

Group Briefing

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Establishing SPVs in Ireland

Client Service Award for Ireland

Chambers Global Awards 2014

Ireland Law Firm of the Year 2014

IFLR Europe Awards

Ireland Law Firm of the Year 2014

Who's Who Legal

Best Provision of Corporate Know-How to Clients Award

Managing Partner Forum (MPF) Awards for Management Excellence 2014

Irish Law Firm of the Year

Chambers Europe Awards for Excellence 2013

Ireland Law Firm of the Year 2013

Who's Who Legal

International Business Cooperation Award 2013

Ibec

Best Firm in Ireland

Europe Women in Business Law Awards 2013

Excellence in Community Volunteering Award

Chambers Ireland CSR Awards 2013

Ireland is a leading jurisdiction for the establishment of special purpose vehicles ("SPVs") for structured finance transactions. Favourable tax laws allow the structures to be, in most cases, tax neutral (with no annual minimum profit or "spread" required at the SPV level) and a "quoted eurobond" exemption, together with numerous double taxation treaties, allows interest on securities to be paid gross. A minimal share capital requirement of €1 in most cases makes

incorporating an Irish SPV an easy process. Additionally, the Irish Stock Exchange is a market leader in the listing of debt securities.

The predominant reasons for Ireland's popularity as an SPV location are its favourable tax regime, the fact that it is an "on-shore" jurisdiction, its developed corporate legal system and the professional and administration services that are available locally.

SUMMARY OF BENEFITS OF ESTABLISHING SPVS IN IRELAND

- » EU jurisdiction with broad range of double tax treaties.
- » Common law legal system, similar in many respects to US and UK.
- » Favourable tax status for debt issuers which should result in:
 - No corporate tax leakage.
 - No withholding tax and limited VAT leakage.
- » FATCA signatory
- » Leading jurisdiction for listing SPVs pre and post-crisis.
- » Cost efficient jurisdiction involving:
 - No thin capitalisation requirement.
 - No minimum profit.
 - Competitive service provider and audit costs.
 - Competitive and sophisticated legal market.
- » AIFMD certainty.

Further details of the key issues are as follows:

LEGAL SYSTEM	» Like the UK and the US, Ireland is a common law jurisdiction and its legal concepts will be recognised by most investors, originators and advisers.
COUNTRY STATUS	<p>» Ireland is a member of the EU and also of the OECD. For many originators and potential investors, this is one of the more significant advantages of locating an SPV in Ireland. Investors in some jurisdictions may want to purchase debt issued by EU/OECD issuers only, and the inability to access those investors if the SPV is located elsewhere may affect the pricing of a transaction.</p> <p>» There is an ongoing international trend away from investing in so-called tax havens. Some investors take comfort from the fact that Ireland is not a tax haven and has a developed corporate legal system and tax structure.</p>
TAXATION	
	» The Irish government has put in place advantageous tax laws for finance vehicles in Ireland. The following tax points are of particular relevance:
(A) SECTION 110 REGIME	<p>» Section 110 of the Taxes Consolidation Act 1997 (“Section 110”) is the cornerstone of Ireland’s securitisation regime which permits qualifying Irish resident SPVs to engage in an extensive range of financial and leasing transactions in a tax neutral manner. The scope of the regime is accommodative, applying to companies involved in the holding or management of a wide category of financial assets (“qualifying assets”), the leasing of plant and machinery, and the holding or management of commodities and carbon offsets issued under voluntary as well as compulsory schemes.</p> <p>» A “qualifying asset” consists of any financial asset, or any interest (including a partnership interest) in a financial asset, commodities, or plant and machinery.</p> <p>» “Financial assets” are defined to include: “<i>shares, bonds, 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, 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 reinsurance.</i>”</p> <p>» Given the extensive range of assets, most structured finance vehicles can qualify as Section 110 companies in such a way that the transaction should be tax neutral. As a result, Ireland is an ideal jurisdiction for locating an on-shore, EU/ OECD issuer with no tax leakage.</p>
(B) TRANSACTION SIZE	» For an SPV to qualify under Section 110, there is a minimum “day-one” size requirement that the market value of all qualifying assets is not less than €10 million on the date they are first acquired, held, or legally enforceable arrangements in respect of the assets are first entered into, by the SPV. This is a cumulative threshold for all qualifying assets held by the SPV and benefits multi-seller transactions where not every seller can meet this threshold.
(C) PROFIT EXTRACTION	» Minimal tax leakage and efficient profit extraction are crucial to any structured finance transaction. Under the Section 110 rules, 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 in particular relaxes the rules regarding payments of interest on securities, the return on which depends on the results of the SPV, so that such payments will not automatically be deemed to be distributions (and therefore non-deductible). Certain targeted anti avoidance provisions can limit a deduction for SPVs for certain payments of profit dependent interest or swap payments which are not subject to tax under the law of an EU/treaty partner country. These provisions do not however apply to payments of interest on “quoted eurobonds” or commercial paper where certain conditions are met. The vast majority of transactions should not be affected by these provisions.

