EU in a country with which Ireland does not have a double taxation treaty.

In this case, whereas every controlling company other than the latter company is controlled by a company situated in a EU country other than Ireland, the question of whether any of these controlling companies can obtain an exemption from DWT in respect of dividends paid by the Irish company depends on whether or not the latter company is controlled by persons resident in a relevant territory.

It should be noted, however, that the requirement to deduct DWT from distributions could be set aside in the case of distributions made by an Irish subsidiary to a parent company under the EU Parent/Subsidiaries Directive. This relief is subject to Section 831(6) of the Taxes Consolidation Act, 1997, which provides that if the parent company is ultimately controlled by persons who are not resident in a EU country other than the State or a territory with which Ireland has a double taxation treaty, then, unless it is shown that the parent company exists for bona fide commercial reasons and does not form part of a scheme to avoid liability to income tax, DWT, Corporation Tax or Capital Gains Tax, DWT will apply to distributions made to the parent company by the Irish subsidiary.

10.8 How are Irish credit unions treated for the purposes of DWT?

Dividend payments made by Credit Unions resident in Ireland are not deemed to be relevant distributions and thus are not subject to DWT. Credit Unions as shareholders in Irish resident companies can gain exemption-at-source from DWT by completing Part A of the Composite Resident Form as they are deemed to be bodies corporate.

10.9 Can a Company that has made a distribution and paid over DWT to Revenue claim a credit for this amount against its Corporation Tax liability?

No. Dividend Withholding Tax (DWT) replaced Advanced Corporation Tax with effect from 6 April 1999. DWT is a tax on the shareholder rather than on the company making the distribution. A company cannot offset DWT deducted from its shareholders, against its own liability to Corporation Tax.

10.10 Can a Company that has suffered DWT as a shareholder in another Irish Paying Company claim a refund of this amount?

Yes. Where a company has suffered DWT in its capacity as a shareholder, and where proof of the Company's entitlement to a refund has been forwarded, Section 172J(3) of the Taxes Consolidation Act, 1997 allows for the amount of the DWT to be refunded to the company.

10.11 Can an overpayment of Corporation Tax by a company be offset against that company's (i.e. being an Irish Paying Company) payments to Revenue of DWT?

Depending on the particular circumstances, a request for such an offset may be considered.

10.12 What happens if family members hold shares jointly, but some of the family members are resident in Ireland and others are resident in a relevant territory?

In this case, DWT must be deducted from the entire distribution, with those family members who are resident in a relevant territory claiming a refund. The question of establishing the level of ownership by individual persons in a joint ownership arrangement may be problematic. It is suggested that any claims for refunds should be supported by a statement indicating the level of beneficial entitlement to the dividends.

10.13 What should happen if a Notice of Death is received for the beneficial owner of an exempt account?

Once a Notice of Death is received on an account that has an exempt status, the exempt flag must immediately be removed from that account. The reason for this is that the 'title' no longer vests in the deceased. Fresh declarations will be required to establish a new exempt flag (if any) depending on how the estate is administered.

10.14 What procedure should be followed regarding changes to a shareholder's address?

If a shareholder changes address from a relevant territory back to Ireland <u>for correspondence purposes only</u>, then that shareholder (provided they remain to be a qualifying non- resident person for the purposes of DWT) should forward an explanatory note for association with their previously submitted Composite Non-Resident Form. Their shareholding may continue to be flagged as exempt, however, a list of such cases should be readily available to the DWT Section for possible further investigation.

If a shareholder changes address from a relevant territory to Ireland, then their shareholding must be flagged as liable.

If a shareholder changes address from a relevant territory to a non-relevant territory other than Ireland, then their shareholding must be flagged as liable. However, if the shareholder is a non-resident company and its external auditor is in a position to certify a new composite non-resident form i.e. if that company is controlled by persons resident in a relevant territory, then exemption can continue.

If a shareholder changes address moving within a relevant territory, then their shareholding can remain flagged as exempt, however the shareholder should provide an explanatory letter for association with the Composite Non-resident form or equally they can provide a newly completed composite non-resident form, certified by the new Tax District.

10.15 Can an Irish-resident company, which is in members' voluntary liquidation, have its exemption declaration signed by its liquidator?

Yes.

10.16 Can a holding company, which has a significant number of subsidiary companies, complete one exemption declaration in respect of these subsidiaries?

No. A separate declaration is required for each subsidiary.

10.17 Is an interest payment and a capital growth on a debenture deemed to be a distribution?

The interest payment is not a distribution but the capital growth on the redemption of the debenture would be a distribution.

10.18 What are the obligations of an Approved Profit Sharing Scheme (APSS) in relation to DWT?

For an Irish Resident APSS: The trustees of the scheme are liable to DWT. The trustees will receive net distributions from paying companies/AWAs/QIs and must pass on net dividends to the participants in the scheme.

For a non-resident APSS: Equally, where the scheme is non-resident, and where the dividends are passed on immediately to the beneficiaries i.e. no period of retention, then the Trustees of the Scheme are viewed as intermediaries and because they are not Q.I.s DWT must be deducted on the entire account. Refunds of DWT can be sought from our International Claims Section, for any qualifying non-resident participant of the scheme.

