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15 September 2023

Funds Review
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Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

Public Consultation

Dear Sirs/Mesdames,

We are pleased to submit comments on behalf of Deloitte Ireland LLP in response to your consultation document Funds Sector 2023: A Framework for Open, Resilient & Developing Markets.

We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact the undersigned at 01-417 2200.

Yours sincerely,

Pádraig Cronin

Pádraig Cronin
Partner & Vice Chairman

Deloitte.

Funds Sector 2023: A Framework for Open, Resilient & Developing Markets

Public Consultation Response

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Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

Public Consultation

Dear Sirs/Mesdames,

We are pleased to submit comments on behalf of Deloitte Ireland LLP in response to Investment funds and asset management landscape Questions 1 to 9 (Section 2) and the Regulatory and supervisory framework Questions 10 to 18 (Section 3) of your consultation document of 21 June 2023. We appreciate this opportunity to share our views and trust that you will find our comments valuable to this discussion.

We look forward to continued collaboration with the Department of Finance on this and other investment management initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact us at +353 (0) 1 417 2649.

Yours sincerely,

Niamh Geraghty

Niamh Geraghty
Partner
Investment Management Leader

Executive Summary

This document deals specifically with Investment funds and asset management landscape **Questions 1 to 9 (Section 2)** and the Regulatory and supervisory framework **Questions 10 to 18 (Section 3).**

There are a few key themes from our responses that we would like to highlight:

- ESG and the transition to net zero is a significant opportunity for the industry to support the wider governmental priorities in this area. From 2030 to 2050, it is predicted that transitioning to a climate-neutral economy and attaining the requisite level of emissions reduction will necessitate a cumulative investment of billions. To drive the necessary investment, a transparent ESG regulatory framework, along with appropriate products and tax efficient structures, would go a long way to establishing Ireland as a key domicile for ESG funds.
- We expect to see a global increase in demand for private assets. It is imperative that Ireland positions itself well to take advantage of this growth. The introduction of an indirectly regulated AIF could accelerate the facilitation of the growth in private assets in Ireland and make a statement that Ireland is 'open for business' in this area.
- Overall government support for the industry is critical to shifting Irelands global position. The right signals and initiatives from the government will enhance Irelands opportunities to take advantage of the growth that will happen in ESG and private assets.

Consultation Questions

<u>Section 2: Investment funds and asset management landscape</u>

1. What policy supports have been most impactful in attracting the funds sector to Ireland and/or the EU in recent decades?

Key factors which have driven and supported the development of the industry in Ireland have included the introduction of EU Directives, importantly the UCITS Directive and the Alternative Investment Fund Managers Directive; the introduction of the ICAV Act, the growth of asset management strategies and asset classes which could be accessed via collective investment vehicles, including UCITS and Alternative Investment Funds; A core enabler of Ireland's success has been EU regulation that has supported EU harmonisation, which enables passporting of services across the EU and beyond for example the AIFMD's marketing passport allows Irish AIFMs to market and sell their funds across all EU member states without separate regulatory approvals.

The growth of this 'ecosystem' that supports the functioning of the industry has meant that Ireland supports investors with not just local but global investment expertise. In the Irish industry this involves a range of locally domiciled specialist service providers, including fund management companies, fund administration, depositary services, auditing, tax and legal services and other services such as securities and technology etc.

While the primary asset classes utilised by investment funds are equities and bonds, a notable feature of the industry has been the growth in breadth and sophistication of asset types. Ireland's success in supporting these developments is evidenced by the fact that alternatives and Money Market Funds (MMFs) now account for nearly a quarter of the overall value of Irish-domiciled fund assets. Ireland's strength as a centre for the funds industry is evidenced by the fact that Irish domiciled funds consistently attract a high proportion of all the net sales into European domiciled funds. In addition, Ireland now accounts for a significant proportion of European ETF assets in Europe amid a favourable tax treaty with the US, the reputation of the Central Bank of Ireland (CBI) and the institutional knowledge of Dublin's ETF industry.

Ireland's tax regime is renowned as highly efficient and clear. The country's favourable tax regime for investment funds has been a significant driver, with specific tax incentives for fund structures like the Irish Collective Asset-management Vehicle (ICAV) and the Qualifying Investor Alternative Investment Fund (QIAIF). Double taxation treaties with approx. 70 countries also enhance the tax efficiency of cross-border fund investments.

2. What characteristics set Ireland apart from other jurisdictions when selecting a fund's domicile?

A combination of factors helped Ireland distinguish itself as a fund domicile these include the industry's global reach, the Tax regime and Ireland's regulatory expertise, Ireland's innovation and development of fund products and Ireland's skilled work force have led to the industry's success down through the years, but two key reasons are Ireland's a robust regulatory framework and employment talent.

Since the establishment of the funds and asset management industry in Ireland over 30 years ago, Ireland has been able to enable global investment managers to develop and expand their international distribution footprint. Ireland is regarded as a key strategic location. Ireland can offer a full suite of locally domiciled solutions and services as a gateway to Europe and beyond. With over 16,000 funds professionals, Ireland is recognised as a centre of excellence with expertise ranging from fund administration, transfer agency, and depositary to legal, tax and audit services, stock exchange listing, compliance and consultancy services. The Central Bank of Ireland approach has encouraged new business while ensuring effective oversight of the funds sector, enhancing investor protection while facilitating fund authorisation and operation. The regulator's expertise in fund policy and its engagement with industry stakeholders have ensured a positive environment for the funds sector.

The investment funds industry in Ireland is a substantial employer of high-skilled individuals, who assist in providing a range of specialist services to enable the establishment, sale, administration and oversight of Irish-domiciled as well as non-domiciled funds. It is estimated that a total of 16,003 full-time persons are employed in investment funds-related activities in Ireland (Irish Funds 2023). The majority of people employed in the industry work in fund administration/ depositary services organisations and investment/asset management. A key feature of this employment is that it supports high-skilled personnel in financial, legal and other knowledge-based activities.

These factors, combined with Ireland being English language speaking, a common law jurisdiction and advantageous geographic location and Ireland's time-zone, have supported the development of the industry in Ireland.

Net assets in Irish domiciled funds reached €3.7 trillion in 2022, with €90 billion in net sales.

Source: Irish Funds 2023

3. What are the most important trends evident in the sector?

There will be continued regulatory focus on transparency for investors and ensuring all ESG and cost disclosures are appropriate.

The investment challenge of balancing risk and return will be trickier as managers try to balance a "third dimension" in the form of ESG and sustainability commitments. The asset management firms must adopt a proactive, and make changes in client engagement approaches, investment processes, operating models, talent strategies and incentive structures.

There will be continued focus on private equity, infrastructure and real estate investments that can benefit from inflation. We believe there will be increased demand for an unregulated AIF to facilitate private asset investment funds;

Disclosures and costs will continue to be two connected buzz word, asset managers will need to invest in enhancing their educational and marketing materials, and in enhancing their engagement strategies with financial intermediaries to ensure transparency.

In Ireland the regulatory focus will continue to be on focused on a number of issues including firms' operational resilience, locally domiciled firms must their demonstrate compliance with the Central Bank of Ireland's Operational Resilience Guidance by December 2023.

Another key theme is costs and fees as highlighted by the issuing in March by the Central Bank of Ireland of a Dear CEO letter following an EU-wide review of costs and fees in UCITS. While primarily related to UCITS (and directed to UCITS management companies) the Central Bank of Ireland also expects that the findings are considered by AIFMs in relation to AIFs as well. The Central Bank of Ireland requires all firms managing UCITS and AIFs to conduct a gap analysis of the findings / expectations and to put a plan in place by 30 September 2023 to address any gaps identified.

There is transformative potential of the underlying distributed ledger technology, this will have an impact on the asset management industry global. Ireland must balance innovation with risk management in this digital sphere. The development of digital technologies, such as artificial intelligence ("AI"), blockchain and cloud computing which will support the continuing importance of cybersecurity and data privacy. Regulatory compliance and AI developments will need to keep pace with each other, which require funds and asset managers to invest in education for their staff and systems and processes in ensure compliance.

The support the expansion of the ETF market from core equity investing in a low-cost transparent vehicle. ETF's that are active and index tracking, physical and synthetic replication.

The shift to passive investing, which involves tracking an index or a benchmark rather than actively selecting securities, this can potentially reduce costs and risks for investors.

Ireland is following the global trend and regulatory expectations in respect of increasing individual accountability in the financial services sector. The Individual Accountability Regime is one of the most impactful regulatory developments of recent years. It will put individual decision making at the centre of firms' governance.

One key theme in the alternative investment fund sector is institutional investors increasingly seek funds aligned with environmental, social, and governance criteria. This has led fund managers to integrate ESG considerations into strategies to meet this demand.

Private credit funds are gaining traction due to investor interest in higher returns and diversification. Some funds are exploring crypto and digital assets in response to growing interest in these emerging asset classes.

