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Contacts

Dublin

Donal O'Sullivan

Partner

Email: donal.osullivan@ie.ey.com

Phone: +353 1 221 2455

Aidan Walsh

Partner

Email: aidan.walsh@ie.ey.com

Phone: +353 1 221 2578

Billy McMahon

Director

Email: billy.mcmahon@ie.ey.com

Phone: +353 1 221 2738

Anne Tobin

Senior Manager

Email: anne.tobin@ie.ey.com

Phone: +353 1 221 2863

Tim Kiely

Senior Manager

Email: tim.kiely@ie.ey.com

Phone: +353 1 221 2693

New York (EMEIA Financial Services Irish Tax Desk)

Michael Moroney

Manager

Email: michael.moroney@ey.com

Phone: +1 212 773 3618

Fax: +1 212 773 6672



The Irish section 110 company

Ireland as a securitisation vehicle location



Building a better
working world

The global securitisation market of today

We have seen a considerable revival in the global securitisation market recently. One of the key vehicles being used is the Irish securitisation vehicle, the section 110 company. Flexibility and innovation have been key to the success of the regime in attracting business to Ireland from across the globe in the past and will be critical in the context of the increased activity levels we expect to see in the securitisation industry globally.

What is a section 110 company?

A section 110 company is a regular Irish company formed under Irish company law (either as a private limited company, unlimited company or public limited company). Provided that it meets certain conditions, however, it qualifies for a particular tax treatment in the Irish tax code (section 110) which entitles it to the benefit of a series of tax efficiencies. These efficiencies are illustrated below.

What types of activities have section 110 companies been involved in?

Section 110 caters for a wide variety of activities. A section 110 company is permitted to hold 'qualifying assets' (whether directly or indirectly through a partnership) and the definition of qualifying assets is widely drawn (mainly financial assets but also includes certain exchange-traded commodities as well as plant and machinery). See inset for complete definition.

Some of the typical uses of section 110 companies include the following:

- ▶ Securitising all types of financial assets in classic securitisation financing transactions. Examples of such transactions include the securitisation of mortgage receivables, loan portfolios, lease portfolios, insurance and reinsurance contracts and life settlement contracts.
- ▶ Recent activity has included the securitisation of substantial portfolios of European distressed debt portfolios by private equity groups and other investors.
- ▶ Securitisation of synthetic financial instruments/portfolios. Examples include ABS, CDOs and CLOs.
- ▶ Asset financing/refinancing programmes for aircraft/shipping groups.
- ▶ Financing of trade receivables programmes across jurisdictions by multinational groups.
- ▶ Holding of asset portfolios by asset managers and private equity groups for asset segregation and tax efficiency purposes.

The above list is not exhaustive but are examples of the multiplicity of uses to which a section 110 company can be put.

What are the advantages of Ireland as a securitisation vehicle location?

Of course, Ireland has much more to offer as a securitisation location than just tax efficiency. The Irish securitisation industry is built upon rock-solid foundations with features such as the following:

- ▶ Well developed legal and regulatory regime in a common law jurisdiction.
- ▶ Established onshore EU location and OECD member. Ireland is also a full Eurozone member.
- ▶ Securitisation industry 'cluster' with extensive pool of experience built up in Ireland in recent years.
- ▶ Many international and global financial services have operations in Ireland and provide back and middle office support to securitisation vehicles.
- ▶ Availability of skilled professionals with extensive experience in set-up and maintenance of SPV structures (particularly in the corporate services, tax, legal and accountancy fields).
- ▶ Straightforward operational requirements (e.g. may not necessarily need a bank account, direct employees etc).
- ▶ Common location for ratings agencies (if required).
- ▶ A securitisation vehicle can list debt on a wide range of global exchanges, including the Irish Stock Exchange.
- ▶ Typically not subject to AIFMD.
- ▶ Excellent location for listing debt securities - listing process on Irish Stock Exchange is quite straightforward and timely.
- ▶ Proximity and ease of access to major European capitals/financial centres, good transport links to all of North America.
- ▶ Competitive cost basis.

