

## Film Withholding Tax

### Part 18-01A-01

This manual should be read in conjunction with sections 529B to 529M, TCA 1997

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## 1 Introduction

The purpose of this manual is to provide guidance on the application of the Film Withholding Tax (“FWT”).

FWT is a withholding tax on certain payments made by companies who qualify for the section 481 Film Tax Credit. The legislation governing the FWT is contained in sections 529B to 529M of the Taxes Consolidation Act 1997 and the Income Tax and Corporation Tax (Film Withholding Tax) Regulations 2015, ([S.I. No.18 of 2015](#)).

FWT will be applied to relevant payments made to visiting non-resident artistes, from outside the EU or EEA, where these artistes are engaged, by companies who qualify for the Film Tax Credit, to appear in film and television productions made in Ireland.

## 2 Who should operate the withholding tax?

The withholding tax should be operated by any film or television producer company (including the qualifying company through which they make the film), who engages and makes relevant payments to non-resident artistes from outside the EU or EEA on a qualifying film for the Film Tax Credit. Since 27 March 2019 production companies apply directly to the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media (DTCAGSM) for certification.

Where a qualifying company fails to operate the withholding tax, the qualifying company shall be liable for the tax which should have been deducted and a penalty equivalent to the amount of tax which should have been deducted up to a maximum amount of €5,000.

## 3 Who should the tax be applied to?

Ireland’s tax treaties with other countries include provisions regarding the taxation of artistes. Artistes who are a resident of one state may be taxed in another state in which they perform activities. There is no precise definition for the term artiste - it is accepted that it clearly includes actors, but that it does not extend to support staff such as cameramen, producers, directors etc. Therefore, the withholding tax will primarily apply to non-resident actors, including voice over artists, who are resident outside the EU or EEA and who are engaged by qualifying companies to provide artistic services in Ireland. Following the conclusion of the Brexit transition period from 1 January 2021 UK artistes are also subject to the withholding tax.

Where an individual is engaged in dual roles, for example, as both a director and as an actor, it will be necessary to apportion payments to the individual between the two roles. FWT should only be applied to that portion of the payment that refers to the provision of artistic services.

## 4 What is meant by artistic services?

Artistic services are defined as the services of an individual, when provided within the State, in giving a performance in audio-visual works of any kind, including films and television content, which is or may be made available to the public or any section of the public.

Where there is doubt as to whether an individual is providing artistic services, it is necessary to review the overall balance of the activities of the person concerned.

## 5 What payments will be taxed?

FWT is to be applied to relevant payments and this means any payment of whatever nature made, whether directly or indirectly (for example where the payments are made to a loan out company, or a manager, an agent or any other third party), by a qualifying company in respect of artistic services provided by an artiste who is not resident in the EU or EEA. FWT is to be applied whether or not the artistic services are provided directly or indirectly (for example through a loan out company) to the qualifying company. The FWT also applies to any payments relating to the exploitation of or compensation for any rights (for example image rights) held by, or on behalf of, or in respect of, the artiste.

The FWT is not applied to payments which are taxed through the PAYE system, nor is it to be applied to expenses which are reimbursed to the artiste, or paid on behalf of the artiste, and were incurred by the artiste in the provision of artistic services to the qualifying company.

### **Important note regarding payments to artistes resident in the USA**

Under the terms of Article 17 of the Double Taxation Treaty between Ireland and the USA (1997,) where the amount of the payments, including expenses reimbursed or borne on behalf of the artiste, made by a qualifying company to a specified person in respect of artistic services does not exceed twenty thousand United States dollars (\$20,000) or its equivalent in a tax year, then FWT is not to be applied to the payments. Where the amount of relevant payments and expenses exceeds \$20,000 in a tax year the full amount (excluding expenses) is subject to FWT.

There are no equivalent provisions in any other double taxation treaties between Ireland and any other state.

## 6 What is the rate of tax?

The FWT is set at the standard rate on Income Tax which is currently 20%.

## 7 Who is the specified person?

In certain circumstances the payment for artistic services made by the qualifying company may not be paid directly to the artiste providing the services. For example, the payment may be made to a loan out company or to an agent, manager or other third party. The specified person is whoever the payment is made to.