4. What are the key risks and challenges for the sector in the medium- to long-term and how can they be managed?

With COVID-19, the Russian invasion of Ukraine and the return of inflation, we are seeing market conditions that are different from those in the previous decade. Technological innovation, and the always changing regulatory framework to support a trusted and resilient sustainable finance sector, are always evolving and this changes how financial products and services are delivered to investors.

There are considerable risks that we cannot ignore and one of them is inflation, which may prove tricker than previously thought and in relation to Tax revenue, the potential for volatile corporation tax receipts, a potential risk to the public finances. On 9 February 2023, ESMA published its latest Trends, Risk and Vulnerabilities (TRV) report 2023 and it is worth noting their concerns and the defining risks they mention which are in relation to the slowdown of economic activity, high inflation, global tightening of financial conditions, the geopolitical environment risks linked to leverage and liquidity. They also noted growing concerns over business practices in the crypto space. Operational risk, liquidity, environment and market risks levels are considered high risks. the report notes however on a positive note that Money Market Funds experienced very large inflows in Q4 2022. The growth of the funds sector will depend on having a highly skilled workforce with the necessary expertise. the Irish Government together with the funds sector needs to invest in initiatives that promote education, and professional development across the financial services industry to ensure there is a pool of skilled professionals. We also believe incentives to attract talent from abroad could help address any the “brain gap” and will ensure the continued growth and competitiveness of the funds sector.

A challenge that the funds sector could face in the near-term relates to the actions of the Financial Stability Board (FSB) regarding open-ended investment funds. Policy proposals from the FSB and Central Bank of Ireland in relation to, imposing bank-like macro-prudential rules on funds could undermine confidence the asset management sectors. We also would like to mention The Central Bank of Ireland’s current discussion paper an approach to macroprudential policy for investment funds. There is concern within the industry that such policy would damage the non-bank financial intermediation (NBFI) sector and thus reduce much-needed funding to the real economy. Market participants have raised concern that such measures could undermine the attractiveness of Ireland as one of the EU’s premier fund domiciles. We would ask the Department of Finance to take the risks to the funds sector that may arise from this discussion paper into account.

Also, we believe insufficient product innovation could potentially undermines the competitiveness of the Irish industry. This will require the support of the government and government resources to ensure Ireland is a leader in market developments, to continue to attract business to Ireland. There is always the risk of becoming non-competitive in a highly competitive business sector.

We support the Central Bank of Ireland’s commitment to amend the existing AIF Rulebook to add a standalone ELTIF chapter. This will assist with the authorisation of ELTIFs in Ireland.

5. What are the key opportunities for the sector in the medium- to long-term and how can they be delivered?

The Irish funds and asset management sector is currently going through a new phase of transformational change that will require, in effect, a revamp of its skills ecosystem. The digitisation challenges and opportunities are significantly impacting the business models that fund and asset management organisations can adopt and how they implement them. An overall picture that emerges is of an increasingly digitally enabled sector in need of substantial numbers of competent ICT practitioners.

The introduction of an indirectly regulated AIF and an appropriate ELTIF 2.0 regime would significantly improve Ireland’s ability to attract private asset investment strategies. Embracing new and innovative fund structures through regulations, such as the EU’s ELTIF, is a way to provide flexibility and attract diverse investor groups to the capital markets.

The incorporation of ESG criteria into strategies and the establishment of dedicated sustainable funds is a key opportunity for the industry.

A combination of factors led to the industry’s success down through the years, but two key reasons – a robust regulatory framework and talent – are key. We believe the involvement from the Central Bank of Ireland in industry seminars and other events to provide “live” feedback and open dialogue would be extremely useful to the industry and the development of more targeted Central Bank-of Ireland led events on specific topics is one of the potential keys to the success of the industry in Ireland.

The regulatory framework is extremely important to asset managers. With investors are looking for funds supported by a strong and robust regulatory framework for them to be confident in the type of funds that they invest in. Ireland is a position to promote to UK and US managers that Ireland can meet this level of expectation with regards to the services they will receive.

In a recent speech, Dr Jennifer Carroll MacNeill TD, Minister of State with responsibility for Financial Services, acknowledged the role that financial technology "can play for governments in the future as we look to achieve our public policy goals." There has, however, been considerable regulatory focus on recognising and mitigating the risks associated with innovation. The emphasis at an EU level on operational resilience is evident from the recently published Digital Operational Resilience Act (DORA). For example, in April 2023, the Central Bank set out conditions under which Qualifying Investor Alternative Investment Funds, or 'QIAIFs', can for the first-time gain exposure to digital assets.

The Central Bank of Ireland has also now commenced its preparations for the implementation of the Markets in Crypto Assets Regulation (MiCA) and the monitoring further developments around crypto-assets. How Ireland manages this tension between opportunity and risk is an important area for this review to consider.

6. How will technological change and innovation influence the sector's future development?

The Irish government has announced it will create a specific taskforce on tokenisation within the Fintech Steering Group to ensure the policy and legislative conditions exist to support the creation and operation of tokenised platforms within Ireland. Ireland needs to ensure replication of the legislative conditions which exist in other EU Member States as regards crypto assets and decentralised finance platforms. It is important to monitor developments in relation to digital assets at a European, UK and international level. The English Law Commission just this month has released a consultation paper on the legal treatment of digital assets, including cryptocurrencies and smart contracts. Ireland has an opportunity to be a leader in this space, it's important to note the assets under management (AuM) for ETFs linked to digital assets enjoyed a 10% bump in June 2023, (Source fintech Fineqia International). Ireland is home to almost 50% of all European ETF assets, significantly more than its nearest rival domicile at 18% (Source Irish Funds 2023).

AI has the potential to transform the industry, improve the investor experience, drive operational efficiency and lead to reduced costs and savings for the end investors. Educating the workforce at all levels on AI while focussing on cybersecurity could be transformative.

7. How best can Ireland position itself in the future as a location of choice for EU and international firms?

Other jurisdictions have continued to innovate in their fund product mix e.g., Luxembourg's securitisation and RAIF regimes and the UK's QAHC regime. We believe that a successful international funds and asset management centre needs to continuously modernise and innovate to maintain and keep its place. We think that this review will be crucial in seek submissions in this area (noting that this would involve looking at both tax and non-tax related matters), this could include a review of the use of limited partnerships (other than ILPs) to facilitate private equity investment.

The continued regional spread of economic activity supported outside of the Dublin area, with very significant clusters of employment in regional centres, including Cork, Limerick, Galway, Kilkenny, and Wexford as meant the industry has access to skilled workforce all over Ireland and this investment in infrastructure must continue.

Looking to the UK, London will continue as a strong global financial centre but what Ireland can offer is not only an attractive funds domicile but also a location as the UK's nearest neighbour in which firms can establish or expand their existing Ireland operation. Ireland must continue to position itself as a gateway for US managers to gain access to the European markets. Following the United Kingdom's withdrawal from the EU, Ireland holds the important position as the only English-speaking gateway to Europe.

There is an opportunity for Ireland to be the domicile of choice for private funds, the enhancements to the Investment Limited Partnership (ILP) regime will help Ireland compete with limited partnerships in other leading jurisdictions. A question to consider is whether Ireland should consider incentives (perhaps for a period) to establish ILPs or ELTIFs in Ireland, rather than just providing the legal and regulatory structure? We need to differentiate Ireland not just offer the same as other jurisdictions.

These enhancements put Ireland firmly on the map as a domicile of choice for asset managers seeking to establish private funds within a regulated ILP framework. the Central Bank of Ireland's register indicates that while the number of authorised ILPs more than doubled following the framework reforms, progress may be plateauing. There are currently 36 authorised ILPs (standalone and sub-funds) and with Ireland ideally placed as a centre of excellence.

Irish domiciled ETFs represent approximately 67% of the total European ETF market. (Irish Funds 2023) If Ireland is to maintain its position a more flexible position on portfolio transparency is required, following on from IOSCO's final report on principles for ETFs1, to ensure that Ireland is no longer an outlier internationally by requiring full portfolio transparency.

We also believe there must be the ability for firms to establish ETF share classes in non-ETF UCITS (as opposed to just unlisted share classes in ETFs).

Ahead of the review of the AIFMD and UCITS directives, ESMA called the European Commission's attention to the increased risks arising from extensive use of delegation and recommended additional legal clarification on the practice. The Minister for Finance recently acknowledged the benefits of the delegation model and Ireland's leadership in EU negotiations around delegation. While this is positive, the risks associated with outsourcing have been kept in sharp focus by the level of Central Bank of Ireland's scrutiny in this area. This has been highlighted by the landmark fine in excess. The ability to balance the costs and benefits of the delegation model and maintain an unblemished reputation for outsourcing compliance will remain an important area of focus for the funds industry into the future.

