An Roinn Airgeadais
Department of Finance

Unique Reference Number: DFIN-C3-153
Status: Submitted
Submission:
Irish Tax Institute Response to Department of Finance Consultation: Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

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Consultation:
Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

Date Created: 15.09.2023 - 10:30

Please indicate which of the following stakeholder groups you feel best describes you as a participant in this consultation.

Representative group

Observations:

5. Taxation of investment products

Section of document: 5. Taxation of investment products

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
24. Classifying investment products for the purposes of taxation - Click the 'Read Content' link to view the text of this question in the document section.

Overhaul the tax treatment of investment funds

The investment market has expanded exponentially over recent years with a wide array of funds and platforms now available to investors. Diverse and international investment portfolios are now accessible to a broad cohort of taxpayers including both professional investors and retail investors. However, the tax treatment of returns on investment funds is very complex with differing tax treatment applying depending on a number of factors including whether the fund is:

- An Irish domiciled fund
- An offshore EU/EEA/OECD fund which is viewed as 'equivalent' to an Irish fund
- An offshore EU/EEA/OECD fund, which is not viewed as 'equivalent' to an Irish fund
- An offshore non-EU/EEA/OECD fund which is viewed as 'distributing';
- An offshore non-EU/EEA/OECD fund which is viewed as 'non-distributing'
- A 'Personal Portfolio Investment Undertaking'.

- Correctly disclosed in a taxpayer's return.

Performing the requisite analysis to determine the correct tax treatment requires an examination of legal and regulatory factors. This analysis is costly and time consuming and may often be incomplete due to the lack of full information on the investment products. Individual products are continually developed so there is no set list of products with the corresponding tax treatment for taxpayers to review. Most private investors do not have the skillset or access to the tools required to ascertain the correct tax treatment.

Revenue has endeavoured to provide guidance and decision trees to assist taxpayers and professional advisers to determine the tax treatment based on the characteristics of the fund, but the usefulness of this approach is limited. Equally, Revenue can change its views on the tax treatment of certain types of investments. For example, in September 2021, Revenue published updated guidance on the tax treatment of Exchange Traded Funds (ETFs), requiring taxpayers to consider whether such investments were within the Offshore Funds Regime which up to then was not required. Previous guidance from Revenue had confirmed that investments in ETFs domiciled in the USA, the EEA or in an OECD Member State with which Ireland has a double taxation treaty, follows the tax treatment that would apply to share investments generally.

The tax treatment of a fund investment will also vary depending on the tax residence or domicile position of the investor and the percentage holding or level of influence of the investor. For example, the remittance basis does not apply to some foreign investments which are treated as Schedule D Case IV income, whereas other foreign income is taxed under Case III, with the remittance basis available to non-domiciled individuals.

Currently, higher rates of tax apply to the returns on investments from offshore funds in non-EU/EEA/OECD jurisdictions. We understand that the original policy rationale for this approach stemmed from concerns over the possibility of converting income into capital gains before remitting to Ireland. Given the extent of the data now reported to Revenue under international reporting standards, the policy rationale for maintaining this approach is unclear.

Considering the complexity in determining the correct tax treatment of a fund investment, there is no guarantee that if a taxpayer uses their best efforts to determine the correct treatment that interest and penalties will not apply if they get it wrong. We would strongly urge that the taxation of fund investments be overhauled to simplify the regime and support tax compliance.

Review the Personal Portfolio Investment Undertaking Rules

A Personal Portfolio Investment Undertaking (PPIU) is defined in section 739BA Taxes Consolidation Act (TCA) 1997 as a fund held by individual investors where the selection of some or all of the assets held by the fund is influenced by the investor or a person connected with the investor. A higher rate of tax is imposed on the income and gains

arising from Irish or offshore funds to Irish individual investors who come within this definition of a PPIU.

We understand that it is common for individual investment managers to be required by investors to invest in the funds they manage to ensure that they are directly affected by the performance of the investments (i.e., they have 'skin in the game'). The PPIU rules may apply if the manager has a role in selecting the fund investments even though the manager is required to manage the fund in compliance with the applicable law. The rules do not apply to funds which are not based in EU/EEA/OECD jurisdictions, or to funds domiciled in the EU/EEA/OECD which are not treated as equivalent to Irish funds.

Revenue's guidance[1] on investment undertakings confirms that it "*would not take the view that a manager or director of a fund who invests in the fund and who might have had a role in selecting assets for the fund comes within the provisions so long as the fund is a public one and the directors' or manager's holding in it is comparable with the investment held by other unit holders in the fund."*

Similarly, Revenue's guidance on IREFs[2] notes; "*An employee of the fund manager of an IREF acquires units in that IREF in his/her personal capacity. In his/her capacity as an employee of the fund manager, the employee is involved in the selection of properties to be invested in by the IREF. However, in undertaking his/her employment duties, the individual acts for the benefit of all investors in the IREF and cannot make selections which are designed to benefit him/her personally to a greater extent than any of the other investors. In these circumstances, the IREF should not be a PPIREF with respect to that individual."*

In the context of regulated funds, in order to provide certainty to investment managers, we believe it would be appropriate for legislative confirmation to be provided that where a professional investment manager is acting in the course of their duties, the PPIU rules do not apply.

More generally, we would also question whether there continues to be merit in maintaining the PPIU regime, with all its complexity, given that the exit tax rate is now 41%.

Aligning the tax rate on investment products

Varying tax rates applying to different forms of investment can impact investor behaviour. For example, a taxpayer that wishes to invest in property may choose to purchase a property directly, so that capital gains tax (CGT) at a rate of 33% will apply to any gains realised on the disposal of the property, rather than investing in a regulated investment fund where they will be taxed at 41% on all returns.

We believe that there is merit in reviewing the rates which apply to investment products. As a general principle, different forms of investment and savings income and gains should be subject to an equal level of taxation, in line with the principle of horizontal equity. This is consistent with the 2009 Commission on Taxation Report which noted that "*as a general principle, and as part of a rational and coherent approach to the taxation of capital, we also conclude that the tax rate on deposit interest, on funds, on capital gains and on dividends received by individuals should be the same.*"

We consider that in the case of individuals, a single rate of tax of 33% should apply for investment income and gains. The 33% rate would align with both the DIRT rate and the CGT rate.

If this is not possible, consideration could be given to reducing the tax rate applicable on the disposal of long-term holdings in investment funds, such as European Long Term Investment Funds, to align with the CGT rate. Such an approach could also support the growth and development of the market for environmental, social and governance (ESG) type investment products which by their nature tend to be longer term than traditional investments.

In addition, we believe that consideration should be given to removing the 8-year deemed disposal rule. Currently, investors in Irish regulated funds are deemed to dispose of and reacquire their units in a fund on the passing of 8-year period of ownership. This can result in a tax liability arising where there is no corresponding disposal and as a consequence, no sales proceeds to fund the payment of the tax liability. As a result, investors may be forced to liquidate their investments in order to discharge the tax liability, which can be problematic where the investment is in a long-term investment product.