What is a qualifying asset?

A financial asset is defined as including:

- a) Shares, bonds and other securities
- b) Futures, options, swaps, derivatives and similar instruments
- c) Invoices and all types of receivables
- d) Obligations evidencing debt (including loans and deposits)
- e) Leases and loan and lease portfolios
- f) Hire purchase contracts
- g) Acceptance credits and all other documents of title relating to the movement of goods
- h) Bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments
- i) Certain types of carbon offsets
- j) Contracts for insurance and contracts for reinsurance
- k) Commodities (i.e. tangible assets dealt in on a recognised commodity exchange)
- l) Plant and machinery

What is the tax treatment of a section 110 company?

The tax efficiencies outlined below are relevant in relation to each of the vehicle itself, the investments held and to the investors in the structure and include the following:

- ▶ A section 110 company is fully embedded in the Irish code and taxable at a rate of 25% on its profits.
- ▶ There is certainty of tax treatment through transparent tax legislation which does not rely on a system of tax rulings for efficiency.
- ▶ Efficient profit extraction mechanisms to bondholders. For example, a corporation tax deduction is specifically allowed for the payment of profit-dependent interest by the section 110 company in certain circumstances.
- ▶ No thin capitalisation rules to limit the deductibility of interest paid by a section 110 company.
- ▶ Tax treaty access. A section 110 company is an Irish-resident company which is subject to tax in Ireland and, as such, should be entitled to access to Ireland's wide treaty network.
- ▶ Withholding tax exemptions. There are exemptions from Irish withholding tax on payments of interest and other payments by a section 110 company.
- ▶ No net wealth tax in Ireland, at either company or investor levels.
- ▶ Stamp duty (transfer tax) exemptions. No Irish stamp duty on issue of securities or transfer of securities issued by a section 110 company. Irish stamp duty exemptions on transfer of most types of financial instruments held.
- ▶ Taxed on accounting profit which can be prepared in non-Euro currency. In addition, long-term cash flow certainty by using 'frozen GAAP' for Irish tax reporting purposes, thereby eliminating risk associated with ever-changing accounting standards.
- ▶ Irish VAT exemption available on management services provided to a section 110 company. Potential to reclaim other Irish VAT suffered.

How EY can help

EY have assisted a large number of clients in establishing and maintaining securitisation vehicles in Ireland.

Our dedicated securitisation team in Dublin is closely linked into the global EY international network and is accustomed to working with our colleagues on large, multi-jurisdictional projects as part of their global teams. We serve a broad range of global clients across all industries, sub-sectors and geographical locations.

We support our clients as they respond to changing operational and regulatory requirements, helping them to position for future growth. EY provides a flexible audit framework with a systematic approach to planning. On this foundation, we collaborate with clients to co-develop expectations, reduce risk and provide an audit tailored to your needs. We assist clients in assessing compliance and operational challenges presented by new legislation and reporting standards. By teaming across service lines, we provide full assurance, advisory, tax and transaction support.

Our Dublin team has substantial experience in the design and implementation of numerous innovative global structures using section 110 companies and has successfully designed and implemented bespoke securitisation structures to meet the particular needs of our clients. We provide a full service to our clients throughout the various stages of a transaction, as follows:

Initial design stage - we assess our client's specific needs and design structuring alternatives based on those specific needs. We are committed to constant innovation in the design of our structures.

Implementation stage - we design work plans with a view to addressing all of the objectives and requirements of the structure. This frequently involves interaction with a range of parties (clients, financial institutions, service providers and advisors involved) across multiple jurisdictions. We have extensive experience of managing large projects of this nature.

Maintenance stage - we help to ensure that the vehicle meets all of its compliance requirements (offering services such as audit, preparation of tax returns, iXBRL etc) and can assist with further ad-hoc matters as required in order to ensure continued access to the range of benefits offered by Ireland as a securitisation vehicle location. We have a long term commitment to our clients and want to ensure their continued success in meeting their objectives.

