Why Ireland for structured finance transactions?

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In this article, Ogier's structured finance experts in Ireland explain why the country is one of the leading jurisdictions in Europe for the establishment of special purpose vehicles (**SPVs**) for structured finance transactions.

Key points at a glance

- On-shore EU jurisdiction with a broad tax treaty network.
- Sophisticated common law system which is similar to the US and the UK.
- AIFMD certainty from the Central Bank of Ireland that debt issuing SPVs are not caught.
- Leading jurisdiction for listing ABS products.
- Minimal corporate tax leakage due to the section 110 regime.
- No withholding tax provided certain conditions are met.
- For CLO managers:
    - clarity in the Irish VAT legislation that there is no VAT chargeable on management services supplied to SPVs subject to the section 110 regime
    - from a MiFID perspective, there is no requirement to be authorised in Ireland when providing MiFID services to an Irish SPV so long as:
        - it has an EU authorisation to provide collateral management services on a cross-border basis
        - in the case of non-EU collateral managers, if its head or registered office is outside

the EU, it has no branch in Ireland, it only provides investment services to non-consumers in Ireland, it is authorised in its home jurisdiction and has certain co-operation/information sharing arrangements with the Central Bank of Ireland

Corporate considerations for SPVs

The most common forms of company structure for SPVs are private limited and public limited companies. In a structured finance debt transaction, the choice will generally be driven by the investor audience. If transactions are not targeted at retail investors, private limited companies can be used for most structures.

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

The main features of a DAC are as follows:

- at least one shareholder

- at least two directors

- it has an issued share capital of €1

In order to ensure that the SPV remains bankruptcy remote, the SPV will generally be established as an "orphan". 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. By ensuring the bankruptcy remoteness of the SPV, the SPVs assets should not be at risk from the insolvency of a parent entity.

The SPV will generally require independent Irish-resident directors, company secretarial services and a registered office in Ireland. Ogier is well positioned in Ireland to provide these services together with good standing services applicable to all Irish domiciled SPVs, such as preparing the financial statements and Irish tax compliance filings.

Key tax considerations

Section 110

As mentioned above, the section 110 regime effectively provides for tax neutral SPVs which are used across a wide range of asset classes on both the public and private transactions including investment platforms, CLOs, CMBS, RMBS and repackagings.

To benefit from the section 110 tax regime, a company must satisfy a number of conditions:

- it must be resident in Ireland for tax purposes

- it must acquire, hold and/or manage "qualifying assets" or have entered into certain arrangements, such as swaps, which themselves constitute qualifying assets. Apart from activities ancillary to such arrangements, it can carry on no other business

- the market value of the qualifying assets must be €10 million or more on the date they are first acquired, held or entered into

- it must generally enter into all transactions on an arm's length basis although certain exceptions exist for profit-related interest or distributions

- it must make a notification to the Irish Revenue Commissioners setting out certain details in relation to the company and its business, however, no other official notices, rulings or authorisations are required

The definition of "qualifying asset" was originally limited to financial assets such as debt and shares but over the years, the definition has been expanded to included more novel asset classes such as commodities and certain carbon offsets.

Interest deductibility

Under the section 110 regime, the cost of funding and other related expenditure is generally tax deductible and is structured so that the SPV's net taxable profit is generally maintained at a negligible level as there is no minimum profit required for tax purposes. Section 110 enables interest on securities, the return on which depends on the results of the SPV, to be deductible.

Withholding tax

The most commonly used exemption from Irish withholding tax on interest is the "quoted Eurobond" exemption. This can be availed of where (i) the securities are held in a recognised clearing system, (ii) payments in respect of the securities are made through a paying agent located outside Ireland, or (iii) where the holder is a non-Irish resident person, the holder has made an appropriate declaration to this effect.

As an alternative, investors can rely upon an exemption where interest payments are made to a person resident in an EU/treaty partner country (other than Ireland), and which are subject to tax under the law of that country, to be paid gross, provided that the interest is not paid in connection with a trade carried on in Ireland by the recipient through a branch or agency.

Anti-tax avoidance directive (ATAD)

Ireland has implemented ATAD I and II in full including anti-hybrid and interest limitation rules. However, these rules apply rarely in practice to SPVs.

Listing of debt

Euronext Dublin has become the largest European exchange for the listing of specialist debt securities where it operates a choice of two markets for listing debt securities – the regulated market (MSM) or the Global Exchange Market (GEM).

While GEM does not fall within the scope of the EU regulated markets definition in MiFiD, the Market Abuse Regulation does apply to issuers that list on this market. Listing on the MSM requires compliance with, amongst other things, the Prospectus Regulation and the Transparency Directive.

About Ogier

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