[1] Investment Undertakings, Tax and Duty Manual, Part 27-01A-02, Revenue Commissioners, May 2023.

[2] Tax and Duty Manual 27-01b-02

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5. Taxation of investment products

Section of document: 5. Taxation of investment products

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

25. Tax on return on certain investments - Click the 'Read Content' link to view the text of this question in the document section.

In considering how the taxation of investments could be simplified, we believe that there should be significant focus on the perspective of the retail investor. By taking into account the retail investor's needs and preferences, the tax system could be tailored to encourage their participation in funding initiatives, thereby playing a pivotal

role in bridging the funding gap for the future.

Final liability tax simplifies compliance administration and collection. However, we believe that consideration should be given to moving to a self-assessment basis and therefore, removing the existing Investment Undertakings Tax regime, which we understand from our members applies to a relatively small number of Irish investors. The Common Reporting Standard (CRS) reporting system could potentially be extended to include Irish investors so that additional information could be provided by investment funds to Revenue. This information could then be used by Revenue to pre-populate tax returns where tax liabilities are to be self-assessed by taxpayers.

Moving to a self-assessment basis would facilitate investors in the retail sector having the option to claim a refund of any overpaid taxes due to availability of tax credits, age exemptions, etc. Loss relief should also be available so that a loss incurred on one investment fund may be offset against a gain made on another investment fund.

Any move to a self-assessment basis would however need to be balanced against the convenience for investors of a withholding tax being operated at source.

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5. Taxation of investment products

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
26a. If any investment returns continue to be taxed on a final liability basis what link, if any, should there be between the rate of DIRT and the rate of tax applied to other investment products?

As set out in our response to Question 24, in the case of individuals, we believe a single rate of tax of 33% should apply for investment income and gains. The 33% rate would align with both the DIRT rate and the CGT rate. If this is not possible, consideration could be given to reducing the tax rate applicable on the disposal of long-term holdings in investment funds, such as European Long Term Investment Funds, to align with the CGT rate.

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5. Taxation of investment products

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
27. Are there places where the taxation of investment income and gains need to be simplified or modernised? For example, in relation to the taxation of ETFs, the old basis of taxation for life products, or harmonising the exemptions from IUT and LAET.

Please refer to our response to Question 24.

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5. Taxation of investment products

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of

section:
28. Additional reporting to the Revenue Commissioners - Click the 'Read Content' link to view the text of this question in the document section.

Pre-Population of Tax Returns

Where data is available to Revenue, the use of such data to pre-populate tax returns where tax liabilities are to be self-assessed by taxpayers would be welcomed. However, it would be important that any additional reporting requirements do not significantly increase the administration burden for the party who would be required to report this information to Revenue. For example, extending the requirements under the CRS reporting system to cover Irish investors should be relatively straightforward. In contrast, imposing an entirely separate reporting regime would impose an undue burden on investment managers.

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5. Taxation of investment products

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
29. Loss relief - Click the 'Read Content' link to view the text of this question in the document section.

Harmonising the tax treatment of investment products and other assets

The 2022 Report of the Commission on Taxation and Welfare advocates for greater horizontal equity in the tax treatment of different forms of investment and savings to reduce distortions. The Institute strongly supports the Commission's view that the taxation of investments and savings is an area which could benefit from reduced complexity and greater harmonisation of the tax treatment.

The Consultation Paper notes that where investments in investment undertakings, life policies or offshore funds give rise to a loss, no relief is available against other income. Where an individual has a gain on one such product and a loss on another, that loss may not be offset against the gain on a similar product. In our view, loss relief should be introduced for investments in such products with a view towards harmonising the overall tax treatment of investment products and other assets.

The Consultation Paper acknowledges that concerns have been raised regarding the interaction of the application of an exit tax to investment products with general tax exemptions and the complexity that comes from different exemptions applying to the taxation of life policies, fund investments and the taxation of deposit accounts.

We have set out below an example of the inconsistencies of tax treatment which arise on the gift or inheritance of Irish and foreign life policies and fund investments.

- Section 104 Capital Acquisitions Tax Consolidation Act (CATCA) 2003 provides that where both CGT and capital

acquisitions tax (CAT) are chargeable on the same property in connection with the same event, the CGT paid is allowable as a credit against the CAT. The credit given will be clawed back if the asset is disposed of within 2 years after the date of the gift or inheritance.

- Section 730GB TCA 1997 applies to Irish life assurance policies and provides that if an assurance company is liable to account for income tax (referred to as appropriate tax) and is payable by a life assurance company on the death of a person, that tax will be treated as CGT for the purposes of section 104 CATCA 2003 (i.e., the appropriate tax payable on Irish life assurance policies on the death of a person is allowed as a credit against any CAT arising). However, it would appear that no credit is allowable against any tax arising on the gift of such policies.

- Section 730K TCA 1997 applies on the disposal of a foreign life policy and provides that where a policyholder is an individual, then the amount of any gain on disposal will be chargeable to income tax at 41%. The income tax paid by an individual on a gain generated by the disposal of a foreign life policy is treated as an amount of CGT paid for the purposes of section 104 CATCA 2003. Therefore, the income tax payable on the disposal of a foreign life policy whether on a death or arising from a gift is allowed as a credit against any CAT arising.

- Section 739G TCA 1997 applies to unit holders in Irish investment undertakings and provides that on a disposal or transfer of units resulting from the death of the unit holder, exit tax will generally be payable and that amount of tax is treated as an amount of CGT for the purposes of section 104 CATCA 2003. However, it would appear that no credit is available for any tax arising from the gift of an interest in such an undertaking.

- Section 747E TCA 1997 sets out the tax treatment of a disposal of an interest in an offshore fund. Section 747E(5) provides that the amount of any income tax paid by an individual on a gain generated by the disposal of an interest in an offshore fund is subject to CGT for the purposes of section 104 CATCA 2003. Therefore, any tax relief on the disposal of an 'interest' in an offshore fund whether on a death or by way of a gift is allowable as a credit against any CAT arising.

It is clear from the above examples, that the tax treatment of a gift of an Irish life assurance policy or an interest in an Irish investment undertaking does not compare favourably with the tax treatment of a gift of a foreign life policy or an interest in an offshore fund. There does not appear to be any clear policy rationale for such inconsistencies in tax treatment. In our view, the tax rules applying on a gift of an Irish life assurance policy or an interest in an Irish investment undertaking should be aligned with the tax treatment of a gift of a foreign life policy or an interest in an offshore fund.

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5. Taxation of investment products

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
30. Are there differences within the regimes (e.g. in relation to who can make a declaration under LAET compared to those who may make a declaration under IUT) which should be addressed?

Please refer to our response to Question 29.