## 8 How will the FWT operate?

There are a number of stages to the operation of the FWT by a qualifying company and these are set out below.

### 8.1 Provision of information by a specified person

When a qualifying company engages an artiste to provide artistic services, the specified person to whom payments will be made is obliged to provide the qualifying company with their address, country of residence and Tax Reference Number in their country of residence.

### 8.2 Issuing of a Certificate of Deduction by a qualifying company

When a qualifying company operates FWT on relevant payments to a specified person, a Certificate of Deduction (Form FWT 45) should be completed by the qualifying company. Part 1 of the form should be given to the specified person and Part 2 of the form should be retained by the qualifying company as part of their requirement to keep accurate books and records.

Form FWT 45 is a secure form and is not available for download. Supplies of the form can be obtained by qualifying companies from the Film Withholding Tax Unit of Revenue who can be contacted by email at [fwtunit@revenue.ie](mailto:fwtunit@revenue.ie). Requests for forms should include the following information:

- the name of the qualifying company
- the Tax Reference Number of the qualifying company
- a contact name and contact details
- an address to which the forms should be sent
- the number of forms required.

### 8.3 Film Withholding Tax Returns

Qualifying companies are obliged to make a tax return for each calendar month in which relevant payments were made and where FWT was operated on the relevant payments. The return should include details of all specified persons to whom payments were made, details regarding the payment and the security number from the Certificate of Deduction (Form FWT 45) that was issued in regard to the payment.

The FWT return takes the form of a preformatted excel spreadsheet which can be obtained by sending an email to the Film Withholding Tax Unit of Revenue at [fwtunit@revenue.ie](mailto:fwtunit@revenue.ie). Requests for a return should include the following information:

- the name of the qualifying company
- the Tax Reference number of the qualifying company
- a contact name and contact details.

Qualifying companies should ensure that they are registered for Revenue's Online Service (ROS) as all returns must be submitted electronically via ROS. On receipt of a request for a return, the FWT Unit will make arrangements for the necessary permissions to be added to the film company's ROS digital certificate in order to enable the company to file the FWT return.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

**Returns are due to be made by the 23rd of the month following the month in which any relevant payments were made and FWT was operated so, for example, the return for January 2019 is due by 23 February 2019.**

There is no requirement to submit a nil return in respect of any month in which no FWT was due to be deducted from relevant payments.

Where a qualifying company fails to submit a return that is due, the qualifying company shall be liable for a penalty of the lesser of €5,000 or the amount of tax due as per the outstanding return.

#### 8.4 How is the Return submitted?

Before submitting a Return, the qualifying company should ensure that it has been saved and named using the correct naming format. The naming format is case sensitive and should be in capital letters and contain no spaces.

The naming format is as follows:

- prefix of FWT to denote Film Withholding Tax, followed by
- the qualifying companies Tax Reference Number (for example, 1234567T), followed by
- the first three letters of the month and the year to which the return relates (for example, JAN2015).

Examples of correctly named returns would be: FWT1234567TJAN2015 or FWT1234567TMAR2015. These are the only formats that are correct.

All returns are required to be submitted electronically by the qualifying company using the secure upload facility in ROS.

The secure upload/download link is on the ROS homepage on the 'My Services' Tab

The screenshot displays the 'My Services' tab on the ROS homepage. The interface is organized into several sections:

- My Frequently Used Services:** Includes a search bar for 'MyEnquiries' and an 'Add a service' button.
- Employer Services:** Contains links for 'Revenue Payroll Notifications (RPNs)', 'Payroll', 'Returns', and 'Additional Services'.
- File a Return:** Offers options to 'Complete a Form Online' and 'Upload Form(s) Completed Offline'.
- Payments & Refunds:** Includes 'Submit a Payment' and 'Manage Bank Accounts'.
- Gifts & Inheritance:** Features a link for 'Statement of Affairs (Probate) Form SA.2'.
- Other Services:** A collection of various services, with 'Secure Upload/Download Service' highlighted in yellow.

