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FS taxation

Irish Qualifying Investor Funds and Section 110 Companies

October 2013

About FS taxation

FS taxation is a boutique tax practice specialising in advising clients in the financial services sector. We work with our clients on product and transaction structuring and provide on-going compliance and operational tax services. We provide these services across all tax heads; corporation tax, income tax, VAT and capital taxes.

We focus on our clients, working closely with them to understand their business and their tax needs. With a combined 40 years top level tax experience between the principals, we understand the importance of tax risk management whilst remaining commercially focused and cost efficient.

Please visit our website to find out more, www.fstaxation.ie

Introduction

Ireland is fast becoming 'the' onshore location of choice for establishing UCITS and non-UCITS investment platforms. In this brochure we look at the most popular non-UCITS fund type in Ireland, the Qualifying Investor Fund ("QIF"), and why coupling it with an unregulated investment company (Section 110 Company) can enhance the tax efficiency of the QIF. When these two investment vehicles are combined they are commonly referred to as a 'Super QIF'. We also include a sample Super QIF structure.

Qualifying Investor Fund

A QIF is a fund vehicle targeted at sophisticated private investors and institutional investors. All investors must meet a minimum initial subscription level of €100,000 and certain other financial resource requirements. While a QIF must be authorised and regulated by The Central Bank of Ireland, the normal investment and borrowing restrictions generally imposed upon Irish funds are automatically disapplied for QIFs. Given this flexibility, they are suitable vehicles for riskier alternative investment strategies such as hedge funds, real estate funds and venture capital/private equity funds.

A QIF can be established as an investment limited partnership, common contractual fund, unit trust and, most frequently, a Part XIII company. Where all of the necessary approvals are in place (in particular for the investment manager and proposed directors) authorisation can be obtained within 24 hours. Fund promoters considering establishing a QIF platform should seek legal advice from a specialist Irish legal firm.

Taxation

Irish regulated funds, including QIFs, are exempt from Irish tax on their income and gains. Equally, no Irish withholding tax applies to income distributions or payments on redemption made to non-Irish resident investors regardless of where they are resident. Certain Irish exempt investors may also receive payments free from withholding. The QIF must be resident in Ireland for tax purposes to benefit from this tax exemption and from Irelands wide network of double tax treaties. Therefore, the strategic management and control (including board meetings) should be carried on in Ireland. The outsourcing of many important day to day functions, such as investments management, to non-Irish entities should not affect this.

As of October 2013, Ireland has signed double taxation treaties with 69 countries, of which 64 are in effect. In the majority of these jurisdictions a QIF can benefit from tax treaty rates. However, where there is doubt over tax treaty access or if benefits are unavailable, the Super QIF structure can enhance tax efficiency (see below).

Section 110 Company

Irish tax legislation contains specific provisions, under Section 110, Taxes Consolidation Act 1997, regarding the taxation of securitisation companies. These companies are commonly referred to as "Section 110 Companies". In practice they are used for a wide variety of structured finance transactions and not merely traditional securitisations. When structured correctly, and all of the legislative conditions have been met, Section 110 Companies can benefit from favourable tax treatment.

The key features/conditions of Section 110 are as follows:

- The company must be tax resident in Ireland and carry on a business of holding or managing what are known as 'qualifying assets'.
- The definition of qualifying assets includes a broad range of financial and other assets such as shares, bonds, others securities, derivatives, loans, deposits and insurance/reinsurance contracts. This definition is regularly expanded by the Irish Revenue and now also includes exchange traded commodities, certain plant and machinery (including aircraft and ships) and carbon allowances.
- Importantly, the value of the qualifying assets must be at least €10m on the date the assets are first acquired by the 110 company.
- Apart from activities ancillary to the holding or managing of the qualifying assets, the company should carry on no other activities.

Taxation

Section 110 Companies are taxed on their profits at the higher rate of Irish corporation tax of 25%. However, the profits taxable are calculated under the rules applicable to normal trading companies. This means that tax deductions are allowable for normal trading expenses such as broker fees, investment manager fees etc.

Section 110 also generally allows qualifying companies a tax deduction for all interest payable including any profit participating element. This is unique in Irish tax legislation; usually such payments would be regarded as non-tax deductible distributions to be made out of after tax profits. Therefore, with correct planning, the favourable tax treatment (i.e. deductions for trading expenses and profit participating interest) enables Section 110 Companies to be effectively tax neutral.

