

Irish Regulated Funds

An Overview of the Irish Tax Registration and Filing Requirements

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One of the key drivers behind the growth and development of the Irish Funds Industry has been the favourable Irish taxation regime for regulated collective investment funds ("**Investment Undertakings**").

This favourable taxation regime essentially provides that Investment Undertakings themselves are not chargeable to Irish tax in respect of their relevant income & gains and furthermore non-resident investors are not taxed in Ireland on either (i) a disposal of their shares/units in the Investment Undertaking or (ii) distributions from the Investment Undertaking. Investment Undertakings are not treated as tax transparent for Irish tax purposes. This can be contrasted with Common Contractual Funds ("**CCFs**") and Investment Limited Partnerships ("**ILPs**") which are treated as Irish tax transparent.

Notwithstanding the above, it is important to note that Investment Undertakings, CCFs and ILPs have certain tax registration and filing requirements to comply with under Irish tax law. It is important that Irish tax advice is sought from the outset so as to ensure that the various tax registration and filing requirements are satisfied as Irish tax law provides for the imposition of interest and penalties for failure to comply with such requirements.

This publication provides an outline of some of the main Irish tax considerations for an Investment Undertaking, CCF and ILP from a registration and filing perspective on set-up.

Please note that this publication does not cover Investment Undertakings which would be regarded as Irish Real Estate Funds and specific advice should be sought in the case of such funds.

1. Investment Undertaking Tax

Following authorisation by the Central Bank of Ireland and launch an Investment Undertaking must register for investment undertaking tax ("**IUT**") with the Irish Revenue Commissioners ("**Revenue**").

Once registered for IUT an Investment Undertaking will be allocated a tax reference number by Revenue and this will allow the required bi-annual IUT Returns to be made in respect of the Investment Undertaking.

Investment Undertakings are not subject to Irish taxation on any income or gains they may realise from their investments and there are no Irish withholding taxes in respect of a distribution of payments by Investment Undertakings to non-resident investors or on any encashment, redemption, cancellation or transfer of units in respect of non-resident investors. However, to the extent there are Irish resident investors (other than certain categories of exempt Irish investors or where the Investment Undertaking's units are held in a recognised clearing system) tax must be deducted by the Investment Undertaking on distributions made to such Irish resident investors. The purpose of the bi-annual IUT Returns is to facilitate the collection of any such taxes (appropriate tax) that are due.

Consequently, these IUT Returns would typically be "nil" where there are no Irish resident investors or where the Investment Undertaking's units are held in a recognised clearing system, but the IUT Returns are required nonetheless to be filed even where no tax liability arises. The IUT Returns cover the periods from 1st January to 30th June and 1st July to 31st December each year with the submission of the IUT Return together with any appropriate tax being due within 30 days of the ending of relevant periods (i.e. on or before 30 July and 30 January respectively).

2. CCFs and ILPs

CCFs and ILPs are treated as tax transparent entities from an Irish tax perspective¹. Therefore, the income and gains (and losses in the case of an ILP) are treated as arising (or accruing as the case may be) to the investors as if the income and gains did not pass through the hands of the CCF or the ILP.

CCFs and ILPs are nevertheless still required to in respect of each tax year of assessment (currently a calendar year) to file with Revenue on or before 28 February in the year following the year of assessment certain details regarding the CCF or the ILP including: its income and gains (and losses in the case of an ILP); its investors; the amount attributable to each of its investors; its business activities; its material

¹ UCITS CCFs strictly fall within the Investment Undertaking regime. However, this regime is essentially disapplied where the UCITS is a CCF. Instead, the CCF regime is applied and the UCITS CCF is treated as tax transparent from an Irish tax perspective (as above).

transactions; its transactions with connected persons; its assets; its net asset value; and any other information that Revenue may require.

