

1. State the name of the organisation you represent (if applicable).

Law Society of Ireland

2. Who are you:

Other - please specify

Representative Body

3. Are you making a submission in relation to the proposals for a:

Both DW & SP (for tax professionals, representative bodies, RCT middle principals)

4. Please tick the sectors that apply to you:

Legal

5. After reading about the proposed new eWHT system, how would you describe your overall reaction?

Somewhat negative - I have some concerns about aspects of the proposal

6. What aspects of the proposed model appeal most to you, and why?

The Law Society of Ireland welcomes the acknowledgement that new business models that facilitate individuals earning income outside the traditional employer / employee relationship means that many individuals are uninformed about their tax obligations, resulting in a new category of non-compliance. It is vital that steps are undertaken by Government to address the issue of non-compliance as this will improve the overall health of the tax system. Imposing significant compliance obligations on third parties is not a reasonable solution, for two reasons: - The emerging non-compliance issue is broader than the SPs which this proposal relates to. A solution should tackle the emerging issue more broadly and across all sectors. - The emerging non-compliance issue stems from lack of knowledge amongst a growing entrepreneurial population about their tax obligations, leading to an urgent need for an educational campaign to inform the wider population about the basics of the tax system and their obligations. - Pushing compliance obligations onto third parties through a new eWHT system will not encourage SPs to engage with the tax

system to understand their rights and obligations. Such an educational campaign would benefit a broader population of gig-workers, rather than just those which the eWHT proposal applies to and therefore would be more equitable for the entire entrepreneurial population.

7. What concerns or reservations do you have about the proposed approach?

The proposal will stifle entrepreneurship in Ireland that is facilitated by the targeted platforms: Gig-workers currently using the platforms to offer their services will experience a reduction in cashflow as a result of the proposed eWHT. That will result in behavioural responses which may include (i) offering their services through platforms that are not subject to the withholding or (ii) deciding not to work in the gig-economy. It will make Ireland a less attractive place to do business: Overall, the proposed approach creates an unfair administrative burden and imposes real business costs on platform operators. For many large platform operators Ireland is a relatively small market and the proposed approach would make Ireland a more expensive place to do business. The time and resources needed to develop and operate an eWHT system may outweigh the revenue earned from the Irish market, and lead to some platform operators deciding to change their operating models so that the platform no longer processes payments, or deciding not to offer the platform in the Irish market. The latter would negatively impact the entrepreneurs in Ireland which use those platforms. The proposal may also reduce the likelihood of new platforms offering their services in Ireland due to the increased compliance burden, thus reducing competition and potentially impacting on the SP's ability to choose between competing platforms. We have also set out some specific concerns below:

- Small entrepreneurs: Cashflow is critical to small entrepreneurs and reducing the day-to-day cash available to these taxpayers through withholding tax will further stretch resources. Even where individual SPs record their expenses as they are paid (which seems unlikely), the PDR will always be at least one step behind.
- Corporate taxpayers: The proposed withholding tax at a standard rate for corporate taxpayers will impact more on the cashflow of businesses that offer services through online platforms, than those that do not. The system will naturally favour larger hotel groups who can be expected to have deeper cashflow and a greater ability to sell hotel rooms outside the online platform model.
- Distortion of market: That negative cashflow impact will discourage those entrepreneurs from using online platforms to offer their services when other options are available e.g. platforms which do not handle the payments and are therefore outside scope of eWHT proposal. Not only will this favour larger businesses who are more likely to be in a position to offer their services for sale elsewhere (for example large hotel groups), but it will also remove transactions from DAC7 reporting and deprive

