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Why Choose Ireland? Structured Finance And Securitisation

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Introduction – Why Ireland?

Ireland is one of the leading jurisdictions of choice in the EU for the establishment of special purpose vehicles (SPVs) that are used in securitisation and structured finance transactions including, for example, asset-backed securities, collateralised loan obligations, mortgage-backed securities and life insurance settlements programmes.

Irish SPVs may also be utilised in structures involving alternative investment funds established in Ireland (or re-domiciling to Ireland), with a benefit for such funds in minimising foreign taxes on underlying investments.

One of the primary reasons for Ireland's reputation in this area is the tax regime under Section 110 of the Taxes Consolidation Act 1997 (Section 110). Other reasons include:

1. the range of SPV service providers that are based in Ireland;
2. Ireland's extensive network of double taxation treaties;
3. Ireland is the only common law English-speaking jurisdiction (like the US and the UK) in the EU and Eurozone and is a member of the OECD; and
4. Ireland is an open economy with an accessible and pro-business legislature that promotes and supports Ireland's competitiveness in international capital markets.

These reasons make Ireland a choice for SPV domiciliation. Efficient listing of securities can also be undertaken on The Irish Stock Exchange plc, trading as Euronext Dublin.

An SPV will generally raise finance by the issue of interest bearing debt securities, or notes.

This article explores some of the benefits of using Irish SPVs for securitisation and structured finance transactions.

Taxation: The Section 110 Tax Regime

Overview

Ireland's tax regime enables SPVs to be tax neutral (i.e. that payments out match payments in) and can result in efficient profit extraction which is essential to structured finance transactions. Irish tax legislation provides for specific tax treatment for qualifying SPVs, with the conditions required to become a qualifying company set out under Section 110. To avail of the benefits of Section 110, the SPV must:

1. be resident in Ireland for tax purposes;
2. become a qualifying company by acquiring, holding, managing or entering into financial arrangements in relation to qualifying assets with a market value of at least €10 million (on the date of the first transaction but can decrease over time) and, apart from activities ancillary to such arrangements, carries on no other activities; and
3. generally enter into all transactions on an arm's length basis (although the legislation specifically excludes profit participating loans from satisfying this requirement).

Once an SPV meets the conditions specified under Section 110, it qualifies for a series of tax efficiencies and must notify the Irish Revenue Commissioners of its existence. However, there are no special rulings or authorisations required in order for the SPV to achieve a tax neutral status. Ireland incorporated SPVs are required to register with the Central Bank and submit quarterly and annual statistical returns.

Resident In Ireland

In Ireland, there are two tests of tax residence:

1. a central management and control test; and
2. an incorporation test.

Where a Section 110 company is owned by a charitable trust (removing the need to consider any group ownership for the purposes of the test), it is most likely that the Section 110 company would be regarded as tax resident in Ireland under the incorporation rule.

Qualifying Assets

“Qualifying assets” means an asset which consists of, or of an interest (including a partnership interest) in a financial asset, commodities or plant and machinery. A “financial asset” includes shares, bonds and other securities, futures, options, swaps, derivatives and similar instruments, invoices and all types of receivables, obligations evidencing debt (including loans and deposits), leases and loan and lease portfolios, hire purchase contracts, acceptance credits and all other documents of title relating to the movement of goods, and bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments, carbon offsets, and contracts for insurance and contracts for re-insurance, “Commodities” means tangible assets (other than currency, securities debts, or other assets of a financial nature) which are dealt with on a recognised commodity exchange. “Plant and machinery”, whilst not specifically defined, is generally understood to include aircraft, ships, rolling stock, motor vehicles and other equipment.

Advantages

An SPV can be profit neutral and tax neutral, with some careful planning. Profits arising from the activities of a qualifying SPV are chargeable to corporation tax as if the SPV was a trading company. This allows for a tax deduction to be available in respect of any interest expense incurred by the SPV. A position can be achieved whereby the SPV earns a minimal profit (there is no specified minimum amount required by law) subject to the prevailing corporation tax rate. SPVs can also avail of exemptions from Value Added Tax (VAT) because management services provided to an SPV are exempt from Irish VAT. There is also an exemption from stamp duty available on the issue and transfer of notes.

Exemptions from Withholding Tax

The listing of the debt securities by an SPV on a recognised stock exchange allows the SPV to avail of one of the most utilised exemptions from the requirement to apply withholding tax on interest paid by a SPV: the ‘Quoted Eurobond’ exemption. This allows for no withholding tax to be applied on interest paid on such securities where:

1. the paying agent is not located in Ireland;
2. the securities are held in a recognised clearing system; or
3. the owner of the security provides a declaration that they are not resident in Ireland.