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5. Taxation of investment products

Section of document: 5. Taxation of investment products

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
31. How should derivative products which mirror the performance of regulated investment products be taxed? Should they be taxed at the same rate as the investment product they mirror or should they be taxed under first principles?

We believe that very complex rules would be required if the tax treatment of a derivative were to be linked to the treatment of the underlying asset. For example, where there is a portfolio of different underlying assets, it would be challenging to clearly define the tax treatment that should apply to the derivative. In the absence of a full alignment of the tax treatment of investment products, we would recommend retaining a first principles approach for derivatives.

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5. Taxation of investment products

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
32. Are any additional anti-avoidance rules required for any of the measures suggested in answer to previous questions?

Robust anti-avoidance rules are an important component of any tax system. Ireland already has a general anti-avoidance rule in section 811C TCA 1997 and specific anti-avoidance rules. If policymakers consider that additional anti-avoidance rules are required, in our view, the best way to develop such rules would be to do so in tandem with the development of any new tax regime which is to apply to investment products. For example, if the 8-year deemed disposal rule were to be abolished, consideration may need to be given to an anti-avoidance rule which would apply in circumstances where an individual becomes non-resident.

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
33. Are there aspects of the way in which property funds are taxed, or defined, that could be aligned with other existing standards, for example, the recent changes in the Central Bank of Ireland's macro prudential measures for property funds?

As highlighted in our submission[1] to the Commission on Taxation and Welfare, restoring certainty to the property market by having a clear strategy to address housing supply issues is critical for Ireland to attract the investors the country needs to fund the development of housing. Irish-authorised funds investing in Irish property are a key participant in the Irish real estate market. However, certainty of tax treatment is of paramount importance to investors and the changes to the taxation of Irish property structures and products in the recent past has reduced investor confidence in the products available.

IREF Income Tax Rules

IREF income tax rules were introduced in Finance Act 2019 and provide for a charge to income tax where an IREF is deemed to have excessive levels of debt. Borrowings exceeding 50% of the relevant cost of the IREF assets will be considered deemed income and subject to income tax at a rate of 20%. In addition, where the finance cost ratio is below 1.25:1 for a given period, the IREF will be deemed to have received income equal to the amount by which the adjusted financing costs would have to be reduced in order to achieve a financing cost ratio of 1.25:1, and this income will be subject to income tax at a rate of 20%.

The Central Bank's *Macroprudential Policy Framework for Irish Property Funds*[2] was published in November 2022 and introduced a 60% leverage limit on the ratio of property funds' total debt to their total assets. It also contains guidance to limit a liquidity mismatch for property funds.

On the basis that leverage limits for Irish property funds are now governed by the Central Bank, consideration should be given to removing the IREF income tax rules. We understand that leverage limits for fund regimes in competing jurisdictions are typically regulated by the central banks or financial regulators rather than under tax legislation. Therefore, the withdrawal of IREF income tax rules would bring Ireland in line with other EU jurisdictions.

[1] https://taxinstitute.ie/wp-content/uploads/2022/01/Commission-on-Taxation-and-Welfare_vfinal.pdf

[2] The Central Bank's macroprudential policy framework for Irish property funds, November 2022.

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

34. IREFs invest in property of all descriptions, as developers, financiers and landlords. Do IREFs, and the regime as it is currently designed, support investment in housing policy objectives?

We understand from our members that there are a large number of residential property developments which would not have been feasible without the IREF regime. This is evident from Revenue's *Corporation Tax 2022 Payments and 2021 Returns* publication which confirms that €2,135m of residential real estate assets were held in IREFs in 2018 compared with €6,340m at the end of 2021.

While, it is clear that IREFs have an important role in supporting housing policy objectives and facilitating investment, a simplification of the IREF tax regime would very likely enhance this position.

IREFs have been subject to many changes over the last number of years with the result that there is little certainty regarding the application of certain IREF provisions. Maintaining certainty in the IREF regime is key to attracting investment into Ireland.

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
35. How does the IREF regime compare to property fund regimes in other comparable EU jurisdictions?

The IREF tax regime differs from regimes which exist in other EU jurisdictions in applying tax both at the level of the fund and on distributions from the IREF. This can negatively influence investment decisions by international investors. As set out in our response to Question No. 33, on the basis that leverage limits for Irish property funds are now governed by the Central Bank, consideration should be given to removing the IREF income tax rules. Such a move would bring Ireland in line with other EU jurisdictions.

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
36. Are there aspects of the IREF regime that are not operating as intended or that are acting as an impediment to investment?

IREF Withholding Tax

Unit holders in an IREF may be subject to 20% IREF withholding tax on the occurrence of an IREF taxable event which is essentially the passing of value or profits to the unit holder. There is an exemption from the 20% IREF withholding tax obligation for certain unit holders (for example, where the units are held by Irish regulated funds or their EEA counterparts, credit unions, charities or section 110 companies). The exemption applies in so far as the unitholders in the IREF are not deemed to hold units in a personal portfolio IREF (PPIREF), as defined in section 739M TCA 1997.

PPIREF rules

A PPIREF is an IREF where some or all of the IREF assets or IREF business may, directly or indirectly, be selected or influenced by the unit holder or a person connected to the unit holder. Where an IREF is deemed to be a PPIREF in respect of a unit holder, it is possible to look through the direct unitholder to determine if the IREF would be a PPIREF in respect of the investors who '*indirectly invested in units of an IREF.*[1] Revenue has interpreted the meaning of 'indirectly' narrowly so that it is possible to look through one layer only, (i.e., it is possible to look through the investors in the entity that holds the units in the IREF and not further up a chain of ownership).

For example, pension funds that typically invest in an IREF via a number of layers, in order to pool pension assets, may fail the PPIREF test due to the restriction to permit look through of one layer only. However, the ultimate investors in the pension fund do not have the right to request a change in the terms of the pension scheme or to influence asset selection or the day to day running of the IREF or the pension fund. In our view, consideration

should be given to amending the legislation, or Revenue guidance if appropriate, to permit a look through to the ultimate investor for the purposes of the PPIREF test.

Advance pre-clearance

Pension schemes, investment undertakings or life assurance companies or their EEA equivalents that can show they have indirectly invested in units of an IREF and who would not be considered a specified person had they invested directly can apply, in advance of an IREF taxable event to which withholding tax would apply, for a certificate from Revenue confirming that no withholding tax should be deducted in respect of the IREF taxable event.

We understand that the advance pre-clearance procedures for indirect exempt investors set out in section 739QA TCA 1997 do not operate effectively in practice. Consideration should be given to agreeing a timeline within which Revenue will respond to a pre-clearance request. It would also be helpful if the pre-clearance request is granted for a five-year period (in line with that which applies to dividend withholding tax declarations) to cover all IREF taxable events within that period where there are no changes to the investors.