10.19 Is the interest on an inter-company loan to an associated company in a relevant territory liable to DWT?

If the interest is deemed to be a distribution for the purposes of DWT, then DWT must be deducted where the associated company is a liable person. Where the associated company is an exempt person, DWT should not be deducted. In either event, a DWT return must be made to Revenue by the paying company.

10.20 Can an Irish Limited Partnership be exempt from DWT?

No, an Irish Partnership is deemed by Revenue to be a “look-through” entity. The individual partners, rather than the partnership, are considered to be beneficially entitled to the dividends received by the partnership. Therefore, the Partnership is viewed as an intermediary and because this intermediary is not a Q.I. DWT must be deducted on the account. However, if the individual partners can fall into a qualifying resident category, then a refund can be pursued.

10.21 What happens where shares in an Irish company are held by an agent as “bare nominees” on behalf of an investor company resident in a relevant territory?

The agent would have to become an authorised QI so that the investor company might receive gross dividends from the Irish company. If the agent does not meet the criteria for becoming a QI, then the investor company would have to suffer DWT and claim a refund of same.

10.22 Is an individual who is not resident in Ireland, but is ordinarily resident in Ireland liable to DWT?

Yes.

10.23 Is an individual who is neither resident nor ordinarily resident in Ireland and who is not resident in a relevant territory, liable to Irish income tax on dividend income received from an Irish paying company?

Yes, but the liability to tax is limited to the amount of DWT already deducted.

10.24 What are the taxation rules for a person in receipt of a dividend from a REIT company?

The general DWT provisions apply to distributions from a REIT company. Therefore, an Irish resident individual will have DWT deducted on distributions. An Irish resident "excluded person", such as a company, pension scheme or charity, may receive distributions gross, subject to completion of the appropriate exemption declaration form.

Non-resident persons are subject to DWT on distributions from a REIT as Section 41 Finance Act 2013 dis-applied the provisions of subsections (2) and (3) of Section 172D TCA. However, non-resident investors who are resident in countries with which Ireland has a Double Taxation Agreement (DTA) or treaty may be able to reclaim some of the DWT, if the relevant tax treaty permits.

10.25 Are investors in Exchange Traded Funds (ETF) subject to DWT on their income?

No. Investors in funds/investment undertakings are subject to exit tax and not DWT. For information please see https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-27/27-01a-03.pdf

Technical Questions of particular interest to Qualifying Intermediaries

10.26 Will Revenue require an intermediary in all cases to provide a bond or guarantee in order to be authorised as a QI?

No. The Revenue reserves the right to request security from intermediaries. However, each case will be considered on its merits and the amount and format of security to be provided will be determined on the basis of the risks involved.

10.27 What happens if the terms of a QI agreement change?

Since the terms of an agreement are enshrined in legislation, there is always the possibility that these terms will change by way of legislative amendment. In such circumstances, then it will be necessary to amend the existing agreement. In some cases, it may be possible to amend the agreement by way of a codicil, which could amount to a short statement outlining the change in terms, and indicating by way of signature, the acceptance of the changed terms by both the QI and Revenue. If there are significant changes to the terms, it may, in fact, be necessary to draw up a new agreement for signature by both parties. An example of where a new agreement would be necessary is where two QIs decide to merge. The new merged entity would have to seek a new QI authorisation.

10.28 What happens if an intermediary does not wish to be authorised to act as a QI?

If an intermediary does not wish to become a QI, then it will not be entitled to receive distributions gross on behalf of its exempt clients. In the circumstances, DWT will be deducted from all relevant distributions made by Irish resident companies to the intermediary, whether made directly to the intermediary by the paying company or through a QI or an AWA.

10.29 Can an intermediary "act" as a QI, even though it cannot be granted QI status by Revenue?

No.

10.30 How are the following entities dealt with under the DWT scheme?

Irish-registered Unit Trusts - these may be Collective Investment Undertakings, if they are so approved by the Irish Central Bank. If that is the case, Part D of the Composite Resident Form may be used in order to gain an exemption from DWT.
Irish-registered Designated Variable Capital Companies - if resident for tax purposes in the State, then an exemption from DWT can be obtained by completing a declaration of exemption.

Irish-registered UCITS (Undertakings for Collective Investment in Transferable Securities) - as for Irish-registered Unit Trusts.

Luxembourg SICAVs - If these are corporate entities, exemption can be obtained on completion of the appropriate declaration of exemption.

Belgian SICAVs – as for Luxembourg SICAVs

French SICAVs – as for Luxembourg SICAVs

Luxembourg FCPs - these entities do not have corporate status but, as an unincorporated body of persons, could claim exemption on completion of the appropriate declaration. The declaration must be accompanied by a certificate of tax residence from the Luxembourg tax authorities. As these entities are "look-through" entities for the purposes of Luxembourg tax laws, the Luxembourg authorities may not be prepared to provide the normal certificate of tax residence. If this occurs, a certificate from the Luxembourg authorities to the effect that the FCP is managed in Luxembourg, that is, that the trustees or the managers of the FCP are resident in Luxembourg, will suffice for exemption purposes.

