

Matheson Response to eWHT Consultation

1. Please give your full name.

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2. Please give your contact email address

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

Matheson LLP

4. Confirm the status in which you are responding

Tax Professional

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

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

6. Please tick the sectors that apply to you:

n/a

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

Very negative – I do not support the proposed direction

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

Although we disagree with the proposed solution, we agree that if new business models that facilitate individuals earning income outside the traditional employer / employee relationship has resulted in a new risk of unintentional non-compliance that should be addressed. Understanding the size of the tax gap would help inform the best policy response. That said, we firmly believe that there is a better way to address non-compliance risk than the proposed model.

We do not agree that imposing significant compliance obligations on third parties is a reasonable solution for two reasons.

First, we expect that if there is an emerging non-compliance issue it will be broader than the SPs that are the subject of the proposed model. For example, there are a range of platforms that report information under DAC7 that will not be in-scope of the proposed model. We urge policymakers to identify a solution that tackles the emerging issue more broadly. Applying the eWHT system to some platform operators and not others will likely result in SPs moving to platforms that do not operate eWHT and create an unnatural market distortion.

Second, we believe that at the root of any non-compliance risk in these cases is a dearth of knowledge amongst a growing entrepreneurial population about their tax obligations, or indeed how the tax system works. The basic tax obligations that apply to each individual is not something that is taught at school nor is it something that is the subject of regular media campaigns. In a country that operates a self-assessment tax system with a growing gig-economy, there is an urgent need to inform the wider population about the basics of the tax system – when they owe tax; when that tax is due; how to register to file a tax return. 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 and will further perpetuate the status quo where tax is perceived as an opaque system best left to Revenue, sophisticated taxpayers and their advisers to engage with. That approach will have further negative implications for the health of the Irish tax system.

We favour an alternative three-pronged solution: (i) use the information collected under DAC7 to pre-populate the tax returns of the sellers who earn revenue through online platforms; (ii) launch an extensive education campaign to inform the growing entrepreneurial population about their tax obligations and rights; and (iii) design simplified filing procedures for taxpayers such as those operating in the gig-economy to further encourage compliance. The benefits of such an approach would be that it would target a much broader population of taxpayers; it would not impose new onerous administrative burdens on a population of third party platform operators who are not responsible for the unpaid tax; it would lead meaningful engagement with the tax system by more taxpayers and would therefore improve the overall health of the tax system. It would also be more in line with European norms.

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

Impact on Specified Persons

For SPs, the proposed approach underestimates how critical cashflow is to the small entrepreneurs that will be impacted. Reducing the day-to-day cash available to these taxpayers through withholding will further stretch resources. For example, the proposal will impact many operating in the tourism sector who we know from recent media campaigns related to the VAT rate operate on very low margins.

While the proposal to issue PDRs for individual SPs is intended to alleviate the impact on cashflow, it seems likely that, even for individual SPs who record their expenses as they are paid (which seems unlikely), the PDR will always be at least one step behind expenses – this will be more acute when individual entrepreneurs incur large unexpected costs (e.g., car repair costs incurred by a taxi; heating repair costs incurred by those letting commercial or residential property).

The proposed withholding at a standardised rate for corporate taxpayers will have an even more severe impact on the cashflow of businesses that offer services through online platforms. For example, hotels are more likely to be operated by companies. Imposing a standard withholding tax rate on all hotel SPs will more negatively impact the cashflow of smaller business. The system will naturally favour larger hotel groups which would be expected to have deeper cashflow and a greater ability to sell hotel rooms outside the online platform model.

The proposal also raises the current Revenue procedures on refunds which typically are paid close to the 90 day deadline before interest begins to accrue. The approach would require a revision of when interest on overpaid tax should begin to accrue given the negative impact of a 90 day holding period on cashflow. Further the rate of interest payable on overpaid tax would need to be revisited given how it compares to the rate payable on underpaid tax.

Concerns have also been raised regarding third parties (DW's) having knowledge of the level of tax an SP is liable to pay which could potentially be commercially sensitive information given its connection to income levels, etc..

Platform Operators – the policy rationale

It is clear that RCT was introduced on a highly targeted basis by reference to specific industries in which tax non-compliance was identified (the size of the tax gap for SPs operating on in-scope platforms has not been identified).

The trade-off of increased administrative costs for industry participants was weighed against the risk of underpaid for tax and determined to lie in favour of the implementation of RCT. Further, the behavioural responses to the introduction of RCT were much more limited than those that will be open to platform operators if eWHT is introduced.

The trade-off and possible behavioural responses do not appear to have been fully considered for the proposed far broader application of a withholding tax system to platform operators.