3. Value Added Tax

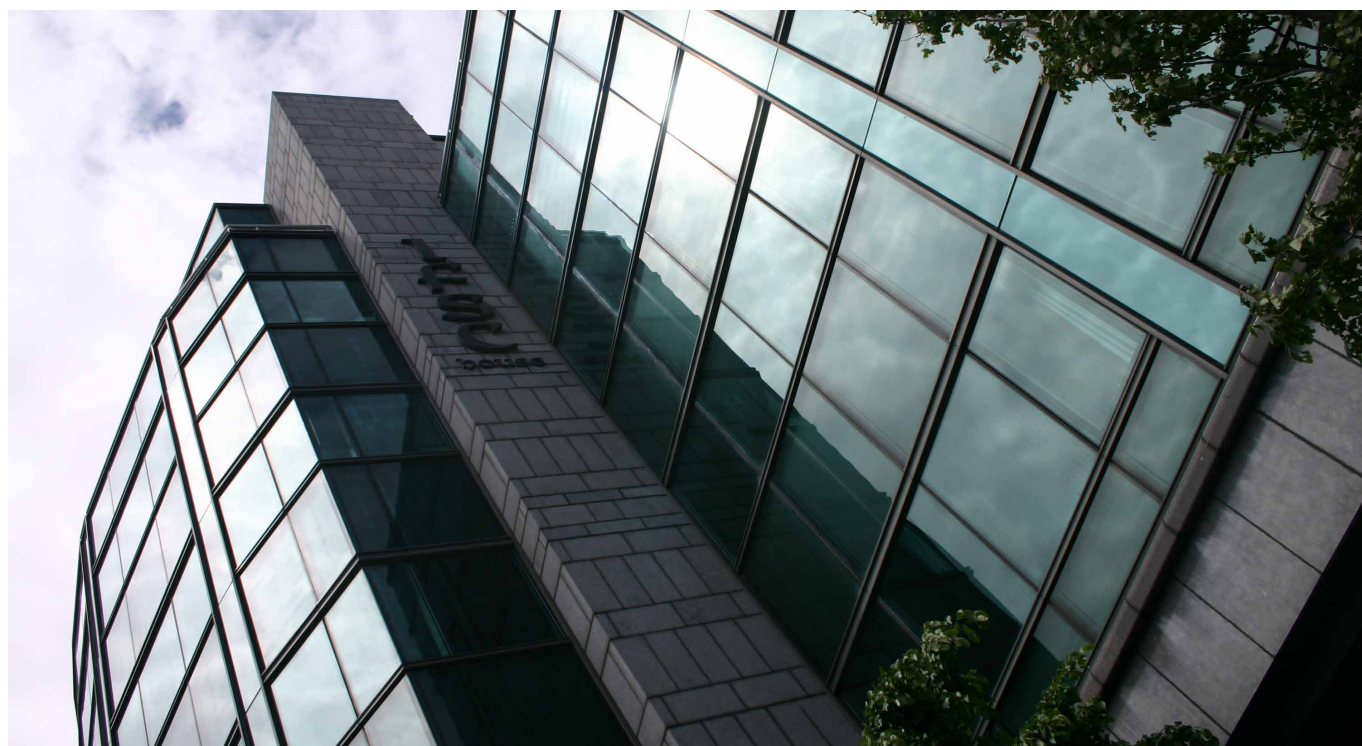
The investment activities of an Investment Undertaking, a CCF and an ILP are generally VAT exempt activities such that VAT registration is not required in respect of these exempt activities.

Accordingly, in the case of Investment Undertakings,

Investment Undertaking, a CCF or an ILP either has or does not have an obligation to register for VAT. The ability of an Investment Undertaking, a CCF or an ILP to recover VAT is not dependent on the Investment Undertaking, CCF or ILP being VAT registered.

4. Pay As You Earn / Payroll Taxes

The PAYE system is the system used in Ireland to collect at source income tax, levies & charges and is required to be operated in the first instance by the employer company on making relevant payments/emoluments to either an employee or director.



CCFs and ILPs, it is typically the receipt of certain VAT-able services from outside of Ireland (e.g. foreign legal or accounting services) which triggers an obligation to register and self-account for Irish VAT. Such foreign VAT-able services which give rise to a VAT registration obligation are commonly referred to as *business to business services*.

