Finance Act 2012

Investment Management

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FINANCE ACT 2012 – INVESTMENT MANAGEMENT

Introduction

As an international fund domicile, Ireland ranks amongst the most flexible and advantageous in the onshore world. Despite the difficult current economic climate the Irish Funds Industry continues to go from strength to strength with the assets under management in Ireland of Irish domiciled investment funds having surpassed the Euro €1 trillion mark in 2011 and total assets under administration in Ireland of Euro €1.875 trillion.

The longstanding Government commitment and support to the industry (together with the input and co-operation from various stakeholders) has played a crucial role in the development and expansion of the industry. In this regard the reaffirmed commitment of the new Government to the industry, with particular emphasis on future employment creation in the industry, is extremely significant for both the continued growth and further success of the industry. The Minister for Finance made reference in his Budget speech in December 2011 to the importance of the financial services industry stating it was "*one of the great export success stories of the last 20 years*" and his intention to introduce changes to enhance the competitive position of the Financial Services industry including the investment management industry. Consequently, it is no surprise that the Finance Act 2012 as enacted (the "**Act**") contains a number of specific and general measures to support and enhance Ireland's reputation as a leading location for investment management.

Investment Management

One of the objectives of the UCITS IV Directive, which came into effect on 1 July 2011, is to enhance the ability of fund managers to rationalise their products and make them more cost effective. To this end, the Directive provides for the cross-border merger of investment funds and for new 'master-feeder' structures. Ireland was one of the first countries to adopt this new Directive and changes were introduced in Finance Act 2010 in order to give the Irish industry a 'first-mover' advantage.

Outbound Migration

Keeping with that "first mover" theme, the Act contains new measures which provide that mergers (both inbound and outbound) involving Irish investment undertakings ("**Irish funds**") and foreign funds (located in an EU Member State, EEA or OECD country with which Ireland has entered into a double tax agreement) ("**offshore funds**") will not give rise to a charge to tax in respect of Irish resident investors. Instead the tax is deferred until such time as the disposal of the replacement units. On the subsequent disposal of the replacement units, the replacement units will be treated as acquired at the same time and cost as the original holding.

Master/Feeder Structures

The Act also includes measures to accommodate master/feeder structures. Currently, a reorganisation relief only applies where the assets of the foreign fund are transferred to the Irish fund in the exchange for the issue of units by the Irish fund to the investors in the foreign fund. The new measures provide that the relief will also apply where the Irish fund issues the units directly to the foreign fund. This provision should prove useful in enhancing Ireland's reputation as a location of choice for master funds.

Exchange of Units in Offshore Funds

The Act also introduces relief for Irish investors in relation to the exchange of material interests within the same offshore fund or between two offshore funds. This is to remove the disparity that existed between the treatment of an investment in an Irish fund and similar investments in an offshore fund as legislation currently exists which provides relief for reorganisations of two Irish funds.

Funds Re-domiciling to Ireland

The Act puts on a legislative footing the practice whereby the equivalent measures (as introduced by the Finance Act 2010) apply in the case of investments made through intermediaries (this being an un-intended exclusion from the original legislation).

Furthermore the Act puts on a legislative footing the practice whereby a fund which has re-domiciled to Ireland from certain offshore centres, can provide a single declaration stating that the unit holders are non-Irish resident, to ensure that no Irish tax arises in respect of those investors, or if there are Irish resident investors, these need to be identified in the declaration and tax accounted for where appropriate on future payments. It also provides that where an existing non-resident unit holder becomes resident in Ireland, tax on chargeable events will arise for the fund.

Stamp Duty

The Act introduces a number of reliefs in relation to stamp duty in the context of funds (including exempt unit trusts).

Cross Border Mergers

In line with the amendments referred to above under "*Outbound Migration*" the Act now introduces:

- an exemption from stamp duty on the transfer of assets on a merger of an Irish fund into an foreign fund (a mirror exemption currently applies in the context of inbound mergers); and
- an exemption from Irish stamp duty where Irish assets transfer on a reorganisation or merger of two offshore funds.