IREF Income Tax

Restriction on expenses

Section 739LB TCA 1997 includes a general restriction which requires that expenses must be incurred *"wholly and exclusively"* for the purposes of the IREF business. Amounts not incurred "wholly and exclusively" for the purposes of the IREF business are regarded as deemed income of the IREF and subject to income tax at the rate of 20%.

IREF business is defined in section 739K TCA 1997 as *"activities involving IREF assets."* This means that if the assets of an IREF consisted of, for example, 85% Irish property and 15% foreign property, expenses incurred by the IREF in relation to the letting and management of its foreign properties would not be considered expenses of the IREF business and would, except in very limited circumstances, result in a charge to income tax under the provisions of section 739LB.

We understand that the purpose of section 739LB was to ensure that 'excessive' expenses were subject to income tax in the hands of the IREF. However, the provision goes further than this and results in genuine commercial expenses being subject to an income tax charge. In our view, consideration should be given to providing a carve-out in the legislation for *bona fide* commercial expenses.

Definition of third-party debt

An exclusion for third-party debt is set out in section 739LC TCA 1997 which operates by reducing the amount of income on which an IREF is charged to income tax by the amount of income that would have been charged to tax had the specified debt consisted solely of third-party debt. However, the definition of *"third-party debt"* for the purpose of section 739LC TCA 1997 prevents genuine third-party debt being regarded as such in many cases.

For example, a fund may agree to acquire an investment property from a third-party vendor who developed and let the property. While the fund may have incorporated an IREF, it may still be awaiting authorisation from the Central Bank. Pending the receipt of authorisation, the fund may incorporate a company to acquire the property. Once the IREF receives Central Bank authorisation, the property will be transferred from the company funding the acquisition with third-party debt. However, this debt will not qualify as "third-party debt" under section 739LC as the property has been acquired from the company who has not carried out significant development work on the property.

IREF income tax rules were introduced in Finance Act 2019 to counter the use of excessive debt and other payments to reduce distributable profits.[2] As the leverage limits for Irish property funds are now governed by the Central Bank, we believe that consideration should be given to removing the IREF income tax rules

[1] Section 739Q(3) TCA 1997.

[2] Response to Parliamentary Question No. 269, 18 October 2022.
https://www.oireachtas.ie/en/debates/question/2022-10-18/269/

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
37b. We invite comment in relation to the tax treatment of IREFs, in particular in relation to the following: The tax exemptions that apply to certain categories of investors

The IREF withholding tax exemptions, in particular the exemption for Irish pension schemes, Irish regulated funds and life assurance funds and their counterparts in the EEA that are subject to equivalent supervision and regulation, should be extended to include counterparts in the UK which is an important source of capital investment.

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6. The role of the REIT and IREF regimes in the Irish property market

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document: I...

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

37c. We invite comment in relation to the tax treatment of IREFs, in particular in relation to the following: The tax rate applicable at the level of the fund

Please refer to our response to Question 36.

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

37d. We invite comment in relation to the tax treatment of IREFs, in particular in relation to the following: The overall tax treatment of IREFS – should an alternative mechanism be considered?

Restoring certainty to the property market by having a clear strategy to address housing supply issues is critical if Ireland wants to attract the investors the country relies on to fund the development of housing. Ireland is at risk of international investors choosing to invest their capital in competing jurisdictions if the stability and certainty of the Irish taxation regime is not maintained.

The IREF regime has facilitated a large number of developments. While we have outlined above a number of difficulties with aspects of the IREF regime, introducing a new regime risks adding further uncertainty to the market. Any significant changes to the IREF regime could result in delays in commencement of developments. If policymakers determine that the IREF regime should be replaced with an alternative regime, it would be crucial to have early engagement with stakeholders regarding its design and implementation.

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6. The role of the REIT and IREF regimes in the Irish property market

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Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

38. REITs invest in property as landlords and as developers of property to hold for rent. Do REITs, and the regime as it is currently designed, support investment in housing policy objectives?

The REIT regime was introduced in Ireland to promote stable, long-term investment in rental property by removing a double layer of taxation that would otherwise apply on collective investment. This operates by providing that REITs are not chargeable to either corporation tax in respect of income from their property rental business or chargeable gains accruing on disposals of assets of their property rental business. Instead, the investor is subject to taxation on distributions from the REIT. Subject to certain exemptions, such distributions are also liable to dividend withholding tax.

REITs have the potential to fulfil a key funding role in the Irish residential market by attracting investors and capital which may otherwise go to jurisdictions other than Ireland. However, there are a number of aspects of the Irish REIT regime which are not operating as intended and are not aligned with the policy objectives of the REIT regime. These aspects have contributed to the privatisation of a number of REITs in recent years.

Irish REITs have historically traded at a significant discount to their net asset values and at a greater discount compared with their European counterparts. We understand that this greater discount is partially attributable to lower liquidity in the Irish market compared to larger European exchanges and to concerns regarding the Irish property market arising from the 2008 financial crisis.

In addition, another important driver of this discount are the significant changes to the tax rules governing real estate structures in recent years. We understand that these changes have negatively impacted investor confidence in the sector. Consequently, restoring stability to the regime is of the utmost importance to attract investment into the Irish real estate sector.

Regulatory Issues

The Central Bank considers that Irish REITs should be regarded as Alternative Investment Funds (AIFs). This brings the management of an Irish REIT within the scope of Alternative Investment Fund Managers Directive (AIFMD), which sets out the regulatory framework governing the conduct of Alternative Investment Fund Managers and the AIFs that they manage. Ireland is an outlier by regarding REITs as AIFs. Belgium, France, the UK, and Spain each have REITs which they do not regard as AIFs.

The classification of an Irish REIT as an AIF results in significant annual costs for Irish REITs, and negatively impacts the attractiveness of the Irish REIT regime in comparison to equivalent European regimes. It should be noted that Irish REITs, by virtue of having their shares traded on the Irish stock exchange, are already subject to significant levels of regulation which apply to a listed company.

Tax Issues

There are a number of aspects to the tax legislation governing REITs which are not functioning as intended. Amendments to these areas would enhance the effectiveness of the REIT regime.

Leverage Condition

It is a legislative requirement that leverage within a REIT may not exceed 50% of the market value of its assets. Where the market value of residential property falls, a REIT's loan-to-value percentage will rise, and the REIT may be required to make an unplanned disposal of properties in order to satisfy this 50% condition. This condition may discourage a REIT from funding the development of Irish property where it anticipates that prices may fall.

We consider this condition could be amended to provide that a REIT's leverage is restricted to 50% of the cost of its assets as opposed to its market value, which would satisfy the policy objective of preventing a REIT becoming over-leveraged. Such an amendment would also allow REITs to continue to support housing policy objectives independently of economic cycles, as it would enable REITs to continue to invest in property even when prices are expected to fall.