Ireland currently host's 42% of EU AUM, more than any other jurisdiction. (Irish Funds 2023) Ireland's must use its influence and impact the ongoing Commission review process, with a view to ensuring that the Irish offering (primarily focussed on the LVNAV) remains viable. Ireland must also retain a very active "watching brief "on the UK's approach and ensure it makes the necessary regulatory changes when needed to ensure Ireland's offering does not lag behind.

Ireland's regulatory environment needs to be open to the tokenisation of MMF units.

8. How can Ireland best support the growth and development of the market for ESG products and the transition to carbon neutrality?

The fund sector plays a significant role in promoting ESG products; nevertheless, corporations frequently believe that investing in ESG demands a large investment and fail to recognize the opportunities that ESG products can provide. The government has the ability to change this perception by taking these 4 actions to maximise the benefits of robust ESG performance:

1. **Promote reliable and consistent ESG reporting**

Government can help to develop strong and consistent ESG reporting across firms, sectors, industries, and government departments, as well as throughout several levels of government. This provides all parties with the same language and framework, allowing them to communicate more effectively and convey a common story as they compete globally.

A core focus should be placed on the transparency framework put in place by EU, the Sustainable Finance Disclosure Regulation (SFDR). The SFDR is designed to allow investors to properly assess how sustainability risks are integrated in the investment decision process. In this way, the SFDR contributes to one of the EU's big political objectives: attracting private funding to help Europe make the shift to a net-zero economy. Ireland can benefit from this transparency framework by ensuring assurance of the claims made by companies within their disclosure and thus support to reduce greenwashing.

[1] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD733.pdf

The rapid rise in the use of green bonds and transition financing has led to many questions from investors. Mainly: how do we know that we are getting what we paid for—a project that is truly green or facilitates a transition to lower emissions?

Government can answer the investor question by ensuring effective implementation of EU Taxonomy regulation. The EU Taxonomy is a green classification system that translates the EU's climate and environmental objectives into criteria for specific economic activities for investment purposes. The Taxonomy Regulation requires Member States and the EU to use the EU Taxonomy as the basis of any EU or national (public) labels for green corporate bonds or financial products that fall under the scope of the SFDR. The EU Taxonomy therefore provides a good basis for the development of further sustainable finance tools, including the EU Ecolabel for Retail Financial Products and EU standards for green bonds as well as green mortgages.

Ongoing EU policy initiatives will link standards and labels to Taxonomy aligned economic activities:

- In the current draft EU Ecolabel criteria for financial products, there is a requirement for a certain share of underlying activities invested in to be Taxonomy aligned. Thus, the EU Ecolabel will be awarded to financial products only if the companies they invest in Taxonomy-aligned activities. It will be useful to have an ecolabel for financial products especially for retail investors who have corresponding sustainability preferences.
- The EU Green Bond Standard (GBS) will define requirements for entities wishing to issue green bonds and claim compliance with this standard. These standards will include a requirement for companies to ensure that the proceeds raised through a bond issuance are used to finance Taxonomy-aligned activities.
- The EU Climate Benchmarks Regulation lays down minimum standards for the creation of two types of climate benchmarks - EU climate transition and EU Paris-aligned benchmarks. These are to be made consistent with the EU Taxonomy. It could be that benchmark administrators have to select companies that have a certain percentage of their activities classified as green as per the Taxonomy or that companies are excluded because they do not meet certain thresholds. The two EU climate benchmarks are largely used by market participants for the allocation of assets and should contribute to showcasing companies that have an impact on tackling climate change.

ESG funds are investment tools that curate a portfolio based on the environmental, social and governance performance of the equities, bonds or other instruments within the fund. , ESG investing* has grown exponentially in recent years. With this growth has come an increasingly stringent view on what qualifies as an ESG fund. This has been largely due to concerns about "greenwashing," or misrepresentation of how the fund actually uses ESG information to select its investments.

We also observed a wide range of new climate change legislations in the last 24 months, with over 10% of them include aspects assessing green claims. It is important government creates a framework to conduct reviews to ensure that asset managers and owners comply with EU's greenwashing regulations and avoid misleading consumers by taking the following step:

1. Review and audit all marketing materials and environmental claims: Should conduct a thorough review of their marketing materials and environmental claims to ensure they align with the regulations.
2. Substantiate environmental claims: They must provide evidence/data to support their environmental claims, using credible and verifiable sources. This may include scientific studies, third-party certifications, or government data.
3. Continuously monitor and update marketing materials: Asset owners and managers should regularly review and update their marketing materials and environmental claims to ensure ongoing compliance with regulations.

It is recommended that as mandatory ESG reporting becomes increasingly universal in coming years, government's role is to ensure that reporting requirements for external companies and organizations are effective, harmonized under the above mentioned regulations and provide information of value.

2. **Provide investors with clarity**

ESG is an instrument that assists investors in assessing financial investment risk and opportunity. Recent FRC report on ESG data distribution and consumption states investors face challenges with data regulations introduced for investors ahead of companies; concerns around fund labelling, risks of accusations of greenwashing and timeliness of data, as sustainability reports are not always published in conjunction with the annual report, and due to the cyclical nature of updates by data providers. This means that the information investors use for decision-making may be out-of-date.

Lack of sustainability data has been a challenge currently being faced by fund industry. It is difficult to determine the predicted risks and benefits of investment without reliable data. This might raise costs and hinder access to external financing. Companies have to respond to various data providers to address their investors' data needs. While providers offer opportunities for company feedback, companies noted that it was sometimes difficult to engage with data and rating providers to discuss any issues or errors with the data points published by the providers. We suggest government must employ policy framework for support to companies from data providers and also ensure that companies keep the annual report as the main vehicle for reporting aimed at investors and consider whether a standalone sustainability report is more appropriate for other stakeholders would help create consistency in data availability.

We suggest government should boost innovations through increased funding to help with technological challenge for data access. Encourage the use of Artificial Intelligence. AI is a critical driver in ESG and sustainability activities, providing predictive capabilities that allow businesses to foresee trends, manage risks, and better match their strategy. This would help fund industry make educated decisions that not only drive financial performance but also improve their environmental, social, and governance products by leveraging the potential of AI.

3. **Raise the bar for ESG performance**

Both companies and jurisdictions are judged on their ESG performance—and the two are closely linked. Raising the bar involves using data and policy to incentivize high performance, make conditions more appealing to investors and stakeholders, and send strong signals about continuous improvement.

Subsidies and tax rebates are additional tools to boost demand for ESG products and services. The government can offer subsidies and grant funding to research institutes, academic institutions, and private R&D firms to boost innovation and develop transformative technologies such as renewable energy, carbon capture, waste management, and energy efficiency.

4. **Inclusion and communication**

The world of ESG is growing and evolving rapidly, and shows no signs of slowing down in the short- to medium-term. Across the globe, agencies inside and outside government have been working to improve consistency, provide clarity and ensure the validity of ESG disclosure and performance.

A real opportunity exists for Ireland Government to support strong and consistent ESG reporting and this can be achieved by continuous involvement with the stakeholders. We would recommend government to create open forums for industry practitioners to provide clarity and guidance on current and upcoming regulations for the implementation of local and jurisdictional policies.

We recommend government to engage with a diverse range of ESG-interested audiences—investors, consumers, data analysts, industry organizations, NGOs, ESG rates, and the general public—to ensure that they have the information they need to understand and support ESG performance claims. This necessitates making data available, useable, and meaningful.

The government must also communicate and set an example by routinely communicating its own ESG achievements. And it entails establishing trust that the administration is dedicated to progress rather than simply spinning a good ESG story.

9. For the NBFI sector, those investment funds providing credit intermediation, what are the key opportunities for the sector in the medium- to long-term and how can they be delivered?

- We have seen a growth in credit fund launches and fundraises in Ireland, as well as in other jurisdictions around the world. Venture debt funds have seen growth and they provide an alternative source of financing for companies, particularly those in the technology sector. Irish legal vehicles used to pursue credit strategies are the ICAV and the Irish investment limited partnership ("ILP").
- Ireland must engage with the NBFI opportunity thorough regulatory reform and thorough diversification of revenue streams, increase profitability, greater market share and innovative credit products. The NBFI sector will need to continuously invest in technology.

Section 3: The regulatory and supervisory framework

10. How important is an effective regulatory framework for Ireland to maintain its status as a leading funds domicile?

In relation to the main factors likely to impact on the industry's future growth prospects, it is notable, though perhaps not surprising, that the regulatory environment is regarded by the industry as by far the factor likely to have the greatest impact on growth prospects over the medium term, with 58% of respondents to Indecon's research ranking this as the largest impact. Also highlighted as an important factor affecting future growth was the legislative environment, with 34% of industry respondents saying this has the second largest impact.