The other possible exemptions from withholding tax are:

1. where the interest is being paid to an individual who is not resident in Ireland, but is resident in the EU or a country with which Ireland has entered into a double tax treaty; or
2. the application of the wholesale debt instrument exemption for notes with a maturity of less than two years.

Ireland has a large double taxation treaty network, which continues to expand. At present, Ireland has signed Double Taxation Agreements with 76 countries, 74 of which are in effect.

Listing on Euronext Dublin (formerly the Irish Stock Exchange)

Euronext Dublin is one of the leading exchanges in the world for the listing of SPVs, providing an efficient and effective listing service for debt securities. Euronext Dublin offers listing on the Main Securities Market (MSM) or the Global Exchange Market (GEM). The MSM is an EU regulated market. The GEM is an exchange regulated market and multilateral trading facility operated by Euronext Dublin.

An offering of securities on the MSM requires the publication of a prospectus approved by the Central Bank of Ireland under the Prospectus Regulation (2017/1129) (or by the regulatory authority of another EU Member state and passported into Ireland).

An offering of securities on GEM is not required to publish a prospectus where the offering comes within one of several exceptions in the Prospectus Regulation, however the Market Abuse Regulation does apply to issuers that list on this market. Instead, the offering can be set out in a document called a “Listing Particulars”, which does not require Central Bank approval and is generally shorter form. The exceptions to the Prospectus Regulation include offerings:

1. to qualified investors (as defined in the Prospectus Regulation); or
2. to fewer than 150 persons; or
3. with a minimum denomination per note of at least €100,000; or
4. for a total consideration of at least €100,000 per investor; or
5. for a total consideration across the European Union of less than €1,000,000 over a 12-month period (individual Member States may raise this threshold from €1,000,000 to up to €8,000,000. For example, Ireland has raised the threshold to €8,000,000).

In some instances, an SPV may wish to list debt for tax reasons, such as availing of the ‘Quoted Eurobond’ exemption from withholding tax, which is discussed below. In addition, trading benefits can be obtained through the listing of debt as it may allow a secondary market for the notes of the SPV to develop. The distribution of securities can be easier if the securities are listed, as some institutional investors may be required to invest a proportion of their portfolios in listed securities.

Where the securities of an SPV are listed on the MSM, with the approval of the Central Bank of Ireland, the securities can be passported across the EU and offered to the public and/or admitted to trading in other EU countries. Securities listed on GEM can be distributed using the private placement rules applicable to the jurisdiction in which they are being offered.

Listings can also be achieved on other European stock exchanges such as the Vienna Stock Exchange. The Vienna MTF is an exchange regulated market and multilateral trading facility operated by the Vienna Stock Exchange and can be a simple, quick and cost-efficient way for an SPV to list the securities where only a listing on a 'recognised stock exchange' is required.

Legal Structure

Under Irish company law, Irish SPVs can be established in a number of ways. They are normally incorporated as either a:

1. designated activity company (DAC); or
2. public limited company (PLC).

The vast majority of Irish SPVs are incorporated as DACs, a form of private limited company that is permitted to have its securities admitted to trading or listed on any market.

DACs can be established with a minimum issued share capital of €1. They can be incorporated within five days and must have at least two directors. A PLC can be incorporated within fifteen days and is subject to a minimum capitalisation requirement of €25,000. One quarter of this amount must be paid in before the PLC commences business and can be used to pay expenses.

An SPV will generally be established as an "orphan" entity, so that it can remain bankruptcy remote. This is achieved by having the shares of the SPV held by an Irish registered share trustee who will declare a trust over the shares in the company for general charitable purposes.

Service Providers

There are a number of institutions established in Ireland providing corporate services to SPVs – such as paying agency, administration and company secretarial services. Ireland's established financial services industry also means that investment managers, collateral administrators and trustees are also located in Dublin, so that all of the services required by an SPV in a securitisation or structured finance transaction can be sourced in Ireland.

EU and OECD Membership

Ireland is a member of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), which means that Ireland is well situated as a location for SPVs. EU and OECD jurisdictions are considered to have well developed regulatory frameworks with sophisticated rules for protection of investors (for example, the Prospectus Regulation and anti-money laundering legislation).

If you would like further information on Structured Finance and Securitisation, please contact a member of our Financial Services team.

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