Companies which are not already registered for ROS should ensure that their registration has been completed in plenty of time before the return filing date of the 23rd of the month which follows the month in which relevant payments were made.

Registration for ROS can be carried out on the Revenue website at <http://www.ros.ie/PublisherServlet/info/setupnewcust>

## 9 Processing of Returns by Revenue

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[...]

## 10 Failed Returns

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 11 Payment to Revenue by the qualifying company of FWT deducted

The qualifying company must remit to Revenue all withholding tax deducted from relevant payments by the 23rd of the month following the month in which the relevant payment was made. This is the same timeframe within which the withholding tax return must be made by the qualifying company. So, for example, the tax deducted from relevant payments made in January 2018 must be paid to Revenue by the 23rd of February 2018.

All payments must be made through ROS or myAccount.

Interest may be charged on late payments.

## 12 Does the specified person need to complete a Return of Income and can they get a repayment of the withholding tax?

The specified person does not have to complete a Return of Income, unless the specified person is in receipt of other income in the State for which they are already obliged to submit a return of income. In those instances, relevant payments received by the specified person from qualifying companies should be included on the Return of Income by the specified person.

Where relevant payments are the only income in the State of a specified person, the FWT deducted is regarded as a full and final settlement of the specified person's liability in the State. FWT is therefore not refundable except in the circumstances outlined in the expenses section below.

## 13 What is the position regarding expenses incurred by the specified person?

Where an expense has been incurred by a specified person, which was wholly and exclusively incurred in the provision of artistic services to a qualifying company<sup>1</sup> and



that expense has not been reimbursed or is not reimbursable, a claim in respect of that expense may be made to Revenue. The [expenses claim form](#) can be downloaded, completed and then sent to the FWT Unit who will process the claim.

Examples of the type of expenditure that may qualify for a claim, depending on the circumstances, include:

- Travel and subsistence expenses.
- Manager and agent's fees.
- International air fares to Ireland immediately before the artiste's involvement in the production commences and from Ireland immediately after the artiste's involvement ceases.

Expenditure can only be claimed for in cases where it is not paid for and claimed by the qualifying company as qualifying expenditure for the film tax credit e.g. travel expenses.

Where Revenue determine that the expense incurred was wholly and exclusively for the purposes of the trade or profession, either of the following will occur:

- In instances where the qualifying company has not yet made all relevant payments to the specified persons, Revenue will notify the qualifying company to reduce the relevant payment by the amount of allowable expenses as determined by Revenue or
- Where all relevant payments due have been made to the specified person by the qualifying company, a repayment of the amount of appropriate tax charged on the amount of allowable expenses will be made to the specified person by Revenue. In these cases, Revenue will issue a notification to the specified person stating the amount of the repayment. Repayments will be processed by the FWT unit through the Claims Processing System (CPS).

A specified person is entitled to appeal to the Tax Appeal Commission any determination made by Revenue regarding the extent of allowable expenses. An appeal must be made in writing within 30 days of the determination and the standard provisions relating to appeals shall apply with any necessary modifications.

## 14 Assessments on qualifying companies

Where a Revenue officer has reason to believe, that relevant payments have not been included on a return by a qualifying company or have been understated on a return by a qualifying company, then an assessment may be made on a qualifying company. The assessment or any subsequent amended assessment may issue by electronic means.

Normal appeal procedures in relation to any subsequent appeals apply.

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<sup>1</sup> [TDM 04-10-01](#) and [TDM 04-06-17](#) contain guidance on when certain expenses are incurred wholly and exclusively.

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[...]

## 15 Monitoring the compliance of the qualifying company

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## 16 Contact details for the FWT Unit

Administration of the Film Withholding Tax in Revenue is dealt with by the Film Withholding Tax Unit of Business Taxes: Policy & Legislation Division. Queries on FWT can be sent to:

Revenue

Film Withholding Tax Unit

Business Taxes Policy & Legislation Division

New Stamping Building

Dublin Castle

Dublin 2.

Email: [fwtunit@revenue.ie](mailto:fwtunit@revenue.ie)

Telephone: + 353 01 6745000