As the Irish funds sector has become increasingly international, fund managers and investors see Ireland as a jurisdiction with a regulatory regime that aligns with international standards. It is hugely important that Ireland's effective regulatory framework helps Ireland remain globally recognised and accepted as a funds domicile.

A robust regulatory framework is imperative for Ireland to upload its position as a leading funds domicile. It is also important to note that when the investment funds and the associated service providers are subject to an effective and robust regulatory framework this provides confidence and reassurance to the underlying investors. Therefore, to build trust, confidence, transparency, and integrity in the financial market, Ireland as part of the European Union (EU) will need to ensure that all applicable regulatory requirements both from a national/regional level and European level are implemented and effectively monitored by the national supervisory body.

Ireland's regulatory framework is aligned to EU regulatory directives such as UCITS and AIFMD, it therefore benefits from the harmonisation of fund regulation across the EU.

For Ireland to maintain its strong reputation as a leading funds domicile, it will need to ensure key elements of the CBI's regulatory framework remains robust and can adapt to industry developments and product innovation:

- Adaptability/Innovation: The CBI's ability to adapt to innovative changes in products/structures remains a challenge for the Irish Fund's market. Taking the emergence of the European Long-Term Investment Funds (ELTIF) as an example, the CBI remains behind other European domiciles in adapting the national rulebooks to cater for such products in the Irish market.
- Industry Engagement: The CBI should continue to actively engage with Fund services firms, Asset Managers, and fund industry bodies to ensure it is consistently informed of emerging market developments and regulatory challenges faced within the Irish fund's market. This is imperative for a robust regulatory framework in Ireland given the fast-paced market developments and evolving regulatory requirements, especially surrounding sustainable finance and fund liquidity measures.
- Authorisation process: A well-established, streamlined, and modernized authorisation process will enable Fund Managers to obtain approvals efficiently. The CBI will need to continue to innovate its technology to ensure this is managed efficiently without compromising the regulatory safeguards required for authorisation.

- Investor Protection: To maintain its status as a leading fund domicile it is important that Ireland continues to operate and enforce a strong investor protection regime and culture through appropriate regulatory scrutiny and assessments on an ongoing basis.
- Ongoing reporting requirements: All Irish domiciled regulated investment funds are required to provide periodic reporting to the CBI which arises as part of the existing regulatory framework. The investment funds must continue to review and identify deficiencies in such reporting, if any, and take necessary remediation actions. This reporting is crucial for the regulators to evaluate and assess compliance with applicable regulatory requirements which will allow them to take corrective actions to reinforce stability and confidence in the market.

Source: "Indecon Assessment of Economic Impact of the Funds Industry on the Irish Economy: Executive Summary"

11. Taking account of the European and international aspect of the Irish framework and key EU files such as Capital Markets Union (CMU) and the Retail Investment Strategy, what improvements could be made to the legislative, regulatory, and supervisory framework?

The European Commission publication of proposals for an EU "Retail Investment Strategy" as part of its Capital Markets Union initiative, following its 2021 consultation are very important. The proposals aim to modernise and streamline the investment framework to increase trust, transparency, and investor participation. he proposals mainly apply to MiFID and insurance firms (the latter via amendments to the Insurance Distribution Directive (IDD)), but aspects of the undue costs and pricing proposals will also apply to UCITS and AIF managers. Under the MIFIR Review the introduction of a consolidated tape to act as a single source for all trading information we believe will enhance Ireland as a domicile of choice for ETF's.

The establishment of a suitable long term savings fund product will also be an important initiative to secure the future wellbeing of the economy and society. This involves making private equity more accessible to retail investors. Asset managers begin able to list their funds on platforms and enabling retail investors' ability to select them. Regulated structures, with a focus on investor protection, will continue to be more appealing to retail investors who are less familiar with the risks in the private equity asset class.

12. What elements of EU policy, including CMU policy, are most relevant to the growth and development of the funds and asset management sector in Ireland and why?

Key areas of policy relevant to the growth and development of the funds and asset management sector in Ireland are at an EU and domestic legislative level. This includes the finalisation of AIFMD II (and related delegation provisions), the evolution of the ESG European framework and the ELTIF. The future of digital assets, the UK – EU Relationship and the impact on the asset management sector will remain another key area of focus.

Ireland through Irish Funds has been very clear at a European level is in relation to the review of the AIFMD, that a key pillar of AIFMD's success of is the delegation model. The delegation model provides many advantages– such as access to expertise and enables fund managers to best serve the interests of clients.

Another key issue is the introduction of an EU framework for loan origination. We should support the introduction of an EU framework for loan origination to enable different sources of funding while balancing associated risks to ensure financial stability and investor protection.

The agreement reached on the revised ELTIF Regulation, which aims to provide investors with a long-term investment horizon offers a new source of long-term financing to companies.

Establishing a European Single Access Point (ESAP) to create a single point of access to public information about EU companies and EU investment products will be important and Ireland must ensure they are part of the discussion at European level as provisional agreement was reached between the Council and European Parliament on 23 May 2023.

13. What peer jurisdictions, most notably from other EU jurisdictions are most relevant? Outline the reasons why.

- Ireland and Luxembourg have long been the preferred jurisdictions in which to establish a fund in Europe. Ireland and Luxembourg are the European domiciles of choice for cross-border fund distribution. This is due to several shared features, including the long standing and respected reputation of each jurisdiction, regulatory conditions (such as regulatory sophistication, accessibility and responsiveness), the applicable legal and tax framework and non-regulatory and non-tax business conditions in those domiciles (such as ease of doing business, service culture, local expertise in complex products).
- An unregulated AIF product is an attractive option for private asset investment strategies. Ireland must monitor this development, particularly within the EU.

14. How does the funds framework in Ireland compare to those other jurisdiction

- Ireland and Luxembourg have several different legal entity structures: corporate; partnership; contractual; and, in the case of Ireland, trusts. Umbrella funds with segregated liability between sub-funds/compartments are a feature of each jurisdiction. Both Irish and Luxembourg sub-funds benefit from legislative ring-fencing, and each jurisdiction allows a sub-fund to be wound up and liquidated, leaving the remainder of the umbrella structure intact. However, and importantly, a sub-fund of an Irish/Luxembourg fund does not have separate legal personality. Ireland's regulatory framework for funds is aligned to EU regulatory directives such as UCITS and AIFMD, as a result it benefits from the harmonisation of fund regulation across the EU.
- Equivalence Arrangements: Brexit has resulted in divergences in regulatory framework between both the Irish and UK jurisdictions. As a temporary measure to Brexit, the UK government introduced the Temporary Marketing Permissions Regulations (TMPR) to allow European domiciled funds access to UK retail investors until 2025. The longer-term solution for the UK will be the Overseas Funds Regime (OFR) which will enable investment funds domiciled overseas to be marketed and sold to UK retail investors.
- The Senior Executive Accountability Regime (SEAR) will not be applicable to Fund Service Providers and Fund Managers initially, however the intention is for the regime to eventually extend out to these firms so that they will fall into scope for the accountability requirements. The SEAR equivalent in the UK is SMCR – Senior Managers Certification Regime, whereby personal accountability is applied to Senior Management of financial services firms including designated investment firms.
- The value for money framework for Investment funds differ between the UK and Ireland. The UK have recently introduced their Consumer Duty regulation, whereby UK distributors are required to gather all relevant information they need from manufacturers to assess the value of the fund products they distribute to the end clients. Irish funds, which are non-UK domiciled FCA recognised funds may face additional challenges in providing comparable information to their UK distributors which can leave them competitively and commercially disadvantaged. Irish funds may also face additional cost of compliance whilst trying to adhere to both local as well as more onerous UK value assessment standards.

Ireland

Irish structures can be broadly divided into regulated and unregulated structures. Regulated structures are regulated by the Central Bank of Ireland (CBI) under the Irish law implementation of the UCITS Directives or AIFMD. The main types of regulated fund structures in Ireland are: (i) variable capital investment companies; (ii) Irish collective asset-management vehicles (ICAVs); (iii) unit trusts; (iv) common contractual funds (CCFs); and (v) investment limited partnerships (ILPs). Each of these entity types (other than ILPs) may be established as AIFs or UCITS. ILPs are AIFs, only. The limited partnership is the most favoured structure for unregulated investment funds in Ireland.

At present, the ICAV (a corporate entity that can elect to be fiscally transparent for US federal tax purposes) is the most common Irish structure encountered in fund finance. ICAVs may be UCITS or under AIFMD. In fund finance, they will invariably be under AIFMD. Changes to the ILP legislation in the past year have seen ILPs used more frequently and will be so more frequently seen in fund finance in the years ahead. The Irish ILP product now allows for the umbrella structure within the partnership, and we have seen this feature used in practice.

Luxembourg

Luxembourg funds may either be regulated or non-regulated vehicles, with or without a legal and/or tax personality, with the possibility of using an important number of corporate entities, to which a regulatory framework may be added.