Revenue of information that would otherwise be available to cross-check taxpayer compliance. Alternative approach: We recommend instead of this proposal, that Revenue should use the DAC7 information already available to it, to pre-populate tax returns of the SPs, which of itself would prompt tax compliance. We recommend Revenue carry out an education campaign to ensure SPs and other taxpayers engaged in the gig-economy understand their tax obligations and rights. Revenue should introduce simplified filing procedures designed for gig-economy taxpayers to further encourage compliance. Relevant Contracts Tax: As regards the proposed changes to the operation of RCT, the proposal does not appear to address or consider longstanding difficulties with the operation of RCT. Specifically, the proposal does not address the following: - The scope of the application of RCT to various arrangements which currently result in uncertainty for potential Principal Contractors outside the construction industry. - Reform of a punitive penalty regime which does not reflect the seriousness of the breaches and currently falls outside the qualifying disclosure regime, which is intended to encourage taxpayers to self-review and correct errors. The proposal to apply a flat rate deduction to RCT ignores the incentivisation of the current RCT system for those subject to RCT to remain in full tax compliance and therefore benefit from a 0% rate of withholding. Where a flat rate would apply this would punish those who are fully tax compliant and potentially reward those that are not tax compliant (in comparison to their competitors). The existing regime recognises the cash flow implications of RCT and indeed incentivises tax compliance on the basis of avoiding such cash flow impacts.

8. The proposed eWHT model seeks to expand withholding tax to payments to service providers where a suitable withholder exists. How do you feel generally about this type of expansion?

The expansion is an unreasonable approach for dealing with compliance issues, where DAC7 and MRDP have only recently bedded in for businesses and the data available from both is available to Revenue to ensure tax compliance. - Placing the compliance burden (in some instances) on the DWs (such as platform operators) does not deal with the core issue of taxpayers not understanding their obligations. - The expansion of withholding tax to payments also creates different obligations on different types of platforms e.g. platforms which handle payments and those that do not. For those required to operate eWHT, it will require significant investment in IT infrastructure and possible changes to global / regional internal systems. It is possible that the cashflow impact for Irish SPs using the platforms in-scope of eWHT will cause these SPs to use different platform operators. This may distort the market. - DAC7 requires reporting of financial transactions regardless of whether or not the platform operator processes the payments (provided the amount of such payment is

known or reasonably known). Under DAC7, platform operators are already reporting all the information required for Revenue to cross-check SPs' compliance. Not using the reported information as intended undermines the purpose of DAC7 and the efforts made by businesses to comply with it. The additional burden imposed on some platform operators under the proposed eWHT model is unjustified in these circumstances and cuts across the efforts to harmonise obligations across the EU. - Revenue should use the information reported under DAC7 to pre-populate tax returns, dealing with non-compliance without adding additional administrative burdens on businesses already facing significant compliance obligations. - The same platform operators targeted by the new eWHT model have just made a significant investment to implement DAC7, MRDP and in some cases CESOP. Over the coming years, they will be required to make a significant investment in IT infrastructure and personnel to comply with ViDA which in particular impacts platform operators proposed to be within scope of the eWHT. In addition, domestically the VAT Modernisation regime is being implemented in parallel and will require further investment and resources. While ViDA is harmonised across the EU, this proposed extensive compliance system on the same businesses operating in the Irish market is excessive and will create an uneven playing field as against platform operators in other Member States. We expect that the proposed expansion will (i) impact the behaviour of SPs and (ii) impact the business decisions of platform operators. - For SPs: impact on their cashflow will discourage them from using in-scope platform operators so that their current cashflow cycle remains intact. Those SPs instead may look to offer their services through systems outside the proposed eWHT model, leading to unnatural market distortion. - For platform operators: they will measure the anticipated revenues from the Irish market against the cost of complying with the eWHT model. If the anticipated revenue from the Irish market is not high enough to justify the new investment, some platforms may take the business decision to either change their operating models so that they no longer process payments or to withdraw from the Irish market. That will negatively impact SPs' businesses who currently use those platforms and have the wider effect of stifling entrepreneurship. The proposal goes entirely against the current drive at Irish and EU level to improve competitiveness and cut unnecessary red tape for business.

