

An Irish Solution to IRS TLP Clarification

A recent ruling issued by the Internal Revenue Service (**IRS**) in the United States has clarified the tax treatment of Traded Life Policies (**TLPs**) which are held by non-US residents.

The effect of the ruling is broadly that death benefits received by a foreign person in respect of TLPs taken out by US residents, may be subject to US withholding tax at a rate of 30%.

Although widely anticipated, the ruling will have serious adverse implications for investment vehicles investing in TLPs which are located in offshore jurisdictions. The ruling threatens to limit returns on maturity policies and upset pricing models. Without the availability of double taxation treaties in offshore jurisdictions, such investment vehicles will need to restructure to minimise their tax exposures as a result of the ruling.

Since the ruling a number of investment vehicles have begun to relocate their operations. They recognise the attractiveness of Ireland as a location and the benefits of gaining access to the double taxation treaty between Ireland and the US in a manner that complies with the limitation of benefits provisions contained in the treaty.

Ireland has a favourable tax regime for entities known as "Section 110" companies, a reference to the applicable statutory provision in Irish tax law. The use of Section 110 companies to structure investments in TLPs can mitigate the application of US withholding tax and potentially eliminate it entirely. Companies satisfying the treaty requirements may remit the maturity proceeds of policies without the imposition of US withholding tax.

A Section 110 company is an unregulated vehicle designed to invest in financial assets which may be established as either a private or public limited company. A key advantage of the Section 110 company arises from its unregulated status which allows for an expedited restructuring time frame at a reasonable cost.

Recognised as a centre of excellence in the structured finance and investment funds industries, Ireland has the necessary infrastructure of experienced advisers and service providers to make it a suitable jurisdiction for investment vehicles seeking to relocate.

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The effective date of the IRS ruling is 26 August 2009 so it is imperative that investment vehicles wishing to restructure act quickly.

At LK Shields we are working with participants in the secondary market to develop structures which allow them to minimise their tax exposure (consistent with the limitation of benefits provisions of the treaty) while offering the flexibility to maintain their investment offering.

About LK Shields Solicitors

LK Shields Solicitors is one of the leading law firms in Ireland. Founded in 1988, today we number some 24 Partners, 70+ fee earners and 130 staff. Our principal areas of practice include corporate, litigation and dispute resolution, commercial property, banking & financial services, intellectual property, employment, pensions and employee benefits.

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