There are various structuring options, under the UCITS regime and in an AIFMD context. The fund-specific legislation is the Luxembourg AIFM Act, risk capital investment companies (SICARs); specialised investment funds (SIFs); and reserved alternative investment funds (RAIFs); RAIFs bearing the corporate form of a special limited partnership (Scope) have recently been extremely successful given the important flexibility that they offer (most aspects may be contractually agreed).

On 24 March 2023, a new bill of law was introduced into the Luxembourg Parliament. It modernises and improves the various Luxembourg structuring options for investment funds and contains several proposed changes. As an Industry Ireland needs to maintain a watching brief of these proposed reforms so that Ireland can stay competitive as a domicile of choice and make any necessary legislative changes.

We would support the establishment of a dedicated unit, within the Department of Finance, that has a mandate to ensure the growth and development of the Irish Asset Management industry.

15. Are there any updates or changes needed to the current legislation governing the legal structures used to establish investment funds?

- Improving and simplifying the tax regime applicable to funds and Section 110s and taking the opportunity to modernise elements of the rules.
- Previously private fund managers had no other real option for fund domiciles other than Luxembourg. Ireland can now provide a viable and purpose built alternative to the Luxembourg SCSp in the Irish Investment Limited Partnership (ILP) this has an important development in Ireland's "shop window" of legal structures. This review is an opportunity to ensure the legal structures on offer are "fit for purpose". These changes to the ILP are a strong mechanism to enable sophisticated investors such as pension funds to deploy their capital into areas such as infrastructure, social housing, healthcare, broadband and alternative energy as well as the wider transition to a greener economy and greater carbon neutrality.

This review is an opportunity to discuss if this is being supported in practice and to help and incentivise the development of policy in Ireland beyond the ILP.

There is no VAT exemption on management services, which is currently available to regulated funds and we believe this should be reviewed.

16. How do the Irish legal structures compare to the vehicles available in other jurisdictions?

Ireland has established itself as the place to domicile ETFs in Europe amid a favourable tax treaty with the US, the reputation of the Central Bank of Ireland and the knowledge of Dublin's ETF industry. The favourable tax treaty is one of the key drivers behind the reason ETF issues favour Ireland over other jurisdictions.

The ICAV is a very popular fund structure with its legal and regulatory requirements. It has become internationally recognised.

We believe another addition to this would be a carve out for any company structures, such as the DAC or Plc, from some of the company law requirements which are designed for trading companies but apply inadvertently to investment funds

The European Long-Term Investment Funds (ELTIF) is a specialised investment fund that provides investors with access to long-term investments in private equity or real assets., An EU amending regulation was recently published, which aims to make ELTIFs more appealing to investors. However, these changes will not take effect until January 2024, with existing ELTIFs considered compliant for a period of five years thereafter. Only time will tell, what effect having the new and improved ELTI will mean for the Irish funds industry. This review represents an important chance to consider how to best position the ELTIF for success in the Irish context.

The revamped ILP has not been as successful as it was initially thought it would be. We believe one of the tax drawbacks has been the lack of a comprehensive holding company tax regime. Not all ILP structures invest directly in their underlying investments and instead it can be the ILP's preference to invest indirectly in the underlying investments via a holding company. While the ILP can establish a holding company in another jurisdiction, that has proved a block in certain cases to establishing the ILP in Ireland. It means the investment manager is having to then deal with more than one jurisdiction, which is far from ideal. We believe there are improvements to the holding company regime that need to be made to rectify this.

17. Are there investment or financing vehicles that are currently unregulated but that should be regulated in the future? If your answer is yes, please explain how these entities should be regulated and the rationale for doing so.

We would support the current industry position to strategically expand 'unregulated' AIFs such AIFs can be viewed as indirectly regulated under AIFMD and thus subject to, inter alia, regulatory monitoring and macro-prudential requirements

Section 110s please see below Chapter 7.

18. Unregulated vehicles are not subject to the same restrictions, requirements and reporting obligations as regulated ones. Does this pose a risk to investors or to the wider financial system?

Section 110s please see below Chapter 7.

In relation to unregulated vehicles like Section 110's while it is important that the right safeguards against misuse in place, it is important to bear in mind that such instances are rare, and measures must be proportionate and respect the overall policy objectives underpinning these vehicles.

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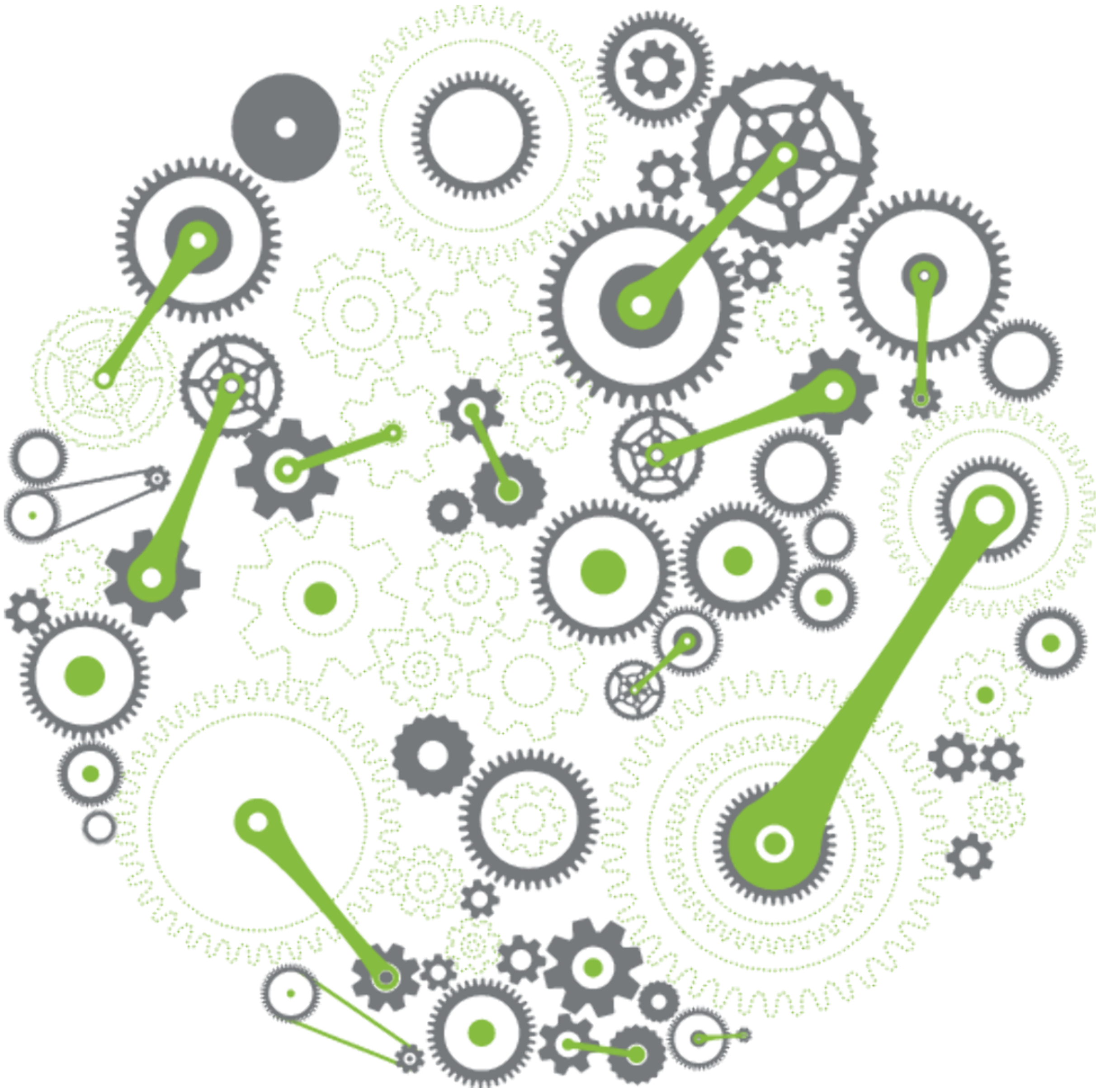

Funds Sector 2023: A Framework for Open, Resilient & Developing Markets

Public Consultation Response

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Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

Public Consultation - Section 4 Assessing the impact of the Funds sector

Dear Sirs/Mesdames,

We are pleased to submit comments on behalf of Deloitte Ireland LLP in response to Section 4 Assessing the impact of the Funds sector of your consultation document of 21 June 2023. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact me at 01-4172594.

