DEBT CAPITAL MARKETS

Establishing SPVs in Ireland

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Ireland is a leading jurisdiction for the establishment of special purpose vehicles ("**SPVs**") for structured finance transactions and the unrivalled strength of the firm's Capital Markets, Tax, Financial Regulation and Listing capabilities makes Arthur Cox a market leader in this area. Set out below are some of the reasons why Ireland is such an attractive venue for vehicles of this nature.

Corporate law enables noteholders to be exposed only to liabilities and assets that are intended to be secured. In addition, favourable tax laws allow the structures to be, in most cases, tax neutral (with no material 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. In addition, Euronext Dublin is a market leader in the listing of debt securities.

The predominant reasons for Ireland's popularity as an SPV location are its developed corporate legal system, the fact that it is an '*on-shore*' jurisdiction, the fact that there are no thin capitalisation rules, the professional and administration services that are available locally and its favourable tax regime.

Summary of benefits of establishing SPVs in Ireland

- EU jurisdiction with a broad double tax treaty network.
- Common law legal system, similar in many respects to US and UK.
- Favourable tax status for debt issuers which should result in:
  - Minimal corporate tax leakage.
  - No withholding tax and limited VAT leakage.
- Leading jurisdiction for listing SPVs.
- Cost efficient jurisdiction involving:
  - No thin capitalisation requirement.
  - Minimal retained profit.
  - Competitive service provider and audit costs.
  - Competitive and sophisticated legal market.
- AIFMD certainty for debt issuance.

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
Ireland is a member of the EU, the Eurozone and 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. 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.

This document contains a general summary of developments and is not a complete or definitive statement of the law.
Specific legal advice should be obtained where appropriate.

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	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 accommodating, applying to companies involved in the holding or management of a wide category of financial assets ("**qualifying assets**"), and includes the leasing of plant and machinery, and the holding or management of commodities and carbon offsets issues under voluntary as well as compulsory schemes. A "**qualifying asset**" consists of any financial asset, or any interest (including a partnership interest) in a financial asset, commodities, or plant and machinery. "**Financial assets**" are defined to include: "*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 off sets, and contracts for insurance and contracts for reinsurance*." 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.
b. Transaction size	For an SPV to qualify under Section 110, there is a ***'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 requirement is a ***'day-one'*** requirement only and asset levels can decrease over time.
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 majority of transactions should not be affected by these provisions. A restriction on the deductibility of interest that is profit or results-dependent and which is derived from Irish real estate was introduced in 2016. This restriction is only relevant to the extent that the SPV invests in assets which derive value from Irish real estate and the investor does not come within an exempt category. As part of its implementation of measures contained in the EU Anti-Tax Avoidance Directive, Ireland adopted anti-hybrid rules in 2020. The rules are broadly designed to prevent arrangements that create a tax advantage by exploiting differing tax treatment in different countries. Most transactions involving Section 110 companies will be unaffected by the rules due to the way in which Section 110 companies are established and governed.

d. Withholding tax	The most commonly used 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: (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. Commercial paper is treated in a similar way. This may be restricted where the holder is known to be 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 and not to public investors. 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	Stamp duty does not apply on the issue or transfer of securities issued by a Section 110 company.
f. VAT	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, are 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. Section 110 SPVs are typically engaged in VAT exempt activities, and so will generally have limited ability to recover any VAT charged to them.
g. Tax rulings	Not required. An Irish tax opinion will cover all relevant issues.
h. Double tax treaties	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	An Irish company is not required to make an annual statutory minimum profit for Irish tax purposes, but it is generally advisable to have a small retained profit for corporate benefit purposes.
j. "Thin capitalisation"	There are no '*thin capitalisation*' rules for SPVs in Ireland. The EU Anti-Tax Avoidance Directive seeks to impose fixed-ratio interest limitation rules to deny taxpayers a deduction for interest payments in certain circumstances. Ireland is not implementing interest limitation rules until 2022 so they do not currently apply and, when introduced, Ireland is expected to adopt minimum standards such that Ireland's Section 110 regime will remain attractive for a securitisation vehicle.
k. Financial account reporting	Ireland is a party to a Foreign Account Tax Compliance Act ("**FATCA**") Model 1 Intergovernmental Agreement ("**IGA**") with the US, and has implemented FATCA reporting obligations into its domestic legislation, similar to the UK. Ireland was an '**early adopter**' of the OECD's standard for the automatic exchange of financial account information, known as the '*Common Reporting Standard*' ("**CRS**"), in 2014. Ireland's adoption of the CRS makes financial account reporting for investors and counterparties straightforward.
l. Accounting standards	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 to use IFRS. 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 IFRS.
m. New structures	In addition to using Irish SPVs for traditional structures such as repackagings, securitisations, receivables transactions, RMBS/CMBS, 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	If transactions are not targeted at retail investors, Irish private limited companies can be used for most structures. A type of private limited company, the Designated Activity Company ("**DAC**"), is required for listed transactions. PLCs are required for retail transactions.
b. Minimum capitalisation	DAC: €1. PLCs: €25,000.
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	Usually 3-5 days for DACs and 1-2 weeks for PLCs but taking up to 7-10 days for DACs and 2-3 weeks for PLCs while Ireland is at the higher levels of the Government's '*Plan for Living with COVID-19*'.
e. Costs of incorporation	Excluding legal fees, it costs approximately €100 to incorporate a private limited company.
f. Service providers	There are a number of institutions operating in Dublin which provide corporate services to SPVs (such as administration, directors, share trustee and company secretarial services).
g. 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, it only provides investment services to non-consumers in Ireland, it is authorised in its home jurisdiction and such jurisdiction has certain co-operation/information sharing arrangements in place with the Central Bank of Ireland. The Central Bank of Ireland has confirmed that debt issuance SPVs fall outside the AIFMD regime.
h. Accounts	The annual financial statements of the SPV are required to be audited.

Listing
The Irish Stock Exchange (trading as Euronext Dublin) has become the largest European exchange for the listing of asset backed debt securities. Euronext Dublin has a particular strength in listing debt securities of both European and U.S. originators. Currently, Euronext Dublin guarantees comments within three days of receipt of the first draft of an offering circular. The Global Exchange Market ("**GEM**") of Euronext Dublin 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 Regulation and the Transparency Directive do not apply, although the Market Abuse Regulation does apply. Through Arthur Cox Listing Services Limited ("**ACLS**"), 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. ACLS is the leading listing agent by volume for debt transactions listed on Euronext Dublin.

ARTHUR COX

Arthur Cox is one of Ireland's leading law firms. It comprises over 550 lawyers with a total staff of 800 in our offices in Dublin, Belfast, London, New York and San Francisco. The practice of the firm encopasses all aspects of Irish 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, RMBS, CMBS and other securitisations, receivables financings, repackagings, LPNs, hybrid fund structures, covered bonds, CDOs, tier 1 instruments, derivative, structured products and the establishment of hedge funds.

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

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

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