Once registered for VAT, an Investment Undertaking, a CCF and an ILP will have certain VAT filing requirements and may depending upon the location of investments or investors have an entitlement to VAT recovery (albeit it should be noted that VAT recovery may also be possible even where VAT registration is not required). It should be remembered that VAT registration is not optional i.e. an

Under Irish tax law, remuneration arising from the office of director of an Irish incorporated company (such as an Irish incorporated corporate fund) is subject to the PAYE system of deductions at source (together with social insurance contributions and the universal social charge, where appropriate) and that this is the position irrespective of either the tax residence of the director in question or where the duties of the office are performed. The only exception to the requirement to operate the PAYE system is where the director in question has obtained a PAYE Exclusion Order.

Once registered for PAYE, an Investment Undertaking will have certain payroll filing requirements with Revenue.

5. Common Reporting Standard ("CRS") and Foreign Account Tax Compliance Act ("FATCA")

Broadly speaking, CRS² and FATCA are reporting mechanisms that place obligations on Irish Reporting Financial Institutions (as the term is defined under FATCA and CRS) to identify and report specific information in respect of certain of their account holders (and, in particular situations, controlling persons of such account holders).

The mechanisms have significant similarities. However, whereas FATCA essentially only requires reporting of specific information in relation to certain US persons, CRS has a significantly wider ambit due to the multiple jurisdictions participating in the regimes.

On set-up, an Investment Undertaking or CCF or ILP is required to determine its FATCA and CRS status (given the similarities between the regimes, it would be very common for an Investment Undertaking, a CCF or an ILP's FATCA and CRS status to be the same).

To the extent that an Investment Undertaking, a CCF or an ILP is a Reporting Financial Institution for FATCA and/or CRS purposes, it will have the following requirements;

- (i) Register with the IRS for FATCA purposes (in order to obtain a Global Intermediary Identification Number or "GIIN");
- (ii) Register for FATCA and/or CRS with Revenue for the purposes of annual reporting;
- (iii) Perform ongoing FATCA and/or CRS due diligence requirements;
- (iv) File an annual FATCA and/or CRS return with Revenue in respect of each calendar year by 30 June of the following year.

In respect of (iii) above, the due diligence requirements are detailed and complex. However, as an overall comment, it is important that the relevant fund documentation is reviewed to ensure that the relevant certifications, disclosures etc. are included (this is particularly the case on set-up).

It should be noted that most Investment Undertakings, CCFs and ILPs would fall to be considered Reporting Financial Institutions for both FATCA and CRS purposes. Notwithstanding this, depending on the specific type of debt and equity interests in the Investment Undertaking or CCF or ILP, it may be possible to qualify as a Non-Reporting Financial Institution for FATCA and/or CRS purposes. This has the benefit of removing the obligations to register and file annual returns (however, limited due diligence requirements still exist and should be performed).

² For all intents and purposes, CRS can be taken to include EU Council Directive 2014/107/EU (commonly referred to as "DAC2") which is essentially the EU implementation of CRS.

In addition, where an Investment Undertaking or CCF or ILP is structured as an umbrella fund, there is an option to apply FATCA and CRS at either the umbrella or sub-fund level. To the extent that the option is made to apply FATCA and/or CRS at a sub-fund level, each sub-fund would establish its own FATCA and CRS status and, depending on the particular sub-fund's FATCA and/or CRS status, it may or may not have FATCA and/or CRS registration, due diligence and reporting requirements.

6. Return of Values

Certain Investment Undertakings are required to make an annual return to Revenue containing details of the values of investments held by certain unit holders. The annual return in respect of a calendar year is due by 31 March of the following year.

However, the reporting requirements do not apply to "excepted unit holders". The definition of "excepted unit holders" is quite broad and includes (i) non-resident investors who have either supplied a non-resident declaration or where the Investment Undertaking has put in place equivalent measures with the written approval of Revenue, (ii) exempt Irish investors (e.g. Section 110 companies, pension schemes, charities, other Investment Undertakings, etc.) provided the relevant declarations have been made and (iii) unit holders who hold units through a recognised clearing system.