9. In relation to PSWT specifically, this currently applies to payments made by state and semi-state bodies for certain services. Do you have a view on how it is targeted and if the types of payments it applies to should be reviewed?

- There should be suitable carve-outs for foreign service providers in line with Ireland's policy on source taxation and general tax treaty policy. - The State requires increasingly complex technical and consultancy services to manage state projects, including in the defence sector. Requiring a 20% withholding for such providers, later refunded by Revenue following a complex paper application process is a disproportionate burden and likely will be priced-in to contracts with the State resulting in the State ultimately paying for the additional administration. - An at source exemption should be available. The same applies to foreign contractors under the current RCT system.

10. Please indicate if you currently operate:

11. From the perspective of a DW, how does the current application of PSWT and/or RCT impact on your business operations?

It is not proposed that the Law Society provides an answer to this question.

12. If you are a Platform Operator, does your organisation have any experience of applying taxes to transactions, for services operating on your platform, in other jurisdictions? If yes, please provide information of the jurisdiction and details of the tax.

It is not proposed that the Law Society provides an answer to this question.

13. From the perspective of a DW, what are your views on the application of RCT and/or PSWT, as the case may be?

It is not proposed that the Law Society provides an answer to this question.

14. What is your understanding of the withholding tax model of tax collection of RCT and PSWT and why it is applied to payments?

We would caution against drawing parallels between RCT/PSWT and the proposed eWHT model from a policy perspective. We expect that behavioural responses to the proposed eWHT model will be different to the introduction of RCT, where contractors had no economic choice but to comply. With eWHT, platform operators will have real options including (i) changing their operating models so that they do not process payments and (ii) opting not to serve the Irish market.

15. The proposal aims to embed eWHT processes directly into accounting, payroll, or other business management systems. How beneficial do you think this would be for your business?

It is not proposed that the Law Society provides an answer to this question.

16. In your view, what opportunities could embedding eWHT within natural business systems create for your business or the wider industry?

It is not proposed that the Law Society provides an answer to this question.

17. What challenges do you think your business might face in adopting this embedded within natural systems approach?

It is not proposed that the Law Society provides an answer to this question.

18. What is the estimated number of payments that you make to SPs each month?

It is not proposed that the Law Society provides an answer to this question.

19. Do you currently use software for processing payments and or managing the finances of your business? If so, what packages do you use?

It is not proposed that the Law Society provides an answer to this question.

20. Are you an employer for PAYE? If so, which software package do you use to report payroll taxes to Revenue?

It is not proposed that the Law Society provides an answer to this question.

21. Please indicate if you currently receive payments which are subject to deduction of:

22. Where you are currently subject to PSWT and/or RCT, how does the current application of withholding taxes impact on your business operations?

It is not proposed that the Law Society provides an answer to this question.

23. From the perspective of a SP, what are your views on the application of RCT and/or PSWT, as the case may be?

It is not proposed that the Law Society provides an answer to this question.

24. What is your understanding of the withholding tax model of tax collection of RCT and PSWT and why it is applied to payments?

We would caution against drawing parallels between RCT/PSWT and the proposed eWHT model from a policy perspective. We expect that behavioural responses to the proposed eWHT model will be different to the introduction of RCT, where contractors had no economic choice but to comply. With eWHT, platform operators will have real options including (i) changing their operating models so that they do not process payments and (ii) opting not to serve the Irish market.

25. Where you are an SP operating as a corporate/partnership or other entity, do the current rates that apply to PSWT and RCT reflect your actual liability on the income received?

It is not proposed that the Law Society provides an answer to this question.

26. The proposal aims to embed taxation directly into how you get paid by the DW. How beneficial do you think this would be for your business?

It is not proposed that the Law Society provides an answer to this question.

27. Where you are an SP operating as an individual worker, the proposal aims to implement personalised deduction rates (PDR), which means you will pay tax on your income as you go, similar to how employees are taxed under PAYE. What impact do you think PDR will have on your cashflow and financial management?