Reinvestment Conditions

Where a REIT disposes of a property, it must either reinvest the net proceeds of the property disposal in the REIT's property business or distribute the proceeds within a 24-month period. Amounts not reinvested or distributed will be treated as part of the REIT's property income, 85% of which must be distributed annually.

The current requirement to satisfy the above condition within 24 months of the disposal of a property is overly restrictive. Extending the reinvestment period to 48 months would provide additional flexibility and would allow a REIT to apply the disposal proceeds in the financing of larger-scale developments.

In addition, it is unclear from REIT legislation or Revenue guidance whether a REIT may satisfy the above test by way of making capital distributions to shareholders, as opposed to distributions out of profits which would be subject to dividend withholding tax.

Capital Gains Tax

Finance Act 2019 amended the REIT legislation so that gains which have accrued in the REIT are brought within the scope of CGT on a subsequent disposal where a REIT exits the regime within 15 years of entering the regime. Previously an uplift in the tax base of the underlying assets to market value was permitted when the REIT exited the regime. This provision is likely to act as a disincentive to the establishment of more REITs in Ireland.

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6. The role of the REIT and IREF regimes in the Irish property market

Section of document: 6. The role of the REIT and IREF regimes in the I...

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

39. While REITs are a structure used in many jurisdictions for collective investment in property, Ireland has only one remaining REIT. Are there aspects of the REIT regime that are not operating as intended or are acting as an impediment to investment?

The REIT offering is an important product for attracting international capital into the Irish property market. While the 20% withholding tax rate is in line with similar European offerings, there are a number of amendments which could make the Irish REIT regime a more attractive proposition. For example, the introduction of flexibility as to

what markets an Irish REIT can list on would be welcome, such as the possibility to list on non-euro markets or markets other than a main market of a recognised stock exchange. It is also noteworthy that REITs established in certain jurisdictions, for example, Dutch REITs and US REITs, do not require the REIT to be listed.

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6. The role of the REIT and IREF regimes in the Irish property market

Section of document: 6. The role of the REIT and IREF regimes in the I...

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
40. How does Ireland's REIT regime compare to REIT regimes in other jurisdictions?

Please see response to Question 39**.**

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6. The role of the REIT and IREF regimes in the Irish property market

Section of document: 6. The role of the REIT and IREF regimes in the I...

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
41. Tax position in relation to REITs - Click the 'Read Content' link to view the text of this question in the document section.

(i) The standard REIT structure, common internationally, of exemption for qualifying property profits within the REIT subject to a range of conditions including a requirement that a high proportion of the profits (85 per cent in Ireland) be distributed annually for taxation at the level of the shareholder

While certain elements of the tax framework of the Irish REIT regime are in line with those of its European counterparts, there are key areas where the Irish regime is more restrictive and is therefore not as attractive to investors as other regimes. Any further restrictions would encourage foreign direct investment to be invested in REITs in competitor jurisdictions instead of Ireland, and as a consequence, reduce the availability of much-needed foreign capital to support the construction of homes in Ireland.

(ii) The tax exemptions that apply to certain categories of investors

The general dividend withholding tax (DWT) provisions apply to distributions from a REIT. Therefore, an Irish resident individual will suffer DWT on a distribution from a REIT. However, an Irish resident "excluded person", such as a pension scheme or charity investing in a REIT, may receive distributions gross, subject to completion of the appropriate Schedule 2A Declaration. Distributions from a company in a group REIT to another company in the same group REIT are exempt from corporation tax.

Non-resident investors are generally subject to DWT on any distributions received from a REIT and are entitled to fewer exemptions from this treatment than if they held the shares in any non-REIT listed company because section 172D (2) and (3) TCA 1997 and section 153 (4) TCA 1997 are disapplied in respect of distributions made from a REIT. Certain investors may seek a refund of DWT under the terms of a relevant double taxation agreement. In our view, the current limited tax exemptions which apply to certain categories of investors are appropriate.

(iii) The tax rate applicable at the level of the REIT

A REIT is generally exempt from tax in respect of income or gains arising from its property rental business. However, in certain circumstances, where a REIT carries out significant development in respect of a property and disposes of that property within 3 years, a charge to tax may arise. A charge to tax may also arise where the REIT fails to distribute 85% of its property profits.

A key objective of the REIT regime is to remove the double layer of taxation which existed previously when investing in Irish real estate through a corporate vehicle. Therefore, any amendment to the tax applicable at the level of the REIT could impact on the viability of the REIT regime.

We understand from discussions at the TALC BEPS Sub-committee that an Irish REIT will potentially not be regarded as a 'Real Estate Investment Vehicle' within the meaning of the new Pillar Two legislation when transposed into Irish law. This would mean that an Irish REIT that is in scope of Pillar Two would not be able to avail of the specific provisions which exempt REITs from the OECD Pillar Two Model GloBE Rules (as intended). If it is the case that a REIT will be subject to tax at the minimum rate of 15%, it is probable that the REIT regime in Ireland would no longer be regarded as viable for investors.

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6. The role of the REIT and IREF regimes in the Irish property market

Section of document: 6. The role of the REIT and IREF regimes in the I...

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

42.Should the IREF and REIT regime continue to exist in tandem?

It is important that both the IREF and REIT regimes continue to exist in tandem in order to maximise the potential pool of capital available to finance Irish real estate development and investment.

Depending on the investment strategy or development period of the fund, IREFs are often established as "closed-ended" funds. This means that investors are required to contribute capital for a fixed period of time and may be unable to realise their investment before the end of that timeframe. Even where an IREF is not closed-ended, it may not be straightforward for an investor wishing to divest to find a buyer for their units.

On the other hand, as shares in a REIT are traded on a listed stock exchange, this provides an opportunity for investors who may not want to commit capital over the long-term, or who wish to make a more flexible investment.

An IREF is likely to be a more suitable vehicle than a REIT for an investor who intends to commit a significant amount of capital to the Irish property sector. This is because a REIT may be subject to a tax charge in respect of any distribution made to a person holding more than 10% of the REIT shares.

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6. The role of the REIT and IREF regimes in the Irish property market

Section of document: 6. The role of the REIT and IREF regimes in the I...

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
43. Is there an appetite for retail investors to invest in property, if so, what is the best type of vehicle to accommodate such investment?

While we understand that there is a strong appetite from retail investors to invest in property, there is currently no appropriate vehicle to accommodate such investment. While the REIT regime may provide an opportunity for retail investors to invest in property, due to the issues which we have already outlined, there is currently only one Irish REIT.

A Retail Investor Alternative Investment Fund (RIAIF) is a regulated investment fund that is targeted at retail investors. However, we understand from our members that a RIAIF is not suitable for property funds as it cannot invest more than 20% of its net assets in securities that are not traded in or dealt on a regulated market and is precluded from investing more than 20% of its net assets in any one issuer.