(D) WITHHOLDING TAX	<ul style="list-style-type: none"> » The principal exemption from Irish withholding tax on interest paid by an SPV is the “quoted eurobond” exemption. This is generally available in respect of interest paid on securities listed on a recognised stock exchange where either: (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. » This may be restricted where the holder is connected with the SPV and the interest is not subject to tax under the law of an EU/treaty partner country. However, in practice this is only likely to apply in limited cases. » Alternatively, investors can rely upon an exemption from withholding tax for Section 110 companies which permits interest payments 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. Withholding tax exemptions are also available in respect of interest paid on commercial paper where certain conditions are met. In addition, interest payments between Section 110 companies are also free of withholding tax. This can assist where multi SPV structures are used.
(E) STAMP DUTY	<ul style="list-style-type: none"> » Stamp duty will not apply on the issue or transfer of securities issued by a Section 110 company.
(F) VAT	<ul style="list-style-type: none"> » Section 110 SPVs are typically engaged in VAT exempt activities, and so will generally have limited ability to recover any VAT charged to them. Irish VAT legislation confirms that management services (which include portfolio management services) supplied to an SPV falling within Section 110, whether by an originator or otherwise, can be supplied exempt from Irish VAT. This legislative exemption provides clarity which is not necessarily available in other jurisdictions. Irish VAT may however be chargeable on certain trustee and rating agency services supplied to Irish SPVs, but proper structuring can usually eliminate or reduce VAT costs.
(G) TAX RULINGS	<ul style="list-style-type: none"> » Not required. An Irish tax opinion will cover all relevant issues.
(H) DOUBLE TAX TREATIES	<ul style="list-style-type: none"> » Ireland is party to an extensive range of double tax treaties that, depending on the particular treaty, can ensure that the SPV receives income on its underlying assets free from withholding tax or at a reduced rate.
(I) NO MINIMUM PROFIT	<ul style="list-style-type: none"> » An Irish company is not required to make an annual statutory minimum profit for Irish tax purposes.
(J) FATCA	<ul style="list-style-type: none"> » Ireland was one of the first countries to sign a Foreign Account Tax Compliance Act (“FATCA”) Intergovernmental Agreement (“IGA”) with the US which will significantly reduce cost and time dealing with FATCA.
(K) ACCOUNTING STANDARDS	<ul style="list-style-type: none"> » As a general rule, the taxable profit of an SPV follows the accounting treatment. SPVs qualifying as Section 110 companies can choose to use Irish GAAP as it existed in December 2004, unless they elect otherwise. This applies to existing and new SPVs and can be useful in certain structures as it eliminates the risk of a change in accounting rules and generally solves any issues raised by IAS.
(L) NEW STRUCTURES	<ul style="list-style-type: none"> » In addition to using Irish SPVs for traditional structures such as repackagings, securitisations, receivables, transactions, CDO/CLOs and loan participation note (LPN) transactions, Section 110 SPVs are also used for structures such as structured corporate and leveraged finance transactions, life settlement issues and fund linked structures (where either a qualifying investor fund (QIF) is used with one or more SPV subsidiaries as a structure to minimise withholding taxes underlying investments or the reverse).

ESTABLISHING AN SPV IN IRELAND	
(A) CORPORATE STATUS	» Given SPVs are not targeted at retail investors, Irish private limited companies can be used for most transactions.
(B) MINIMUM CAPITALISATION	» Private limited company: €1.
(C) OWNERSHIP STRUCTURE	» Irish SPVs are normally set up with their shares held by or on behalf of a share trustee who holds the shares on trust for charitable purposes. As such, the arranging institution will not have any shareholding in the SPV.
(D) TIMING FOR ESTABLISHMENT	» Private limited company: 3-5 days.
(E) COSTS OF INCORPORATION	» Excluding legal fees, it costs approximately €100 to incorporate a private limited company.
(F) "THIN CAPITALISATION"	» There are no "thin capitalisation" rules for SPVs in Ireland.
(G) SERVICE PROVIDERS	» There are a number of institutions operating in Dublin which provide corporate services to SPVs (such as administration, directors and share trustee and company secretarial services). Tax compliance services, audit services are also widely available.
(H) LICENCES AND APPROVALS	» There is no requirement for a collateral manager to be licenced in Ireland if it has an EU authorisation to provide collateral management service on a cross-border basis, or in the case of non-EU collateral managers, if its head or registered office is outside the EU, it has no branch in Ireland from which it provides collateral management services and it only provides investment services to non-consumers in Ireland. » The Central Bank of Ireland has confirmed that debt issuance SPVs fall outside the AIFMD regime.
(I) ACCOUNTS	» The annual financial statements of the SPV are required to be audited.
LISTING	
	» The Irish Stock Exchange (ISE) has become the largest European exchange for the listing of asset backed debt securities. » The ISE has a particular strength in listing debt securities of both European and U.S. originators. » Currently, the ISE guarantees comments within three days of receipt of the first draft of an offering circular.
	» The Global Exchange Market (GEM) of the Irish Stock Exchange has also become an increasingly popular market for issuers seeking an EU-based listing. GEM is an exchange-regulated market and does not fall within the scope of the EU regulated markets as defined in MiFID and therefore the requirements of the Prospectus Directive and the Transparency Directive do not apply. » Through Arthur Cox Listing Services Limited, we advise on the listing of a wide variety of asset-backed debt and fund transactions. Details of our experience and services are available on request.

ARTHUR COX

Arthur Cox is one of Ireland's leading law firms. It comprises over 300 lawyers, including more than 100 partners. The firm's principal office is located in Dublin and we also have offices in Belfast, London and New York. The practice of the firm encompasses all aspects of corporate, business and finance law.

A large number of lawyers in our Corporate, Tax and Finance Departments advise on an extensive range of structured finance transactions including CLOs, securitisations, repackagings, LPNs,

hybrid fund structures, covered bonds, CDOs, tier 1 instruments, derivative, structured products and the establishment of hedge funds, as well as on aircraft and equipment leasing transactions.

We act for all manner of industry participants including originators, arrangers, issuers, trustees and rating agencies.

We believe the unrivalled strength of our capital markets, tax, regulatory and listing capabilities gives us an edge over our competitors and makes us the market leader in this area.

KEY CONTACTS

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