Yours sincerely,

____
John Doddy
Head of Debt & Capital Advisory

Consultation Questions

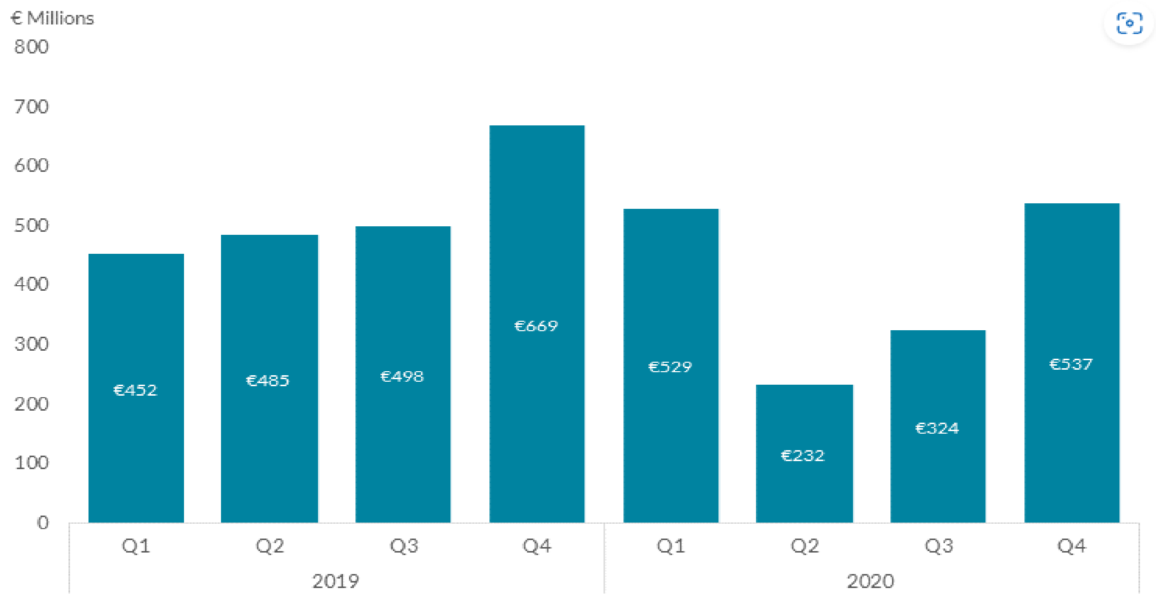
Section 4: Assessing the impact of the funds sector

Question 19. Where relevant, detail how your organisation, or the wider sector, contributes to the economy with particular reference to employment, revenues and regional development.

While still representing a relatively low proportion of overall financing of 'trading' (i.e. non property related) small and medium-sized entities (SME's), the funds industry is playing a growing role in the provision of credit to SMEs in Ireland; in particular through the likes of direct lenders such as Dunport, Muzinich, Bain, Beechbrook, Beachpoint and Claret in Ireland (plus many more from the UK and across Europe), specialty asset finance lenders and working capital providers.

Full and up to date information on non-bank lending in Ireland is somewhat limited, but it is understood, from calculations and records taken from the Central Credit Register and other sources that between 2019 and 2020, non-bank lending to SMEs in Ireland amounted to circa to €3.7bn, versus €9.5bn from banks over the same period. As at the end of 2020, there was circa €4.3bn of financing owing to non-bank lenders in Ireland, as compared to €19.8bn of financing owed to bank lenders – see figure 1.0.

Fig 1.0 – Non-bank loan agreements with SMEs in Ireland



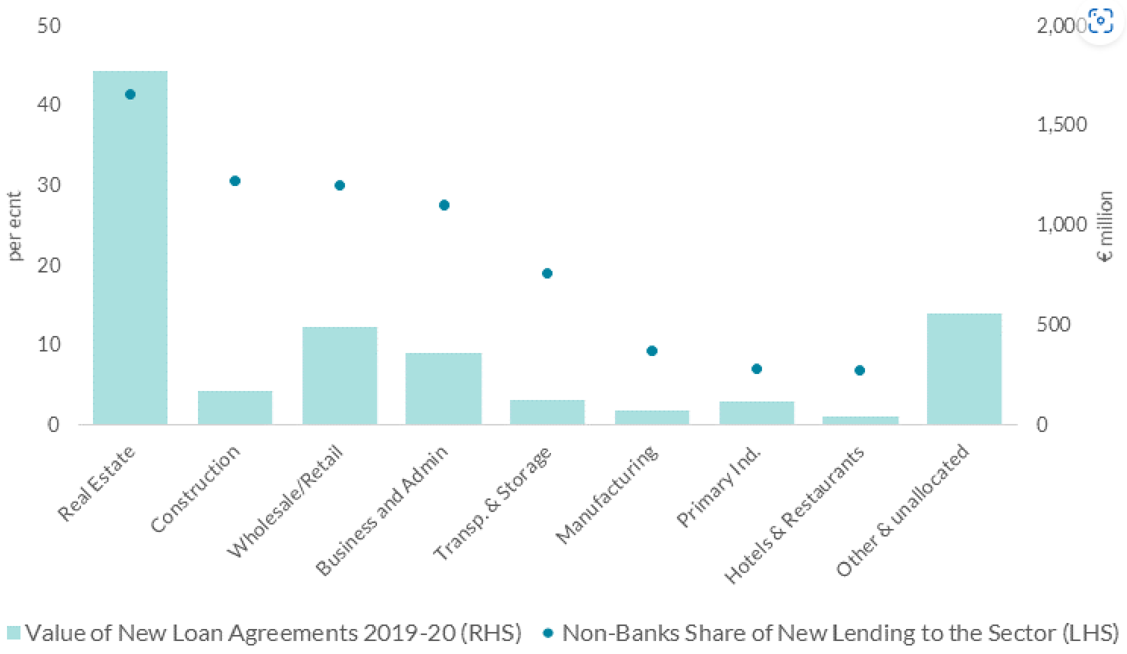
Source: Central Credit Register, CRO, Register of Affiliates and Assets Database and Central Bank of Ireland calculations

Against the backdrop of a contracting domestic banking sector, bringing with it reduced funding options available to domestic SME borrowers, funds help mobilize capital, diversify risks, and facilitate access to financing options that might otherwise be unavailable to SMEs through traditional banking channels. For example, many SMEs face challenges in obtaining credit from traditional banking sources due to their size, lack of collateral, lack of equity or own resources, limited credit history, or specific financing product need. The funds industry offers an alternative avenue for these businesses to secure the funding they need to expand operations, invest in innovation, and develop new products or services.

As can be seen from fig 2.0 below, from a sectoral perspective, the real estate sector was the biggest user of non-bank lending between 2019 and 2020 in Ireland, with other sectors more typically looking to bank lending heretofore.

Direct Lenders are playing an increasingly significant role in the provision of development finance and leveraged finance in Ireland. We would expect this trend to continue as the pillar banks appetite and ability to fund projects with a higher risk profile becoming increasing limited.

Fig 2.0 – Sectoral use of non-bank loans



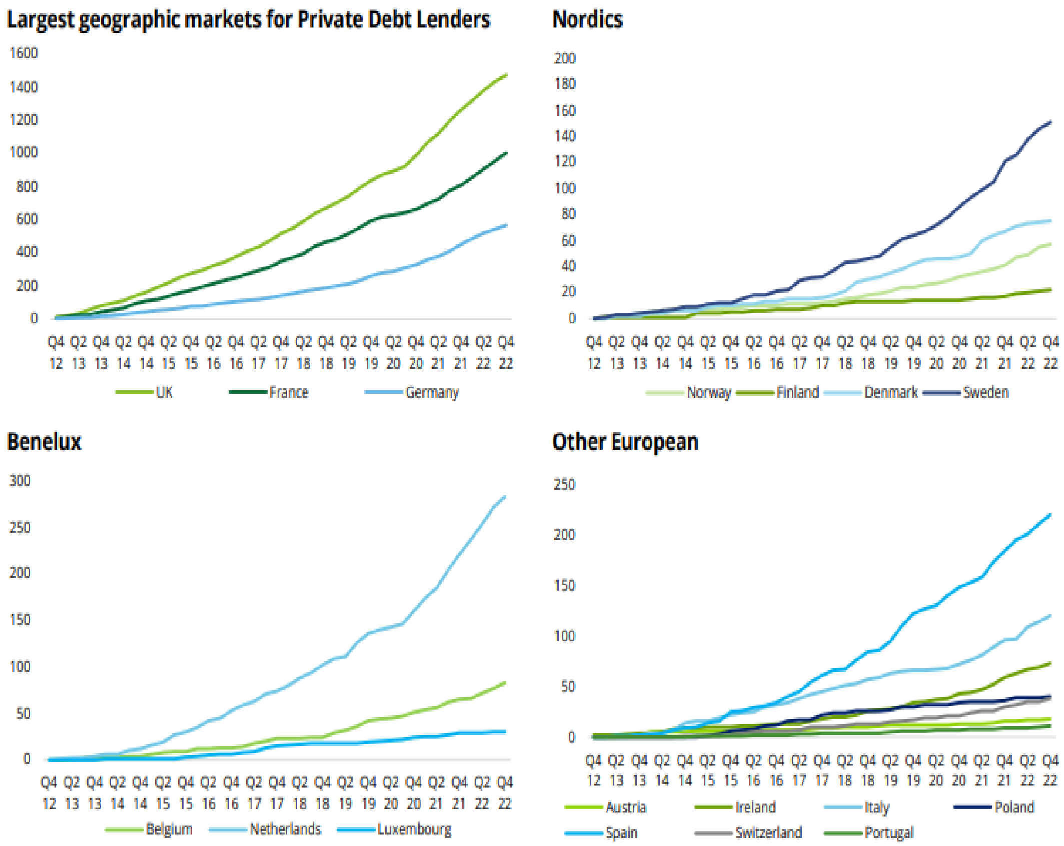
Source: Central Credit Register, CRO, Register of Affiliates and Assets Database and Central Bank of Ireland calculations

It is clear however from fig 3.0 and fig 4.0 below, that compared to some of our European neighbours, the scale of the non-bank lending market in Ireland is still relatively small and really only now beginning to scale. However, it is vital to ensuring a liquid and competitive funding environment, that the growth of non-bank lending is facilitated and promoted.