French FCPs – unlike Luxembourg FCPs, it is understood that the French tax authorities are in a position to issue certificates of tax residence, which should facilitate the completion of DWT exemption declarations

UK Authorised Unit Trusts – see 10.2 above

UK Unauthorised Unit Trusts – ditto

UK Pension Fund Pooled Schemes – ditto

UK Common Investment Funds – ditto

UK Collective Investment Schemes – ditto

UK Executor Accounts – ditto

US Limited Liability Companies (LLCs) – if of a corporate nature and taxed in its own right i.e. not 'look-through', exemption can be made by completing Form V2B.

Open-Ended Investment Companies (OEICs) - the investor base in such companies may change constantly, and it can be difficult to monitor the residence status of the investors. An exemption declaration can be made that accurately reflects the then current status of the company and providing the company has no reasonable grounds to believe that control is likely to pass to Irish-resident investors. However, this situation should be monitored by the company, and any changes notified to paying companies, AWAs and QIs. If of a corporate nature, exemption can be made by completed a Form V2B.

Irish-resident trusts - the only Irish-resident trusts in respect of which DWT exemptions can be obtained are:-

Qualifying Employee Ownership Trusts;

Retirement annuity/life assurance schemes organised as trusts;

"Qualifying trusts" within the meaning of section 189A

In all other cases, Irish-resident trusts are liable to DWT.

10.31 How are Regulated Investment Companies (RICs) to be dealt with for the purposes of DWT?

RICs are open-ended or closed-ended mutual funds which, despite their name, are not corporate entities as such. Where RICs are resident in a relevant territory, they may obtain exemptions from DWT on completion of Part C of the Composite Non-Resident Form.

10.32 What impact do the Luxembourg Laws of 31 July, 1929 have on the DWT scheme?

"1929 holding companies" are Luxembourg resident companies, the purpose of which is the acquisition of participations, in any form, in other Luxembourg or foreign companies, and the management of these participations.

The 1929 companies cannot receive dividends from Irish subsidiaries free of DWT under the EU Parent/Subsidiaries Directive as, not being subject to the local "impôt sur le revenu des collectivités", they are not companies within the scope of the Directive.

Furthermore, Article 29 of the Ireland/Luxembourg Double Taxation Agreement (DTA) specifically excludes the 1929 companies from any treaty benefit under this DTA.

However the 1929 companies may claim exemption from DWT on the basis that they meet the residence or control tests outlined at **paragraph 6.2.2**. provided that they can provide the appropriate declaration of exemption described in **paragraph 8.1.**

10.33 What should be done if completed exemption declarations are mislaid or destroyed?

New declarations should be made.

10.34 How are "pooled pension funds" to be dealt with, where participation in the pooled fund is limited to pension funds which would otherwise be qualifying non-resident persons?

An exemption declaration should be made by, or on behalf of, the pooled pension fund. There is no need for a full list to be provided of the participating pension funds where these funds would be entitled to seek exemption at source in their own right. Where the declaration is being made by a bank on behalf of the pooled pension fund, the fund should, if possible, bear the name of the bank concerned to avoid any concern relating to the right of the bank to make the declaration.

10.35 Must the powers of attorney required by QIs from nominee companies be both sealed and signed by authorised signatories?

In certain circumstances, the powers of attorney may not require a seal, but they must always be signed by authorised signatories.

10.36 Can an exemption declaration be accepted from a client in respect of that clients' own underlying clients?

Yes, but only where the client has power of attorney from the underlying clients to make the declaration on their behalf.

10.37 How are non-resident PEPs, ISAs and SIPs to be treated for the purposes of DWT?

The company which manages the fund is considered to be beneficially entitled to the relevant distributions received in respect of the fund. Therefore, it is appropriate for the declaration to be made at fund manager level.

10.38 Can an intermediary, which cannot become a QI, open sub-accounts with a QI in order to received relevant distributions from that QI?

Yes, but distributions can only be paid net to the intermediary, regardless of the fact that the intermediary's clients may, in fact, be entitled to exemption at source from DWT.

10.39 Can an offshore "umbrella fund" with related sub-funds apply for exemption from DWT?

Yes, provided that the Composite Non-Resident Form is completed appropriately, usually at fund manager level and lodged with the relevant person. There is no need for the "umbrella fund" to become a QI. Instead an appendix to the composite non-resident form is provided showing the name, address and tax reference number of the overall fund, followed by a list of the name & tax reference number of each sub-fund. This appendix must contain suitable wording that confirms residency of the overall fund and each subfund and must be certified by the relevant Tax Authority. It must also show the name and rank of the certifying Tax Official and the certification must be dated.

10.40 Can an intermediary become a QI in respect of a portion of their clients, and remain unauthorised for the balance?

No.

10.41 Can exemption declarations be transferred from one QI to another, where the latter QI has acquired the former QI?

No. New declarations must be obtained in respect of the latter QI.

10.42 If a QI incorrectly informs a paying company or AWA that a client should have been paid gross rather than net, is the QI responsible for collecting and returning to Revenue the DWT which should have been deducted?

Yes.