Duplication of DAC7 reporting obligations

When RCT was applied, the potential cash flow cost was acknowledged as being an unfair burden on otherwise fully tax compliant taxpayers. As a result a 0% rate of RCT was applied provided a taxpayer was in compliance with their tax obligations. The RCT reporting obligation remained with associated administrative costs which was considered a reasonable trade-off to ensure greater tax compliance in the targeted industries. Platform operators are already incurring significant administrative costs to provide relevant information to revenue authorities internationally.

Even if a 0% rate system were to be applied to SP's under the proposal, any reporting obligations under eWHT would be duplicative of the DAC7 obligations. The position achieved under RCT with the application of a 0% rate (transparency for the tax authorities as regards payments received by subcontractors) is already the case for SPs and platform operators given the EU harmonised DAC7 regime.

Distortive impact of the application of eWHT to the Platform economy

The negative cashflow impact for SPs will discourage those entrepreneurs from using online platforms to offer their services when other options are available. 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 have a real impact on the market. For example, it may:

- result in some platform operators changing their business models so that either (i) they no longer service the Irish market if the costs of compliance outweighs the potential revenue that can be earned from the Irish market or (ii) service payments are no longer routed through their platforms;
- offer opportunities for platforms based outside the EU to facilitate transactions in the Irish market on the basis that enforcing the proposed compliance obligations on those platforms will be challenging in practice; and,
- disadvantage potential new entrants into the Irish marketplace given the entry price will be greatly increased by the cost of compliance.

We believe the proposed approach imposes a disproportionate administrative burden and real business cost on platform operators given all of the relevant information is already reported under DAC7. Ireland 66881612.1

has a population of 5 million people and for most large platform operators Ireland is a low revenue generator. If the proposed approach is implemented, those platform operators will have a real economic decision to make – is it worth investing time and resources to develop and operate an eWHT system relative to the revenue earned from the Irish market. For some platform operators, the economically rational choice will be to switch off the platform for Irish SPs. That, in turn, will stifle the entrepreneurship that is facilitated by those platforms in Ireland.

Alternative approach to the platform economy

Rather than implementing the proposed eWHT approach which will likely impact smaller businesses more acutely, we strongly recommend that instead (i) Revenue use the information received under DAC7 to pre-populate tax returns of the SPs, which of itself would prompt tax compliance; (ii) Revenue undertake a wide-reaching education campaign to ensure SPs and other taxpayers engaged in the gig-economy understand their tax obligations and rights; and (iii) Revenue implement simplified filing procedures designed for taxpayers such as those operating in the gig-economy to further encourage compliance.

RCT - Implications for the existing Subcontractors under the RCT regime

The rationale for the application of the 0% rate of RCT is outlined above. Such rationale is justified in our view, e.g. tax compliant tax payers should not suffer an unnecessary cash flow cost where they operate within the RCT regime.

We assume it has been determined that the administrative costs associated with RCT in the relevant industries continue to be outweighed by the risk of underpaid tax in such industries. Where this is the case, then the basis for the application of the 0% rate continues to apply.

The current approach taken for RCT which rewards compliant sub-contractors by permitting 0% withholding should be retained. It operates as a distinct incentive for sub-contractors to ensure they are tax compliant and demonstrates the behavioural response of sub-contractors to obviate withholding taxes that would otherwise have a negative impact on cashflow.

Under the current proposal, a non-tax compliant SP (which will typically be a company in the industries subject to RCT) will be subject to the same rate of withholding as a fully tax compliant industry participant. This removes one of the key nudges / benefits of the RCT system in rewarding tax compliance over a longer period whilst also triggering significant cash flow difficulties for fully compliant participants in the relevant industries.

10. 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?

We believe the proposed expansion of withholding tax is misguided for four reasons.

First, the in-scope platforms have already invested significant resources to implement DAC7 and the Model Reporting Rules for Digital Platform Operators. On foot of that implementation, Revenue receives comprehensive information about the revenue earned by SPs through the reporting platforms. Moving to an eWHT model as DAC7 / MRDP reporting undermines that reporting framework and the investment that has already been made to comply with a global reporting standard. The better approach would be to use the information that is currently being reported to ensure that taxpayers are complying with their obligations, for example by pre-populating their tax returns. We note that recital 12 of DAC7 provides that the information reported should be used by tax administrations to ensure income tax is correctly assessed. Not using the information reported in the way that is anticipated by DAC7 sends negative messages about

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Ireland's capacity to develop a pro-compliance environment even in cases where Revenue has a deep pool of information of revenue earned by taxpayers.