In addition, as RIAIFs are generally obliged to ensure that they are sufficiently diversified, property cannot make up more than 20% of the total net assets. In contrast, a typical property fund would have property holdings accounting for 80-90% of its net asset value.

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7. The role of the Section 110 regime

Section of document: 7. The role of the Section 110 regime

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
44. What policy objectives should section 110 be supporting?

Section 110 TCA 1997 was introduced by Finance Act 1991 to promote securitisation for the financial sector operating within the State. It was designed as a tax neutral regime for securitisation transactions. Since the introduction of the section 110 regime, Ireland has established itself as one of the leading locations in Europe for

securitisation activity. Securitisation activities in Ireland typically involve investors using section 110 companies to hold/manage a variety of qualifying assets, which include a wide range of financial assets (such as shares, bonds, derivatives, loans and deposits), commodities, and plant and machinery.

Finance Act 2016 and 2017 introduced changes to the legislation to address concerns that the section 110 regime was being used by international investors to reduce their Irish tax liabilities in respect of investments in Irish property-backed assets. The changes restricted the use of section 110 companies to minimise Irish tax liabilities on certain distressed debt transactions that are secured over, or derive their value from, an interest in Irish land, to ensure that profits made on Irish property transactions are taxable at the 25% rate of corporation tax.

The Commission on Taxation and Welfare recommended the Government to undertake a review of the section 110 regime with regard to institutional investment in the Irish property market and that this should include an assessment of whether it is achieving its intended policy objectives including their impact on the supply and affordability of housing.

We believe that concerns raised about the role of section 110 companies within the Irish property market have been adequately addressed through the Finance Act 2016 and 2017 changes of the rules around "specified mortgages" forming part of a "specified property business". If it is determined that further changes to the section 110 regime are required regarding any remaining section 110 companies that may be involved in investment in Irish property-related assets, we would urge policymakers to engage with stakeholders to ensure the design and implementation of any new regime does not negatively impact the majority of section 110 companies that have no connection with the Irish property market but invest in international assets.

The section 110 regime is an essential component of Ireland's funds industry. It also provides substantial employment and contributes to the Exchequer. The regime also plays an important role in Ireland's aircraft leasing sector. In 2022, net corporation tax receipts from section 110 companies were €84 million, while employment taxes were €8.9 million.[1] The special purpose vehicle (SPV) sector supports over 5,500 jobs across Ireland, with a gross value added of over €450 million in 2022.[2] We believe section 110 companies represent an essential part of Ireland's offering to international fund managers. Feedback from our members suggests that if Ireland does not maintain the section 110 regime, international fund managers are likely to look to other jurisdictions for both suitable SPVs and regulated funds. In particular, section 110 companies are used by regulated investment funds as investment subsidiaries, feeder vehicles, alternative investment vehicles and for warehousing of financial assets. These are all crucial aspects of providing a coherent infrastructure as an international fund domicile.

[1] Corporation Tax – 2022 Payments and 2021 Returns, Revenue Commissioners, May 2023.

[2] Indecon report on the 'Assessment of the Economic and Cross-Sectoral Impacts of the Special Purpose Vehicle Sector', September 2023.

7. The role of the Section 110 regime

Section of document: 7. The role of the Section 110 regime

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
45. What changes are needed, if any, to ensure the section 110 regime meets those policy objectives?

A number of legislative changes are required to ensure the section 110 regime continues to be considered internationally as a well-functioning tax-neutral SPV.

Restore the deduction for foreign withholding tax

The policy intention for the introduction of section 110 TCA 1997 was to promote securitisation for the financial sector operating in Ireland. It was designed as a tax neutral regime for securitisation transactions. Where a section 110 company suffers foreign tax on its income, this can impact on its tax neutrality if double tax relief is not available.

Finance Act 2019 amended section 81 TCA 1997 to provide that in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, a tax deduction should not be allowed in respect of any 'taxes on income'. Whilst we understand the policy intention of this amendment for companies which are carrying on a Case I trade in Ireland, this provision gives rise to unintended consequences for section 110 companies.

As the profits or gains chargeable to tax at 25% under Case III by section 110 are computed in accordance with Case I rules, it is unclear whether a tax deduction is now available for foreign taxes, assuming that these are taxes on income suffered on the receipt of distributions or interest received by a section 110 company.

An anomaly could potentially arise if both a deduction was not allowed for foreign taxes suffered and where the tax credit available under Schedule 24 was computed in line with that of a trading company such that the income which was not received by a section 110 company (i.e., the foreign withholding tax) would be subject to tax at a rate of 25%.

In addition, because of the corporation tax liability in the first year of the foreign tax being suffered, there is an amount of the liability which cannot be paid out as interest on the profit participating note (PPN) in the second year. Therefore, a tax deduction cannot be claimed for this amount of interest on the PPN in the second year, resulting in a corporation tax liability in Year 2 that is based on the corporation tax charge in Year 1.

This issue will be compounded on a yearly basis, with a resulting tax liability each year being based on the corporation tax charge from the year before. Such an outcome would likely place Ireland at a disadvantage relative to competitor jurisdictions. It would also appear to be at odds with the intended policy objective of section 110.

To ensure that the policy objective of section 110 can continue to be achieved, legislative clarification is required to ensure a section 110 company is entitled to a deduction for foreign withholding taxes.

Provide clarity regarding bona fide CLO transactions

Finance Act 2019 amended the definition of 'control' for the purposes of section 110 TCA 1997. A consequence of the amendment to section 110 (7) (b) was the extension of the test for control to include *bona fide* Collateralised Loan Obligation (CLO) transactions in certain circumstances. We understand from discussions with Revenue at TALC that this was not the policy objective.

Legislative clarification is required to confirm that the Finance Act 2019 amendments to the definition of control would not apply in circumstances where a section 110 company is set up for the purpose of executing a *bona fide* CLO which complies with the Securitisation Regulation.[1]

€10 million of qualifying assets on day one

In order to be a qualifying company under section 110, on the first day the company acquires qualifying assets, it must have €10 million of qualifying assets. The policy rationale for the €10 million test is unclear and it can be problematic where investment fund managers wish to use a SPV to hold assets with a lower value on day one.

In our view, the €10 million threshold should be lowered. In addition, we believe that consideration should be given to providing a reasonable period within which the test must be satisfied. For example, for the purpose of the anti-reverse hybrid rules[2], a 24-month period is provided to allow an entity meet the conditions to be a 'collective investment scheme'.

If it is decided that the €10 million test should continue to apply on day one, then it would be helpful to clarify that amounts which may be drawn down (for example, through share capital) and used to meet various costs before the company commences its securitisation activities, do not impact on its ability to satisfy the requirement that its holds no less than €10 million qualifying assets on the first day that such assets are acquired, held or created.