Foreign Immovable Property

Removal of a charge to Irish stamp duty arising on the en-specie transfer of foreign immovable property into an Irish fund in return for the issue of units in that fund.

Exempt Unit Trusts

Introduction of exemptions from Irish stamp duty on any conveyance or transfer of units in an exempt unit trust and also the transfer of assets between an exempt unit trust and an Irish fund. An exempt unit trust is essentially a unit trust which is neither authorised nor deemed to be authorised by the Central Bank of Ireland and one where all the issued units are typically held by Irish approved pension and charities.

Pension Business

Because of the range of products offered by institutions, transfers of pension funds/charities assets may happen in a number of different ways such as;

- Transfer of investment assets from one institution to another institution;
- Transfer of assets from a unit trust in one institution to either a segregated fund or a similar unit trust in the same or another institution;
- Transfer of assets from a corporate fund in one institution to either a similar corporate fund in the same or another institution;
- Transfer of assets from a life company to a related or unrelated financial institution, which may hold the assets either as a segregated asset or as an asset in a unit trust or in a life company.

However, under these arrangements there is no change in substance, in the ownership in the assets of the pension funds/charities, although there may in certain circumstances be a change of legal or beneficial ownership. As such, in recognition of same, the Act provides that the transactions outlined above will be exempt from stamp duty going forward.

Other Items

Other items of note include:-

ETF Shareholders - Technical Charge

Currently where non-resident investors hold shares/units in an Irish fund they should not suffer exit tax on distributions or gains on disposal of their shares/units. An amendment has been introduced in the Act to clarify that this exemption also applies where the non-resident disposes of their shares/units to a person other than the ETF.

Chargeable Events - Tax Rates

The Act confirms the increase in the rates as set out in the budget effective from 1 January 2012 (e.g. rate of exit tax goes from 27% to 30% on regular distributions and 30% to 33% and other chargeable events). In addition, in the case of Irish corporate investors the rate of exit tax is reduced to 25%, again effective from 1 January 2012.

Periodic Reporting by Funds

The current Revenue reporting requirements for Irish funds in respect of payments to unit holders are based on the reporting requirements for banks. However in recognition of the undue administrative burden (and associated costs) which could be placed on Irish funds and following on from extensive discussions between the Industry and the Revenue Commissioners representatives, the Act provides for a separate approach specific to Irish funds. The new reporting measures allow the Revenue Commissioners to require the periodic reporting of certain Irish funds with effect from 1 January 2012 and the focus of the reporting will be in relation to the value of units which is more readily available to Irish funds. Furthermore, a specific exclusion has being included for information already provided or to be provided under the provisions of the European Union Savings Directive - so as to ensure that there is no duplication of reporting.

EU Savings Directive

Finally, the Act removes the grandfathering of certain domestic and international bonds and other negotiable debt securities for the EU Savings Directive.

Looking Forward

Extension of Equivalent Measures Regime

While it was hoped that the equivalent measures regime, which essentially permits Irish regulated funds to make payments to non-Irish resident investors free of exit tax without the requirement for a non-resident declaration to be in place, would be extended in the Act, the Industry is nevertheless in discussion with the Revenue Commissioners on an ongoing basis in this regard.

Future Product Offerings

The Industry continues to explore new products & fund structures with the Department of Finance which will enhance Ireland's competiveness and further cement Ireland's place as a leading location for investment management. Current discussions include the introduction of a new corporate structure and an enhanced regime governing Ireland's investment limited partnerships.

Date: **April 2012**
Author: **Sean Murray**

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Hong Kong

Room 604
6/F, Printing House
6 Duddell Street
Central
Hong Kong
Tel: +852 35210352

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

David Lawless
E-mail: david.lawless@dilloneustace.ie
Tel : +353 1 673 1765
Fax: + 353 1 667 0042

Sean Murray
E-mail: sean.murray@dilloneustace.ie
Tel : +353 1 673 1764
Fax: + 353 1 667 0042

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DUBLIN HONG KONG NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.
www.dilloneustace.ie

In alliance with Arendt & Medernach