Second, under the proposed model, withholding tax obligations will be imposed on those in-scope of DAC7 if the payment is routed through the platform. The proposal will likely incentivise SPs to operate on platforms that do not handle payments (with a view to protecting their cashflow). In addition, platform operators that currently process payments may be incentivised to change their operating model in Ireland to one where they do not handle payments with a view to falling outside onerous withholding tax obligations and risking potential penalties when withholding is incorrectly applied. The uneven treatment of the two types of platform operators will lead to unnatural distortions in the market which we do not think can be reasonably justified.

Third, the proposed eWHT model imposes a disproportionate burden on certain platform operators. It will require significant investment in IT infrastructure. That cost should not be underestimated as it will often require changes to a global or at least regional system. In addition, both developing and operating the new eWHT system will require involvement of personnel across different parts of the platform operators' businesses. The lift required to implement a withholding tax system, even if just for one jurisdiction, could be greater than that required to implement DAC7 reporting given it will also require integration with payment systems. If platform operators make unintended errors in the operation of the system, they will be exposed to penalties. The burden involved for those businesses is disproportionate particularly where the platform operators have nothing to gain from the proposal. We expect that in-scope platform operators will have to consider their options if the eWHT model is introduced. Those options will include retaining their existing operating model and incurring the costs and risks associated with applying the eWHT model, changing their operating model so that they do not process payments and fall outside the scope of the proposal and taking a decision to no longer serve the Irish market.

Over the coming years, the same platform operators at whom the new eWHT model is targeted will be required to make a significant investment in IT infrastructure and personnel to comply with ViDA (which is an EU wide obligation). The tax teams of platform operators will currently be negotiating IT infrastructure budgets and budget for additional personnel to ensure they are ViDA-ready over the coming two to five years. Proposing a further new extensive compliance system for one jurisdiction on the same businesses is excessive. We strongly urge policymakers to consider the impact of the proposal on platform operators and to reassess whether the problem that the proposed eWHT model is intended to address can be solved in a more reasonable and proportionate way. We further note that ViDA implementation will be perceived differently than a unilateral withholding tax project. Given ViDA is an EU project, business frustration will be directed at the EU institutions.

Fourth, the proposed eWHT model will be perceived as a 'solo-run' by Ireland. At a time when simplification, removal of red-tape and competitiveness is to the fore of policymakers' minds, we believe that the proposed eWHT model will negatively affect the perception of Ireland as a jurisdiction in which to do business.

The potential consequences should be given due consideration by policymakers.

11. 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?

The application of PSWT to foreign service providers should be reconsidered. Applying PSWT to foreign service providers runs contrary to the spirit of Ireland's extensive double tax treaty network and the policy position taken at international fora on source taxation.

The Irish Government requires increasingly complex technical and consultancy services to manage government projects, including in the defence sector. Requiring a 20% withholding for such providers which then needs to be refunded by Revenue following a complex paper application process is a disproportionate burden. An exemption for non-resident service providers should be developed in line with Ireland's existing position on source taxation.

12. Please indicate if you currently operate:

n/a

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

We advise a number of clients on RCT obligations and these comments are informed by that experience. In some instances we have experienced a misunderstanding of the scope of RCT, particularly with respect to the application of the withholding obligations in cases for example where a fit-out of leased premises is funded by a landlord who will retain ownership of elements. That aspect of RCT could usefully be the subject of an awareness campaign. There also continues to be significant ambiguity around the interpretation of elements of the RCT regime and its application.

The current RCT system rewards compliant sub-contractors by permitting 0% withholding. In addition, tax compliant contractors benefit from the potential cash flow of VAT arising on a reverse charge basis. That approach operates as a distinct incentive for sub-contractors to ensure they are tax compliant in the long term and demonstrates the behavioural response of sub-contractors to obviate withholding taxes that would otherwise have a negative impact on cashflow. Removing the 0% withholding tax rate for tax compliant subcontractors would have a negative impact on tax morale. Indeed, focussing solely on RCT, we would suggest that the potential extension of the application of the 0% rate (perhaps by way of an application process) to newly incorporated and non-Irish suppliers should also be considered.

The RCT penalty regime is disproportionately punitive and, unlike the usual tax penalty regime, does not provide any incentive to taxpayers to disclose errors voluntarily. We would urge Revenue and the Department of Finance to revisit the existing RCT penalty regime so that it aligns with the standard tax penalty regime.

14. 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.

N/A

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

See response to question 11 and 13.

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

See response to question 9.

17. 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?

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We do not think the proposal will be beneficial for SPs or platform operators for the reasons explained in our responses to questions 9 and 10.

For SPs, we think the proposal will negatively impact their cashflow and have the broader effect of stifling the entrepreneurship that is facilitated by platform operators.