Fig 3.0 – Total number of direct lender deals of scale per jurisdiction

Source: Deloitte Private Debt Tracker

Fig 4.0 – Cumulative number of Direct lender transactions per jurisdictions

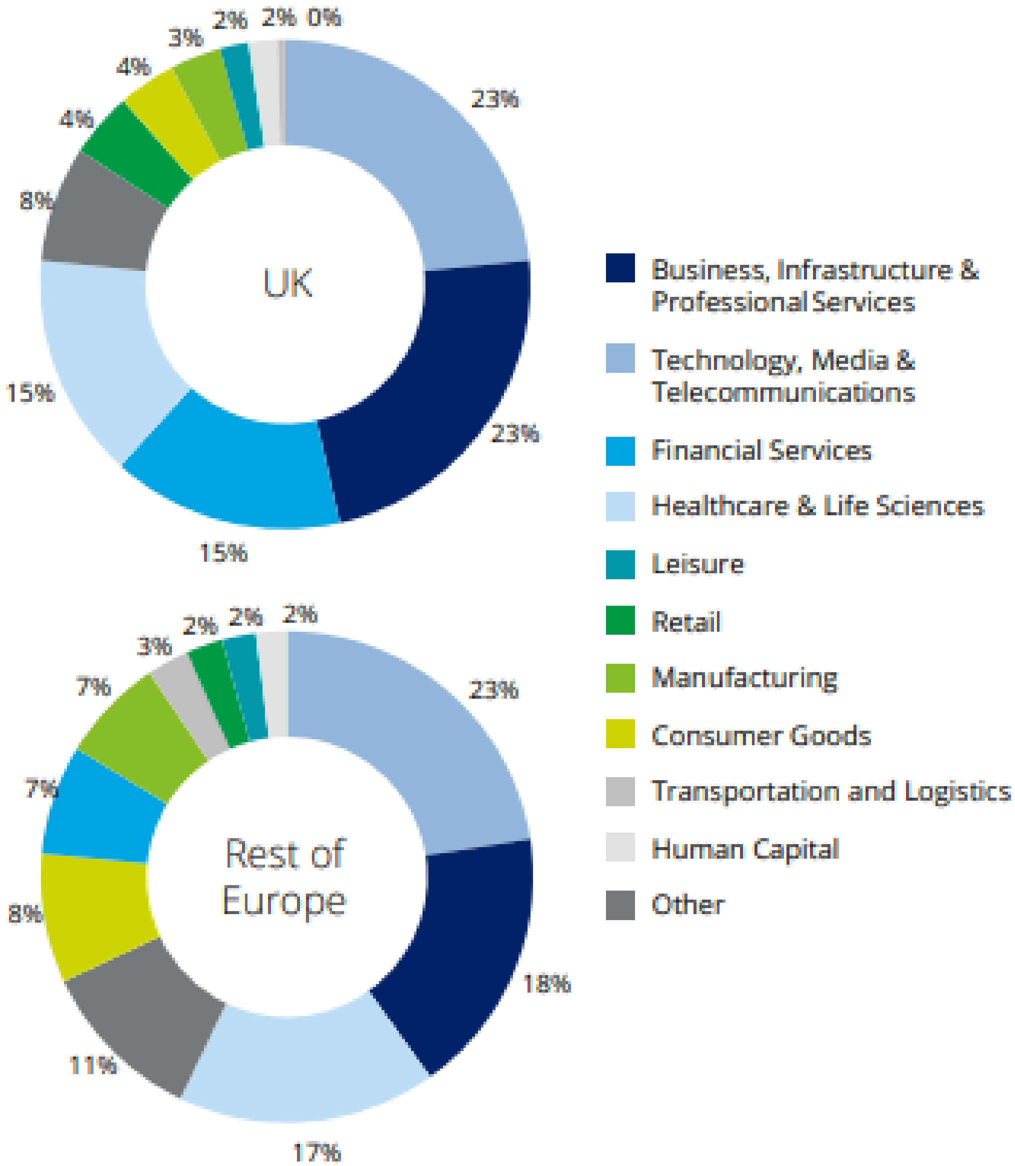


Ireland is lagging the bigger markets in scale, but the role of direct lenders is growing and will continue on this trajectory

Source: Deloitte Private Debt Tracker

As the industry grows in maturity and scale, it is clear from fig 5.0, that the direct lenders and non-bank financing becomes a very important source of financing for a broad range of sectors.

Fig 5.0 – Industries using direct lenders/non-bank debt financing in the UK and across Europe



Source: Deloitte Private Debt Tracker

These funds themselves create highly skilled employment in their own organisations, and support an ecosystem of advisors (legal, tax, financial, regulatory, operations etc) and outsource business services companies (accounting, fintech, compliance etc).

More significantly however, by virtue of their role in adding to the range and depth of financing options in the market, and making financing available to SME's which might not otherwise be made available from traditional banking sources, these funds support innovation, job creation (and job protection in the case of financially challenged businesses), and economic growth within the wider SME sector through the effect of their capital deployments.

Funds can provide various types of financing, including unitranche and stretched senior loans (forms of senior secured lending, but with higher leverage than typically made available by traditional banks), specialty asset financing and working capital funding (e.g. financing esoteric trade receivables, outside of the normal lending practice of banks), convertible debt, mezzanine financing, 2nd lien debt and hybrid debt/equity. This flexibility allows SMEs to choose the most suitable funding structure based on their business model and growth trajectory. Unlike short-term loans, some funds can also provide longer-term financing, giving SMEs the stability and resources needed for sustained growth and development.

Question 20. What role can the sector play in deepening Ireland's capital markets and, in particular, supporting retail investors access to investment opportunities and domestic SME's access to finance? What measures can be taken or supported (if underway) to meet this objective?

The funds industry encompasses a wide range of financial intermediaries such as direct lending funds, private equity funds, venture capital funds, venture debt funds and other investment vehicles. The funds industry serves as a bridge between investors (including retail and institutional) seeking opportunities and SMEs in need of credit and/or investment.

In a stable and robust regulatory environment, funds' (or more specifically fund managers') ability to attract capital, manage risk, and provide tailored financing solutions makes the industry/landscape an important facilitator of growth and prosperity of SMEs, and indeed larger corporates seeking capital for accelerated growth. Specifically, funds:

- Enable the pooling of capital from various investors, including individuals, institutions, and pension funds. This aggregated capital is then invested, by way of debt or equity into SMEs, enabling them to access capital which they might get through traditional sources likes banks or stock market listings;
- Support risk diversification for retail and institutional investors, whereby funds invested by parties (be they retail or institutional) in diverse portfolios of SMEs loans, have their risk spread across multiple assets. This approach reduces the impact of potential losses on individual investors, making it more attractive for them to participate and support SME lending;
- Enable retail investors leverage the expertise of lending/investment experts. Fund managers have specialized knowledge and expertise in evaluating SME credit. They conduct thorough due diligence to assess the creditworthiness and growth potential of these businesses, ensuring that investment decisions are well-informed and aligned with the fund's objectives.

Question 21. What role can the sector play in meeting wider Government policy objectives in areas such as investment in domestic enterprises and infrastructure? What measures can be taken or supported (if underway) to meet these objectives?

Addressed in responses to questions 19 and 20.

Question 23. What role does the sector play in supporting investment in the economy and the savings needs of investors in the EU, and outside the EU, where relevant?

A well-regulated fund industry which supports lending to SMEs can enhance Ireland's economic resilience by diversifying its financial services offerings and reduce overreliance on the traditional banking sector. An effectively regulated and innovative direct lending industry can also enhance Ireland's competitiveness on the global financial stage, attracting business and investment from around the world.