8-week period for electing into the section 110 regime

The legislation provides a period of 8 weeks to make an election into the section 110 regime. The late filing of this election means that a SPV will be taxed under normal Case III principles. The consequences of late filing are therefore hugely disproportionate to the administrative nature of the election. In our view, the 8-week time limit should be extended and consideration should be given to replacing it with an election contained in the corporation tax return of the SPV.

Section 452 Election

The activities of an Irish company are often financed by monies lent to the Irish entity by a foreign parent and interest is payable to that parent. Under section 130 (2)(d)(iv) TCA 1997, if the interest is payable to a non-resident company of which the Irish company is a 75% subsidiary or associate, it is treated as a distribution and, therefore, is not deductible as a trading expense.

However, section 452 (2) TCA 1997 allows interest to escape the application of section 130 (2)(d)(iv) if the company so wishes where the interest is payable to a company which is a resident of a tax treaty country, or an EU Member State. The interest concerned must also be payable by a company in the course of its trade and be deductible for tax purposes but for the rule in section 130 (2)(d)(iv). The treatment in section 452 (2) is optional and the company can elect in its corporation tax return for the period in question to take a deduction for the payment of interest.

As section 110 companies compute their taxable profits using Case I trading principles, it has been the long-standing practice that this permits such companies to make a section 452 election. However, Revenue recently updated their guidance[3] to state that section 110 companies may not make an election under section 452 unless the relevant income/expense itself is of a trading nature, and it is not sufficient to rely on the 'Case I' basis of calculation. The policy rationale for this change in practice is unclear and should, in our view, be reconsidered.

Irish Dividend Income

Dividends received by one Irish company from another are generally exempt from corporation tax irrespective of whether the recipient is receiving the dividends in the course of a trading activity or as non-trading income. However, Revenue recently updated their guidance[4] on section 110 to confirm their view that Irish dividend income is chargeable to corporation tax in the hands of a section 110 company.

Notably, there are a number of anti-avoidance provisions that apply to trading companies in receipt of exempt dividends which are designed to prevent those companies from artificially creating tax losses.[5] These rules also apply to section 110 companies. In these circumstances, the policy rationale for applying different treatment to dividends received by a section 110 company compared to all other Irish companies is unclear.

Duplication of Anti-Avoidance Rules

Finance Act 2011 introduced a form of anti-hybrid rules into section 110 TCA 1997.[6] These rules pre-date the Anti-Tax Avoidance Directive (ATAD) anti-hybrid rules and interest limitation rule which have since been transposed into Irish law. However, the 2011 rules remain in place, which creates an unnecessary duplication of rules that have the same objective but operate separately. In our view, it would be appropriate for the 2011 rules to be removed.

[1] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

[2] Section 835AVB, Taxes Consolidation Act, 1997

[3] Section 110: entitlement to treatment, Tax and Duty Manual, Part 04-09-01,at para. 2. https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-04/04-09-01.pdf

[4] Section 110: entitlement to treatment, Tax and Duty Manual, Part 04-09-01,at para. 2.1. https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-04/04-09-01.pdf

[5]Part 28 TCA 1997

[6] Section 110 (4A)TCA 1997.

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8. General

Section of document: 8. General

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:

46. In addition to the matters covered in this public consultation, are there other issues relevant to the Terms of Reference, which you wish to bring to the attention of the Department? Yes / No

Yes

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8. General

Section of document: 8. General

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of

section:
47. If you have answered "yes", please provide a brief summary of those issues, providing any information or references to material that you consider relevant to the Terms of Reference and the Department's work.

Participation exemption for foreign dividends

Private equity fund structures expect that the lower-tier investment subsidiaries will be able to receive dividends from their portfolio companies and claim a participation exemption. While Ireland's existing foreign credit system will typically reach the same result (that no Irish corporation tax is due), we understand that the complexity of the credit system is deterring private equity managers from using Irish investment companies.

In this regard, we welcome the publication on 14 September 2023 by the Department of Finance of the *Roadmap for the Introduction of a Participation Exemption into Irish Corporation Tax* which confirms the intention to legislate for a participation exemption for dividends in Finance Bill 2024 to take effect from 2025.

The Institute's response[1] to the Department of Finance's consultation on moving to a territorial system of taxation in March 2022 and our Pre-Finance Bill Submission[2] in May of this year highlighted how the absence of a participation exemption for foreign dividends puts Ireland at a disadvantage when competing for investment with other EU and OECD countries that operate exemption systems.

We firmly believe that Ireland should adopt a participation exemption for foreign dividends on the election of the taxpayer. The participation exemption should apply to all foreign source dividends irrespective of whether they are derived from treaty or non-treaty jurisdictions and it should not be limited to dividends paid out of the trading profits of companies, as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption.

In designing a participation exemption for dividends, we believe it would be reasonable to impose a minimum ownership requirement. For example, policymakers could consider imposing a condition similar to that which applies to the participation exemption for gains in section 626B TCA 1997. This would limit the availability of the participation exemption to dividends where the Irish resident company has a direct or indirect interest of at least 5% in the company from which the dividend is ultimately sourced.

In tandem with the introduction of a participation exemption for dividends, consideration should also be given to amending section 626B to ensure that it aligns with the dividend exemption. For example, the definition of relevant territory for the purpose of section 626B could be aligned with the list of qualifying jurisdictions for the participation exemption for dividends. We believe that consideration should also be given to the removal of the trading requirement for section 626B to apply.

Attracting Talented Workers

The Irish funds industry is a key contributor to the country's economy, providing employment opportunities for highly skilled workers. However, similar to other industries, the continued success of the funds industry is reliant on the ability of employers to attract key talent to work in Ireland. The unprecedented mobility in the current labour market internationally means that there is a real risk that the Irish funds industry will be unable to attract the workers they need if the marginal cost of employment for businesses and individuals is not reduced.

Ireland's high marginal tax rate applies at relatively low-income levels by international standards which can act as a disincentive for companies seeking to attract workers to Ireland. As we highlighted in our response[3] to the Department of Finance consultation on Ireland's Personal Tax System in April, an objective of any long-term strategy aimed at attracting and retaining foreign direct investment in Ireland should include reducing the marginal cost of employment in Ireland for individuals and ultimately, businesses which bear the cost of the employment. The consensus among our members is that a marginal rate of tax (including income tax, USC, and employee PRSI) set at 50% would help to attract highly skilled and mobile labour to Ireland.

Special Assignee Relief Programme (SARP)

Given the high rates of personal taxation and the intense competition for top talent across many jurisdictions, persuading highly skilled individuals and senior decision-makers to move to Ireland is challenging. SARP plays a critical part in Ireland's competitive offering to incentivise the relocation of highly skilled workers to the State.

However, the attractiveness of SARP remains vulnerable to competitive pressures. Many other jurisdictions offer similar and often more attractive regimes to attract foreign executives, such as the Netherlands, France, and Portugal. Therefore, it is essential that SARP is retained and benchmarked on a regular basis against the top competitor jurisdictions to ensure Ireland remains competitive.