An Investment Undertaking is not required to deliver a return for a year where the only unit holders are excepted unit holders (although, Revenue have noted that it would be of assistance if an e-mail confirming this was sent to their Planning Division).

Therefore, for the large majority of Investment Undertakings, this legislation should have little (if any) impact.

7. Mandatory Disclosure Rules

Council Directive (EU) 2018/822 (amending Directive 2011/16/EU), commonly referred to as "DAC6", has been implemented in Ireland since 2018.

DAC6 creates an obligation for persons referred to as "intermediaries" to make a return to the relevant tax authorities of information regarding certain cross-border arrangements with particular characteristics, referred to as "hallmarks" (most of which focus on aggressive tax planning arrangements). In certain circumstances, instead of an intermediary, the obligation to report may pass to the relevant taxpayer of a reportable cross-border arrangement. The definition of an "intermediary" is quite complicated – however, it is sufficient to note that it should



typically include legal and tax advisors to arrangements and also, in the context of Investment Undertakings, administrators, investment managers etc.

Given that the reporting obligations under DAC6 primarily rest with intermediaries (as above), it would be relatively uncommon for the Investment Undertaking, CCF or ILP itself to have any reporting obligations under DAC6.

In general, where a return of information is required to be filed with Revenue, there is a 30-day window within which to file the return.

8. Anti-Tax Avoidance Directives ("ATAD")

Anti-Hybrid Rules

As part of the implementation of ATAD, anti-hybrid rules have been introduced into Irish tax legislation. Broadly speaking, the anti-hybrid rules are intended to prevent arrangements that exploit differences in the tax treatment of a financial instrument or an entity under the tax laws of two or more jurisdictions to generate a tax advantage or a mismatch outcome. As Investment Undertakings are not subject to any Irish taxes on their income or gains, it is expected that the Irish anti-hybrid rules should not have any negative impact.

Reverse Hybrid Rules

However, the reverse hybrid rules (which form part of the anti-hybrid rules) can apply to Irish tax transparent entities such as CCFs and ILPs. In brief, these rules will generally apply where (i) an Irish entity is treated as tax transparent under Irish tax law (this would include an ILP or a CCF) while being treated as tax opaque in the territory of a "relevant participator" (broadly defined as those participators that hold directly or indirectly, along with associated entities, rights to at least 50% of the entity's profits or at least 50% of the ownership rights or voting power in the entity), and (ii) some or all of the profits or gains of the entity that are attributable to the relevant participator are subject to neither Irish nor foreign tax.

Depending on the circumstances, various exemptions may be applicable. In particular, there is an exclusion from these rules for a CCF or an ILP that is a "collective investment scheme" as defined for the purposes of the reverse hybrid rule. This definition is quite complex, however, broadly speaking, it is a CCF or a partnership (or where the CCF or ILP is an umbrella scheme, a sub-fund of that CCF or ILP) that is "widely held" and "which holds a diversified portfolio of assets" (both terms have explicit definitions within the relevant Irish tax legislation).

Interest Limitation Rules

Also, as part of the requirements of ATAD, Ireland has implemented interest limitation rules that will generally be effective for accounting periods commencing on or after 1 January 2022. As required by ATAD, these rules are designed to limit the ability to deduct borrowing costs when calculating taxable profits. It operates by limiting the allowable tax deduction for "exceeding borrowing costs" (in broad terms, net interest costs) in a tax period to 30% of Earnings before Interest, Tax, Depreciation and Amortisation (EBITDA).

Similar to the case for the above anti-hybrid rules, given that Investment Undertakings are not subject to any Irish taxes on their income or gains, it is not expected that the interest limitation rules should directly impact Investment Undertakings.

In the case of certain Irish Fund/SPV structures³, the rules may be relevant for the tax treatment of the underlying Irish SPV. Notwithstanding this, it is expected that the typical Irish Fund/SPV structure should be able to elect to be part of a local "interest group" under the interest limitation rules (as implemented in Ireland). This should generally result in no interest restrictions at the level of the particular underlying Irish SPV.

