

Establishing SPVs in Ireland for Structured Finance transactions

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Ireland is the European jurisdiction of choice for locating special purpose vehicles (SPVs) for reasons that include:

- it is an "on-shore" English speaking common law jurisdiction with legal concepts that international investors, arrangers and originators are familiar with. In addition to this, Ireland is a member of the Eurozone and the OECD
- coupled with an extensive double tax treaty network, its favourable tax regime allows for special purpose vehicles to be tax neutral under the section 110 regime, provided they meet certain conditions. The section 110 regime results in minimal tax leakage and efficient profit extraction which are crucial to structured finance transactions
- a minimum share capital requirement of €1 in most cases makes incorporating an Irish SPV a straightforward and inexpensive process that can be completed within five business days
- the SPV industry is clearly supported by the Irish Government and tax authorities facilitated by various changes to encourage structured transactions.

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; and
- 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" entity. 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 SPV's 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 Global is well positioned in Ireland to provide these services, amongst others/Our teams have worked on a variety of transactions that utilise special purpose vehicles (SPVs), such as bankruptcy remote orphan SPVs across the spectrum of Capital Markets including RMBS, CMBS, ABS, Loan Origination, Synthetic Securitisations, note issuance programmes, syndicated loans and repackaged securities. Our offering covers all aspects of SPV administration and management services, including the provision of independent directors, company secretarial services, financial, regulatory and statutory reporting, and share trustee services where required.

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; and e) 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 include 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

Ireland has implemented ATAD I and II in full including anti-hybrid and interest limitation rules.

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

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services

to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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