



**Providing guidance**  
Taxation and Irish funds

## Set up phase

### Fund vehicle evaluation

Ireland offers a wide variety of fund vehicles, regulated and unregulated, transparent and opaque. In determining the optimum vehicle to be selected, various factors will need to be considered such as investor profile, investment mix, strategy and governance requirements. We can advise on the full suite of fund vehicles available, having regard to the specific requirements of the fund manager and investors.

### Fund prospectus

On launch, the fund will prepare a prospectus, and other documentation, depending on regulatory requirements. This prospectus will need to outline the tax treatment of the fund and the investors therein. We can therefore:

- Review Irish tax section of prospectus or disclosure document to ensure it is up to date with the latest legislation, tax authority practice, industry standards and associated requirements:
  - o Applicable tax rates for fund and investors
  - o Available exemptions and documentation required
  - o Categorisation of investor etc.
- Review tax risk disclosures
  - o OECD BEPS process, including future potential developments not yet agreed;
  - o ATAD, including transposition into Irish law
  - o DAC6 disclosure requirements
  - o Other applicable tax risks including Brexit etc

The review can be provided as a standalone document for inclusion or existing boilerplate can be reviewed.

### Subscription documentation

The fund will be required to issue account opening and onboarding documentation to potential investors, to ascertain the tax treatment applicable to those investors. These documents will be dependent on the type of fund and the nature of the investor cohort. We can assist with the preparation and review of:

- Irish tax declarations to be made by investors, in corporate, individual or other legal form, comprising:
  - o Non-resident declaration
  - o Exempt Irish resident declaration
- FATCA/CRS self-certification
- Other required jurisdiction specific declarations

### Tax registration

Notwithstanding the fact that certain Irish funds may be exempt from Irish tax at a fund level, certain Irish tax registrations are still required. We can assist with the registration of funds for the following:

- Investment Undertaking Tax ("IUT") – qualifying Irish funds must: register for IUT, file bi-annual IUT returns, and operate IUT on payments to investors (if necessary). Funds must register for IUT and file IUT returns even where no liability to IUT arises (for example where there are no Irish resident investors). Normally the fund administrator will file IUT returns, but we can assist in the filing of these if required. Funds which are treated as tax transparent, such as a CCF or ILP are required to register for reporting purposes.
- PAYE – PAYE and associated payroll taxes must be operated on payments to directors and employees (if any).
- VAT (if necessary) – whilst there is an exemption for certain services provided to funds, there may still be an obligation to register for, and account for Irish VAT. Transparent funds are not exempt from Irish VAT requirements.
- Corporation tax – where the fund is not a qualifying fund and instead is incorporated as a "regular" DAC, limited company, or SPV, it will generally be required to register for corporation tax. Similarly, a General Partner of an Investment Limited Partnership may be required to register for corporation tax.

## Tax advice

### General

The fund, or its investors, promoters or managers may require specific advice on the Irish tax treatment of funds in Ireland. This can be provided in an overview format, such as a slide presentation, or a detailed analysis of the Irish tax legislative framework outlining the following:

- Corporate tax environment for Irish funds
- General scheme of taxation of funds' income and gains
- General scheme of taxation of investors
- Tax treatment of general and limited partners

### Fund tax residence

In order to benefit from the specific regime for Irish funds, the fund must remain to be considered Irish tax resident at all times. We can advise on how the fund can preserve its Irish tax resident status, and advise as to how the following factors affect that tax residence status:

- Management and control issues around the fund and its governance
- Location/residence of manager/AIFM
- Composition and operation of board
- CBI interactions

We can also assist in the preparation and review of an operating checklist/procedures manual, outlining the operation of the fund, and the various infrastructural parts thereof, in the context of maintenance of Irish tax residence.

### Fund manager residence

In certain cases, the residence of the fund manager will have a bearing on the residence of the fund. In addition, the fund manager, if non-Irish resident, may have an exposure to Irish tax where certain conditions are not met. We can advise on the implications for both the fund and the manager in scenarios such as:

- Irish fund with non-Irish manager/AIFM
- Irish manager/AIFM with non-Irish fund

### VAT

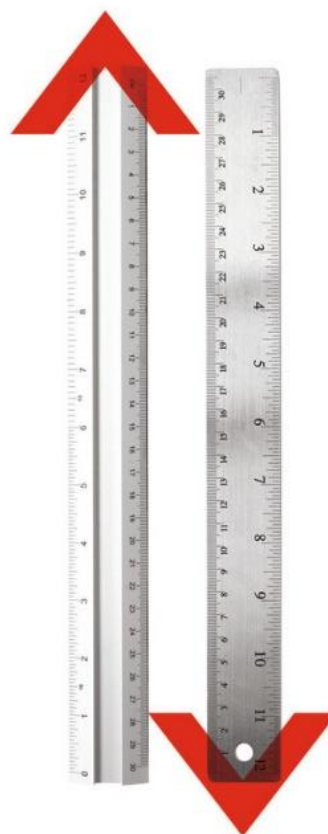
Notwithstanding the general exemption from Irish tax available to regulated funds, a registration for Irish VAT may still be required. Where a registration is required (or indeed,

beneficial to the fund), some additional issues need to be considered including:

- Applicability of general financial services exemption to the fund
- Irish VAT treatment of management fees
- Recovery of input VAT on costs suffered by the fund
- Irish VAT treatment of services from outside of Ireland
- Irish Revenue enquiries, particularly in case of refund claims
- Irish VAT treatment of AIFM
- VAT treatment of any service level agreements with various providers

### PAYE

As is the case with VAT, an Irish fund may also be required to operate PAYE, notwithstanding the general exemption from Irish tax. Where a fund pays directors fees, those fees are subject to PAYE. As a result, the fund will be required to register for and operate applicable payroll taxes. We can advise on the specific requirements, as well as assist with the registration of non-Irish resident directors for appropriate payroll taxes, and if applicable, applying for PAYE exclusion orders for certain directors if appropriate.



## Ongoing maintenance

### Certificate of residence for fund

In order to claim reduced rates of withholding tax and other benefits under a double tax treaty which Ireland may have entered into with another jurisdiction, that jurisdiction may require proof from the Irish tax authorities of the fund's entitlement to benefits under the treaty. Generally, a certificate of residence will be required. This may be a generic certificate, or may be specific to the relevant treaty at issue. We can assist with the application to Irish Revenue for such a certificate, be it specific to a treaty, or general in nature. The nature of the certificate supplied will also depend on the legal form of the fund.

### Withholding tax forms

In addition, or instead of certificates of residence, certain countries may require additional documentation to be furnished, in order to benefit from reduced or eliminated rates of withholding tax under treaties. We can assist in the preparation/submission of such forms as:

- US W8-BENE
- Italian withholding tax treaty applications
- Others, as required

### Asset level taxation

The taxation treatment of assets in which the fund is invested will vary greatly depending on the nature of those assets. We can assist with reviewing the asset portfolio from the following perspectives, and advising on the correct local treatment:

- Withholding and capital gains tax reviews
- Tax treaty access review

In addition, significant asset level tax issues will arise on a fund migration or merger. We can review the assets held and advise as to the taxation arising on migration or merger, and advise on any deferrals or reliefs available.

### Investor level taxation

Similarly, the treatment of investors in a fund will vary greatly, depending on their corporate form and residence. We can review specific tax issues which may arise for investors, including treaty access matters, and in particular issues arising under the Multilateral Instrument, and access to Limitation On Benefits clause contained in the US tax treaty.

## Foreign entity classification from Irish perspective

In order to determine the correct tax treatment of a particular investor, or indeed the return from a particular asset, it may be necessary to determine how that asset or investor would be treated from an Irish tax perspective. Whether the entity is transparent or opaque may have implications for withholding tax purposes, or indeed from a treaty access perspective. For example, entities such as a Cayman LP, a US LLC or a UK LLP may have differing tax treatment under a particular set of rules, to those rules under which they were established.

### Leveraged funds

Ireland operates an interest withholding tax regime on interest paid by Irish residents. Irish resident funds utilising leverage may have an obligation to operate withholding tax on interest which they pay on their debt. We can advise funds as to:

- Interest withholding tax obligations, including the operation and remittance of such withholding tax
- Available exemptions and applicability thereof to the fund.

Further, we can review the appropriate "qualifying lender" wording and definition in the relevant loan documentation or prospectus, as required.

## Summary

Although Ireland is the jurisdiction of choice for fund domicile, and while there are wide ranging exemptions from tax at the fund level, as can be seen above, there are still certain administrative and compliance matters to be attended to, insofar as Irish tax is concerned. Working as part of the Investment Funds Unit, our Irish tax team are ideally placed to assist on matters arising for asset managers either establishing or maintaining operations in Ireland.

Eversheds Sutherland's Investment Funds Unit provides a full range of legal and tax services to clients in the asset management industry. We advise on the structuring, authorisation and ongoing operations across the full spectrum of Irish regulated fund products from retail/traditional products such as unsophisticated UCITS and exchange traded funds to alternative investment vehicles such as hedge funds, fund of funds and sophisticated UCITS.

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The team in Dublin forms part of the Eversheds Sutherland International network and works closely with the Financial Institutions Group within Eversheds Sutherland in London, which has considerable depth of knowledge and experience in the area of investment funds and asset management. Through our substantive presence in Ireland and the UK, we are in a position to offer asset managers a direct and consultative service from the initiation of an investment fund project through to launch and beyond.

**For further information, please contact:**



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