The proposal appears not to consider the possibility that for a global platform to implement this type of system in a relatively small market will still require a global or at least regional decision. That decision will require those groups to weigh all of the available options including (i) not handling payments; and (ii) not servicing the Irish market. In our response to question 10 we have more comprehensively described the burden we expect will be associated with implementing the eWHT system. We do not agree that it is reasonable to impose that burden on a third party unconnected to taxpayers who may be failing in their own tax compliance obligations particularly where EU wide requirements have very recently been implemented which provide Revenue with the information they need to pursue noncompliant taxpayers.

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

As noted in our responses to questions 9 and 10, we think implementing the eWHT model will negatively impact the businesses of both SPs and platform operators.

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

For SPs, the proposed approach will negatively impact cashflow. We also understand that they will need to make changes to their own business intake systems to account for the reduced cashflow.

For platform operators, the costs associated with implementing the eWHT model may be prohibitive and result in some platform operators changing their operating models to fall outside the scope of eWHT or deciding not to service the Irish market. The proposal does not take account of the size of the Irish market or the proportion of revenues that any platform can derive from the Irish market and underestimates the cost of implementation. These are the two factors that we expect platform operators will weigh if the proposal is implemented.

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

See response to questions 11 and 13.

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

See response to question 9

27. 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?

n/a

28. 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?

See concerns regarding negative impact on cashflow explained in question 9.

29. 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?

A negative impact – please see response to question 9.

30 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 would be more helpful and less disruptive to pre-populate tax returns with the information collected under DAC7.

31. 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?

We think this is unlikely but the question would be better answered by SPs

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

n/a

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

n/a

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

Platform operators will be in a better position to answer this question but we would note that the timescale for implementation of something like the proposed eWHT model would be a multi-year project. We would also note that the affected businesses have just invested significant resources in implementing systems to comply with DAC7, CESOP and MDPR. In addition, the impacted businesses are already facing significant resource demands to implement ViDA and domestic Irish VAT modernisation.

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

Platform operators will be in a better position to answer this question, but we strongly believe that any platform faced with implementing the proposed eWHT model will undertake a cost benefit analysis to determine if instead it makes more economic sense to (i) change how the platform operates in Ireland such that it no longer processes payments or (ii) understand whether continuing to service the Irish market and complying with the new framework is justified by the revenue that can be earned in the Irish market. We would further note that implementing the proposal will simply increase the cost of entry into the Irish market for new platforms. Irish SPs and Irish consumers will in turn will lose out from the lack of competition.

*** 36. 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)

Reduced administrative workload

Increased accuracy of information submitted to Revenue

Greater certainty in relation to your tax affairs

Better visibility and control of information held by Revenue

Seamless integration of taxation with your business systems

Other (please specify)

We firmly believe that the proposed eWHT model is the wrong solution unfairly directed at those operating as intermediaries rather than those who may be failing in their tax obligations and that it punishes those who are fully in compliance with their tax obligations.

We believe that a more appropriate solution would be: (i) for Revenue use the information received under DAC7 to pre-populate tax returns of the SPs, which of itself would prompt tax compliance; (ii) for Revenue to undertake a wide-reaching education campaign to ensure SPs and other taxpayers engaged in the gig-economy understand their tax obligations and rights; and, (iii) for Revenue to implement simplified filing procedures for taxpayers such as those operating in the gig-economy to further encourage compliance.

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

Training or awareness sessions

Helpdesk or dedicated Revenue contact

Industry/professional body support

Clear guidance for software providers and a testing environment

Mailshots and guidance on the Revenue website

Other (please specify)

See answer to question 36

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

DAC7 was an EU project that originated from an OECD proposal. It required significant investment from platform operators and has provided tax authorities with a wealth of information about taxpayers operating in their jurisdictions. Pre-populating that information in Irish tax returns and investing in an education campaign, similar to the approach taken by Singapore would be a more proportionate next step to improve compliance. We note that through this approach, Singapore reports a 96% compliance rate.

Introducing the proposed eWHT model will have a negative impact on entrepreneurship in Ireland and impose an entirely disproportionate burden on compliant platform operators and impact the cashflow of compliant SPs.

Going ahead with such a proposal unilaterally will have negative consequences for the reputation of Ireland as a location to do business particularly with the impacted DWs. The timing of the proposal is hard to understand in an environment when political leaders are emphasising the importance of cutting unnecessary regulation and making the EU and Ireland more competitive and easier places to do business. The proposal will set Ireland apart

We strongly recommend that the eWHT proposal is not pursued given more appropriate and comprehensive solutions are available.

We also recommend that the existing RCT regime is not revised as proposed. The proposal removes the incentivisation of subcontractors to remain in tax compliance whilst simultaneously not addressing existing weaknesses in the RCT regime being lack of clarity as to its application in various scenarios and an overly punitive penalty regime which contrasts with the approach taken to encouraging compliance by taxpayers in respect of other taxes.

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