³ it is very common for a specific type of Irish special purpose vehicle ("SPV") to be used in conjunction with Investment Undertakings, with the relevant investments being held through the SPV (a tax neutral vehicle). This very efficient tax structure is commonly referred to as an "Irish Fund/SPV" structure.

Tax Checklist on the Set-Up of an Investment Undertaking, CCF or ILP

The following is a checklist of the primary actions that should be taken from an Irish tax perspective on the set-up of an Investment Undertaking or CCF or ILP. It does not pertain to cover all tax matters that could be relevant to an Investment Undertaking or CCF or ILP. In this regard, Irish tax advice should always be sought on the set-up of an Investment Undertaking, CCF or ILP.

Dillon Eustace can assist with the provision of these advices and the below services (a comprehensive list of our services is set out in the final section of this publication).

General Irish Tax Requirements on Set-Up	
Requirement	Timing
Tax Review of fund documentation to ensure all relevant Irish tax declarations (if applicable), disclosures, representations etc. are included.	On set-up
Registration of Investment Undertakings for IUT - Mandatory registration for Investment Undertaking Tax with Revenue (Section 1 above) Registration of CCF or ILP	The Investment Undertaking must be authorised by the Irish Central Bank prior to submission of the relevant tax registration form. Once submitted, typically, it takes no longer than 10-15 working days for Revenue to process the registration. A similar tax registration procedure applies in the case of CCFs and ILPs.
VAT Registration - Establish if there is a requirement for the Investment Undertaking, ILP or CCF to register for VAT (Section 3 above) and, if so, register with Revenue.	If there is a requirement to register for VAT, registration can occur at the same time and using the same tax registration form as that used for IUT registration or registering the CCF or ILP with Revenue.
PAYE Registration - Establish if there is a requirement for the Investment Undertaking to register for PAYE (Section 4 above) and, if so, register with Revenue	Similarly, if there is a requirement to register for PAYE, registration can occur at the same time and using the same tax registration form as that used for IUT registration.
FATCA and CRS Requirements on Set-Up (Section 5 above)	
Requirement	Timing
In the case of an umbrella fund, establish whether FATCA and/or CRS is to be applied at the umbrella or sub-fund level.	On set-up
Establish the FATCA and CRS status of the Investment Undertaking or CCF or ILP (or each sub-fund, as the case may be).	On set-up
Review fund documentation to ensure that the relevant certifications, disclosures etc. are included.	On set-up. This typically forms part of and is completed at the same time as the overall Irish tax review of the fund documentation (above).
To the extent that the Investment Undertaking or CCF or ILP (or sub-fund) is a Reporting Financial Institution for FATCA purposes; (a) Register with the IRS in order to obtain a GIIN (b) Register with Revenue for FATCA	Regarding registration with the IRS, we typically advise to wait until the Investment Undertaking or CCF or ILP is authorised by the Irish Central Bank. The FATCA registration with Revenue should generally be completed after the Investment Undertaking is registered for Investment Undertaking Tax or the CCF or ILP is registered with Revenue.
To the extent that the Investment Undertaking or CCF or ILP (or sub-fund) is a Reporting Financial Institution for CRS purposes, register with Revenue for CRS.	The registration with Revenue should generally be completed after the Investment Undertaking is registered for Investment Undertaking Tax or the CCF or ILP is registered with Revenue.