It is not proposed that the Law Society provides an answer to this question.

28. Do you think this new regime, including the PDR will have a positive effect on your end of year Income Tax return filing and preliminary tax payment obligations?

It is not proposed that the Law Society provides an answer to this question.

29. The accuracy of PDR is improved by the regular reporting by you to Revenue of your income and business expenses. How likely are you to report your income and expenses to improve the accuracy of your PDR?

It is not proposed that the Law Society provides an answer to this question.

30. What changes do you expect to have to implement in your business in order to be ready for the proposed eWHT regime?

It is not proposed that the Law Society provides an answer to this question.

31. What benefits do you expect the new regime to have on your business processes, costs and delivery of your business services?

It is not proposed that the Law Society provides an answer to this question.

32. What would you consider a reasonable timeframe for your business to adapt to the proposed new system?

It is not proposed that the Law Society provides an answer to this question.

33. How confident are you that your business could adapt to the new system within a reasonable timeframe?

It is not proposed that the Law Society provides an answer to this question.

34. In terms of the management of your business, which outcomes from this new regime are the most important for you? (Select a maximum of 3)

It is not proposed that the Law Society provides an answer to this question.

35. What supports from Revenue would be of most benefit to you in transitioning to the new regime? (Select a maximum of 3)

It is not proposed that the Law Society provides an answer to this question.

36. Is there anything else you'd like to share about how the proposed eWHT system could best meet the needs of your business or sector?

We suggest that alternative solutions to the emerging compliance issue should be considered by Government. This proposed model does not address the core issue of the entrepreneurial population's (and taxpayers generally) lack of knowledge and understanding of how the tax system operates and what their tax obligations are. The data which Revenue already has access to (from reporting obligations such as CESOP and DAC7) should be exploited and used to pre-populate taxpayers' returns. DWs which are platform operators have already invested heavily to ensure compliance with these reporting obligations on an EU wide harmonised basis, and this should be leveraged, before introducing additional compliance burdens for platform operators. We recommend Revenue and DoF to consider the impact of the proposal on platform operators, how it may impact Irish businesses which use the platforms and the platforms operators' appetite for changing their systems (to comply with eWHT) in respect of a relatively small market. We suggest that a more proportionate solution to a compliance problem can be found, using information already readily available to Revenue. The above suggested supports would not address the compliance burden placed on DWs. In particular, where DWs are large platform operators operating in multiple jurisdictions, rather than just in Ireland, this proposed model would create significant disruption to the operators' processes, making Ireland a less business-friendly jurisdiction. Further - none of the suggested supports would address the potentially serious cash flow costs for many Irish businesses as a result of the imposition of a flat rate withholding rate. This would impact significantly on the construction industry and indeed those SP's who operate in the platform ecosystem and are otherwise fully in tax compliance. DAC7 was an EU-wide project which required significant investment from platform operators. DAC7 reporting provides tax authorities with comprehensive information about taxpayers operating in their jurisdictions. In our view, a more proportionate approach to improving compliance would be to pre-populate the DAC7 information in Irish tax returns and to undertake an education campaign for taxpayers on their obligations. The recitals in the DAC7 Directive highlight that "reporting of income earned through such activities should provide tax administrations with comprehensive information necessary for correctly

assessing the income tax due". We would recommend that Revenue uses the information already available for ensuring tax compliance, before introducing an additional compliance obligation. The eWHT proposal will be a unilateral move by Ireland where EU efforts are focused on simplification, improving competitiveness across the Member States and an overall reduction of red tape for businesses. The current proposals do not reduce burdensome obligations for businesses and do not appear to be in line with recommendations contained in the Draghi report on European competitiveness. The Law Society submits that the eWHT proposal will have a negative impact on entrepreneurship in Ireland and we recommend that the eWHT proposal is not pursued by Government.