In benchmarking SARP against equivalent regimes, care should be given to ensuring the Irish regime reflects emerging working arrangements and international norms regarding the types of remuneration that qualify for relief, for example, share-options and Restricted Stock Units which are used extensively as part of the remuneration of high-performing employees and executives.

To provide certainty to businesses, SARP should be extended beyond its expiry date of 31 December 2025 for a 10-year period to December 2035. This would assist businesses to plan for longer-term projects with the knowledge that SARP will remain a core offering under the Irish personal tax system. In an environment where there are high employment levels and skill shortages in some key areas, consideration should also be given to allowing "new hires" to qualify for SARP.

Taxation of share-based remuneration

The Irish system of taxation of share options and Restricted Stock Units is overly complex in comparison with the approach taken in other jurisdictions. Given the importance of share-based remuneration as a means of attracting and retaining key talent, the taxation of share-based remuneration needs to be simplified and aligned with other competitor countries.

Amend Section 79 TCA 1997 to include units held in Money Market Funds

Section 79 TCA 1997 clarifies the tax treatment for trading companies of foreign-exchange gains and losses arising in the profit and loss account on any "relevant monetary item or relevant contract" and on any "relevant tax contract". Such exchange gains and losses typically arise when the company undertakes trading transactions in currencies other than its functional currency for accounting purposes.

In our view, the definition of "relevant monetary item" in section 79 should be amended to ensure that the provision applies not only to bank accounts used solely or mainly for trade purposes, but also to units held in Money Market Fund (MMF) accounts used for the same purpose.

MMFs are as liquid as bank accounts and are designed to convert on a par basis. We understand from our members that since the international banking crisis of the last decade, there has been a move by domestic and international groups away from ordinary bank accounts to holding their day-to-day funds via units in MMFs. The rationale for holding such funds via MMFs includes reducing a group's exposure in the event of a liquidity event for banks and also avoiding negative interest rates during the historic low interest rate period of recent years. Although interest rates have now increased, we understand that many domestic and international groups continue to hold their day-to-day funds via MMFs.

In our view, it would be reasonable for Case I treatment to be applied to MMFs used for the purpose of a trade, akin to the treatment which applies where foreign currency is held via a bank account for the purpose of a trade. Amending section 79 to give certainty in this area would remove doubt for taxpayers who are using MMFs for *bona fide* commercial reasons on a day-to-day basis.

Expand the exemption from DWT for 'collective investment vehicles' to include Investment Limited Partnerships (ILPs)

Currently, common contractual funds (CCFs) benefit from an exemption for DWT but no such exemption exists for ILPs. Given both fund types are tax transparent, it would seem logical that the same tax treatment should apply to both. Limited partnerships are often used for private equity funds and it is intrinsic to such private equity fund structures that they can make their investments through lower-tier investment subsidiaries. For this reason, it is

crucial that an ILP can establish an Irish limited company as a lower-tier investment subsidiary and be able to receive dividends from that wholly-owned subsidiary without tax being withheld. We understand from our members that this lacuna is reducing the attractiveness of ILPs for international fund managers.

[1] https://taxinstitute.ie/wp-content/uploads/2022/03/2022-03-07-ITI-Response-to-Consultation-on-a-Territorial-System-of-Taxation-Final.pdf

[2] https://taxinstitute.ie/wp-content/uploads/2023/06/2023-05-31-ITI-Pre-Finance-Bill-Submission-FINAL.pdf

[3] https://taxinstitute.ie/wp-content/uploads/2023/04/Irish-Tax-Institute-Response-to-the-Public-Consultation-on-Irelands-Personal-Tax-System.pdf

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8. General

Section of document: 8. General

Select the question to which you are responding. Click 'Read Content' above to view the full text of questions at end of section:
48. This consultation is necessarily wide-ranging. As we would not be able to take forward all proposals immediately, what do you think the top 3 priority proposals should be for government implementation and why?

In responding to this consultation, we have focused on the tax issues raised in sections 5, 6, 7 and 8 of the Consultation Paper. We have identified 3 priority proposals for Government implementation below:

1. Participation Exemption for Foreign Dividends

As set out in our response to Question 47, we firmly believe that Ireland should adopt a participation exemption for foreign dividends on the election of the taxpayer. The participation exemption should apply to all foreign source dividends irrespective of whether they are derived from treaty or non-treaty jurisdictions and it should not be limited to dividends paid out of the trading profits of companies, as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption.

In tandem with the introduction of a participation exemption for dividends, consideration should also be given to amending section 626B TCA 1997 to ensure that it aligns with the dividend exemption. For example, the definition of relevant territory for the purpose of section 626B could be aligned with the list of qualifying jurisdictions for the participation exemption for dividends. We believe that consideration should also be given to the removal of the trading requirement for section 626B to apply.

2. Simplify the Tax Rules for Investment Products/Vehicles

Certainty of tax treatment is of paramount importance to investors. We firmly believe that a key focus of policymakers should be to simplify the existing complex rules that apply to savings and investment products, to property funds and to section 110 companies.

In answering the consultation questions, we have identified a number of key areas where we believe simplification is necessary to help restore certainty which is key to attracting investment.

These include:

- Due to the inherent complexity in determining the correct tax treatment of a fund investments, there is no guarantee that if a taxpayer uses their best efforts to determine the correct treatment that interest and penalties will not apply if they get it wrong. We would strongly urge that the taxation of fund investments be overhauled to simplify the regime and support tax compliance.

- The IREF regime has been subject to many changes over the last number of years with the result that there is little certainty regarding the application of certain IREF provisions. For example, as we outlined in our response to Question 33, the IREF income tax rules apply where an IREF is deemed to have excessive levels of debt. On the basis that leverage limits for Irish property funds are now governed by the Central Bank, consideration should be given to removing the IREF income tax rules. This would simplify the regime and it would also bring Ireland in line with other EU jurisdictions.

- In our response to Question 45, we identified a number of simplification measures which are necessary to ensure the section 110 regime continues to be considered internationally as a well-functioning tax-neutral SPV. For example, we believe that the €10 million qualifying asset test should be reviewed and the 8-week period for electing into the section 110 regime should be reconsidered.

3. Align the Tax Treatment of Savings and Investment Products

As a general principle, we consider different forms of investment and savings income and gains should be subject to an equal level of taxation, in line with the principle of horizontal equity. This is consistent with the 2009 Commission on Taxation Report which noted that "*as a general principle, and as part of a rational and coherent approach to the taxation of capital, we also conclude that the tax rate on deposit interest, on funds, on capital gains and on dividends received by individuals should be the same".*

In our view, in the case of individuals, a single rate of tax of 33% should apply for investment income and gains. The 33% rate would align with both the DIRT rate and the CGT rate.

Documents Attached: No

Boundaries Captured on Map: No