In addition, Section 110 Companies should be able to benefit from Ireland's entire tax treaty network in respect of inbound flows of income or gains. Furthermore, no Irish withholding tax is levied on interest payments made by a Section 110 Company to person's resident in EU/Tax Treaty countries or upon interest paid in respect of 'quoted Eurobonds' issued by it regardless of the recipient's residence.

About our Partners

FS taxation is led by independent tax professionals with 40 years top level domestic and international tax experience.

Patrick McClafferty
BComm, MAcc,
ACA, AITI (CTA)
Partner

Patrick specialises in tax compliance and tax efficient structuring of Irish asset management and structured finance vehicles. He has significant experience advising on taxation matters arising on establishment and operation of Irish investment funds (and fund management companies) and section 110 securitisation companies.

PJ Henehan
FCCA, FITI
Partner

PJ has over 33 years top level tax experience. He was a senior financial services tax partner with Ernst & Young for over 25 years. He is regarded as a leading expert in tax structuring and tax minimisation for banks, insurance companies and asset management and structured/asset financing vehicles. During his career PJ has advised the majority of the world's major financial institutions.

FS taxation Services

FS taxation provides a wide range of services to the asset management and structured finance market, these include:

Advisory – We advise on the tax efficient structuring of Irish investments funds (QIFs, UCITS) and securitisation vehicles (Section 110 companies), the use of profit participating debt / total return swaps and minimising tax leakage. We also advise clients on a variety of other structures and solutions. These include life settlement, private equity, asset financing (including international property) and bespoke capital markets structures.

Compliance – Companies resident in Ireland (e.g. Irish fund managers or Section 110 companies) are required to meet certain corporation tax compliance obligations, including filing annual tax returns and making tax payments in instalments. We can provide a full scope service from preparing the corporation tax computation, advising on payment dates and amounts and filing the corporation tax return. We can also provide other services including:

- **Audit of tax process.**
- **Prospectus tax reviews.**
- **Investment undertaking tax (exit tax).**
- **Non-resident declarations.**
- **Tax treaty access / rate reviews.**
- **EU dividend withholding tax reclaims.**
- **VAT / PAYE reviews.**

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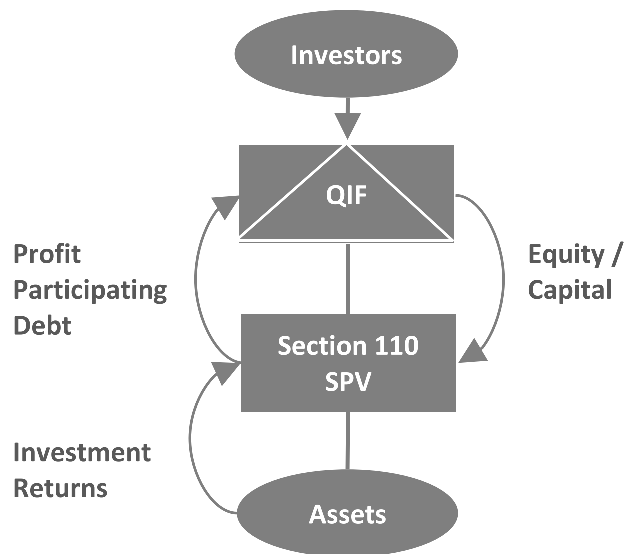
The Super QIF

As noted above, certain foreign jurisdictions may deny tax treaty access to Irish funds. This is generally on the basis that Irish funds are regarded by the foreign jurisdiction as not being subject to tax in Ireland. The use of a Section 110 Company, which is both liable and subject to tax in Ireland, can eliminate this issue. The below is an illustration of a sample Super QIF structure:



- In the above example, the Irish QIF incorporates a new Section 110 Company ("SPV") as a 100% subsidiary. It is permissible for a QIF to invest in underlying assets via a wholly owned vehicle.
- The QIF funds the SPV by way of a Profit Participating loan note. The SPV uses these funds to make international investments.
- The QIF may also make investments directly rather than via the SPV where tax treaty access is not a concern.
- Where the QIF is an umbrella fund, a separate SPV may be established for each sub fund, if required, to ring-fence the investments.

Taxation

- Inflows of income and gains derived from the investments made by the SPV should benefit from the lower or zero withholding rates provided for under the relevant tax treaty with Ireland.
- Income and gains in the SPV should be matched by a tax deductible interest payment up to the QIF. Therefore, there should be little or no taxable profits left in the SPV.
- The interest paid up under the Profit Participating Debt should be free from any withholding tax and exempt from tax in the hands of the QIF.

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