Overview of On-going Filing Dates

Relevant Tax Obligation	Filing Date
Investment Undertakings - Filing of the bi-annual IUT return <i>(Section 1 above)</i>	30 July (in respect of the 1 January to 30 June period) 30 January (in respect of the 1 July to 31 December period)
CCFs and ILPs - Filing of annual return <i>(Section 2 above)</i>	28 February (in respect of the previous calendar year).
Filing of annual CRS return with Revenue, to extent a Reporting Financial Institution <i>(Section 5 above)</i>	30 June (in respect of the previous calendar year).
Filing of annual FATCA return with Revenue, to extent a Reporting Financial Institution <i>(Section 5 above)</i>	30 June (in respect of the previous calendar year).
VAT Compliance, to the extent required to register for VAT <i>(Section 3 above)</i> <ul style="list-style-type: none"> - Filing of on-going VAT returns. - Filing of the annual return of trading details 	Bi-monthly (typically), the return is due by the 23rd of the month following the end of the relevant two month VAT period ⁴ . 23rd of the month following the end of the accounting period.
PAYE Compliance for Investment Undertakings, to the extent required to register for PAYE <i>(Section 4 above)</i> <ul style="list-style-type: none"> - Provision of payroll information notification to Revenue (this includes the amount of payroll taxes to be deducted) - Payment of the relevant payroll taxes - Statutory employer return 	On or before the making of any payments to directors Typically 14 days after the end of the relevant month (this is extended to 23 days for ROS users who file and pay online). By the 14th day of the end of each month. Based on the employer payroll information notification for the previous month, Revenue will normally issue a statement to the employer by the 5th of the following month. If accepted, this becomes the statutory employer return.
Filing of the Return of Values for Investment Undertakings, if required only <i>(Section 6 above)</i>	31 March (in respect of the previous calendar year)

Dillon Eustace can assist and advise in respect of the above tax obligations (a comprehensive list of Dillon Eustace services is set out in the next section of this publication).

⁴ This is extended from the 19th of the month where the Investment Undertaking or CCF or ILP pays and files its VAT return using Revenue's Online Service ("ROS").

Dillon Eustace - Tax Services

Our Tax team is multi-disciplinary and is comprised of a combination of tax, legal and accounting professionals who provide a full service Irish tax practice with extensive experience advising a broad range of international and domestic clients. We advise across all tax heads and have considerable experience and expertise in the areas of Asset Management, Securitisation and Structured Finance, Private Equity, Capital Markets, Aviation Financing, Banking, Treasury, Life Assurance and Reinsurance. We provide a comprehensive range of taxation services to our international and domestic clients in conjunction with our legal colleagues and counsels in other jurisdictions based on extensive relationships built up over many years.

In the context of asset management such services include:-

- Advising on all aspects of taxation with regard to Investment Undertakings, CCFs and ILPs with respect to structuring of cross border transactions in a tax efficient manner including but not limited to fund re-organisations and migrations;
- Advices with respect to accessing Ireland's extensive network of double taxation agreements and assisting with double taxation treaty claims (on a case by case basis) including obtaining certificates of tax residence from Revenue;
- Advices regarding tax structuring (via the use of intermediate tax efficient investment vehicles) to obtain treaty benefits;
- Advices regarding the various Irish tax implications in relation to group restructurings / reorganisations;
- Provision of FATCA and CRS advices. To include, advising on the FATCA and CRS status of the Investment Undertaking or CCF or ILP, assisting with registration requirements (both with Revenue and the IRS), reviewing the relevant fund documentation to ensure the correct inclusion of the relevant certifications, disclosures etc. and advising on the various on-going FATCA and CRS due diligence and reporting requirements that apply to the Investment Undertaking or CCF or ILP.
- Arranging for any tax registrations (i.e. IUT, PAYE and VAT) required with Revenue in addition to provision of on-going advices with respect to same;
- Advising on a robust range of VAT matters (for example, the correct Irish VAT treatment of services provided to the Investment Undertaking or CCF or ILP);
- Provision of comprehensive VAT compliance services, to include preparation of the bi-monthly VAT returns; the calculation of the appropriate VAT recovery rate; where necessary, the completion of the annual VAT review procedure; and the filing of the annual return of trading details;
- Drafting of appropriate Irish taxation insertions and disclosures in fund documentation;
- Stamp duty (transfer tax) advices with regard to the transfer of assets to or from an Investment Undertaking or CCF or ILP;
- Advices in respect of Investment Undertakings which would be regarded as Irish Real Estate Funds;
- Advising Investment Undertakings, CCFs and ILPs in respect of any reporting obligations that they or any other relevant parties (e.g. investment managers, shareholders etc.) may have in respect of the Mandatory Disclosure Regime (DAC6); and
- Advising CCFs and ILPs in respect of the application of the reverse hybrid rules (if relevant).

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