An established and active direct lending funds industry will also attract international investors seeking higher returns than traditional banking products. This influx of foreign capital can contribute to Ireland's overall economic growth and development, and specifically the development of domestic Irish SMEs.

Deloitte.

Funds Sector 2023: A Framework for Open, Resilient & Developing Markets

Public Consultation Response

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Funds Sector 2030: A Framework for Open, Resilient & Developing Markets
Public Consultation

Dear Sirs/Mesdames,

We are pleased to submit comments on behalf of Deloitte Ireland LLP in response to Taxation of investment products Questions 24-32 (Section 5) of your consultation document of 21 June 2023. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact us at 01-417 2200.

Yours sincerely,

Niall Glynn

Niall Glynn
Partner

Séamus Kennedy

Séamus Kennedy
Partner

Executive Summary

- This document deals specifically with Taxation of investment products Questions 24-32 (Section 5) of the consultation document. We have commented in a separate submission on the questions raised in *Section 6 – The role of the REIT and IREF regimes in the Irish property market*. As such, our comments and references below in relation to investment funds do not extend to the IREF or REIT regimes.

- As outlined below, the current tax treatment of various types of investment products, particularly investments in funds such as ETFs, is unnecessarily complex. While 20 years ago, investments in funds may have been seen as exotic, it is becoming increasingly commonplace for taxpayers to hold a range of investment types. This evolution in investor behaviour has made the completion of the tax return more difficult to navigate, as it requires the legal and regulatory nature of each fund to be considered. Such complexity arguably makes tax compliance very difficult for taxpayers, as well as making the fair and efficient collection of taxes more difficult for the Revenue Commissioners. In our view, the tax treatment of funds should be reviewed and overhauled to simply the tax treatment and in turn increase compliance.

- As set out in our responses below, the taxation of investment products could be simplified as follows:

Types of Investment	**Taxation Treatment for individuals**
Investment Funds & Life Assurance based investment products	• 41% exit tax to be applied on a self-assessment basis on income and gains • No USC or PRSI. • Losses fully allowable against gains and other investments. • No deemed disposal events.
Other investments (including deposit interest)	• Marginal rate of income tax • USC and PRSI on income • 33% capital gains tax (CGT) on disposal

- The above simplifies investments into two categories and avoids complexity with determining what myriad of treatment an investment can take.

- We recommend loss relief be available on all investments i.e. investors should be taxable on their net overall investment gains.

- There is a distinction as to what types of investments are subject to USC and PRSI. For example, dividend income is subject to income tax, USC and PRSI but income and gains arising from EU ETFs are subject to income tax only. In our view, USC and PRSI should be applicable to investment income other than that deriving from Irish investment funds and life assurance-based products as outlined above.

- In our view, if the treatment of fund investments cannot be simplified in the manner above and in order to remove uncertainty regarding the tax treatment of certain investments, a comprehensive list of various products and tax treatment should be developed by Revenue to assist taxpayers in completing their tax returns.

Consultation Questions & Responses

Question 24. For an Irish investor, as set out above, tax legislation separately classes investments as:

- **a) Irish bank accounts**
- **b) EU/EEA bank accounts**
- **c) Other bank accounts**
- **d) Dividends from companies**
- **e) Capital gains on the sale of shares in companies**
- **f) Irish life products (new basis)**
- **g) Irish life products (old basis)**
- **h) Foreign life products**
- **i) Irish funds**
- **j) EU/EEA/OECD equivalent funds**
- **k) EU/EEA/OECD non-equivalent funds**
- **l) Other distributing funds**
- **m) Other non-distributing funds**
- **n) Personal Portfolio Investment products**

Taking account of the different nature of the investment products, is this an appropriate way to class investments for the purposes of taxing the returns on those investments? Does the differing tax treatment of different investments drive investor behaviour, and if so how? Do you propose an alternative method / methods of classifying investment products?

As an overarching comment, we are of the opinion that the current classification system of investment products is unnecessarily complex. An individual taxpayer has to navigate through a Form 11 that is now 42 pages long with various different classifications of investments when filing their annual tax return. In addition, the different classification of investments attract different tax treatment and rates as can be seen from the table below.

Types of Investment	Taxation Treatment for individuals	Tax Treatment for companies
Equities / EU/EEA/OECD non-equivalent funds	Marginal rate of income tax, USC and PRSI on income and 33% capital gains tax (CGT) on disposal	Corporation tax at 0%/12.5%/25% on income and 33% on gains on disposal
Irish domiciled funds/ Investment Limited Partnerships – authorised before 13 February 2013	41% exit tax on income and gains with an 8 year deemed disposal. No USC or PRSI.	Corporation tax 25% on income and gains
Equivalent Offshore Funds/ Exchange Traded Funds	41% exit tax on income and gains with an 8 year deemed disposal. No USC or PRSI.	Corporation tax 25% on income and gains
Other Distributing Offshore Funds	Marginal rate of income tax, USC and PRSI on income and 40% CGT rate applicable to gains.	Corporation tax at 25% on income and 40% on gains
Other Non-distributing Offshore Funds	Marginal rate of income tax, USC and PRSI on income and gains.	Corporation tax at 25% on income and gains
Irish Life Assurance Products – New basis	41% LAET with an 8 year deemed disposal	Corporation tax at 25%
Irish Life Assurance Products – Old basis	Taxed at 20% annually	Corporation tax at 12.5%
Foreign Life Assurance Products – EU, EEA, DTA	41% income tax, no USC or PRSI.	Corporation tax at 25%
Foreign Life Assurance Products – non EU, EEA, DTA	Profit is subject to CGT at 40%	

Types of Investment	Taxation Treatment for individuals	Tax Treatment for companies
Investment Limited Partnerships – authorised after 13 February 2013	Taxed on a transparent basis	
Deposit Interest Products	33% DIRT and PRSI (where applicable)	Corporation tax at 25% on any interest income earned.

In order to simplify the tax treatment and in turn increase compliance and reduce errors, consideration should be given to applying income tax at an individual's marginal rate of tax, USC and PRSI (where applicable)/ the higher rate of corporation tax (25%) to most investment income with all capital gains taxed at 33% with loss relief for all categories of investment. By applying tax at the individual's marginal rate of tax/the higher rate of corporation tax, it provides for an equitable and balanced tax system. We have commented on the alternative tax treatment in greater detail below in addressing the subsequent questions.

In our view, the simplification of the tax treatment should also result in a change in investor behaviour. In our experience to date, we have seen more and more of our clients invest in US ETFs (particularly clients who have unutilised capital losses) due to the previous Revenue guidance accepting that US ETFs did not fall within the offshore fund regime. In addition, our clients who are foreign domiciled individuals are avoiding investing in EU ETFs so that they may continue to avail of the remittance basis of tax as detailed further below.

Question 25. The return on certain investments is taxed through the operation of a withholding tax at source, while others must be self-assessed by the investor. In either case, the tax may be a final liability tax, or it may be an amount against which reliefs and credits are allowed.

- **a) Is it desirable that, where possible, taxes are:**
  - **i. deducted at source; and**
  - **ii. final liability taxes? Or**

- **b) Is it desirable that:**
  - **i. taxes are self-assessed; and**
  - **ii. taxed at a marginal rate with reliefs and credits available against investment returns, meaning taxpayers would have to file a tax return each year.**

Do the answers to a) and b) differ for different types of investment product or different types of taxpayer?

We have commented on deduction of taxes at source in relation to the following investments below;
(1) Irish and Offshore funds;
(2) Irish deposit interest
(3) Life Assurance Products

(1) Irish and Offshore Funds – Part 27, TCA 1997

As outlined in the table above, the tax treatment of income and gains from fund investments varies depending on whether it is;

- an Irish fund subject to Investment Undertaking Tax (IUT),
- an EU/EEA/OECD equivalent fund
- an EU/EEA/OECD non-equivalent fund
- a non-EU/EEA/OECD distributing fund, or
- a non-EU/EEA/OECD non-distributing fund

The method of collecting the tax due also varies depending on the fund type.

While it may be desirable that taxes on Irish investments are deducted at source and final liabilities, the practicality of operating same may make it difficult or impossible to achieve. For example, current legislation acknowledges that Irish Exchange Traded Funds (ETFs) are bought and sold between investors on the stock market (cleared through a recognised clearing system) and therefore the fund cannot deduct the appropriate tax at source. Other Irish collective investment vehicles are required to deduct the appropriate tax at source subject to the exceptions set out in the legislation and the de minimis limit in respect of the 8 year deemed disposal events. This difference in treatment can lead to confusion for taxpayers and fund service providers and increases the risk of error given the complexity of the applicable legislation. Furthermore, funds outside of Ireland that fall under the offshore fund tax regime will not apply the appropriate tax at source as they are outside the remit of Irish tax. It is our view that the Irish and offshore fund tax regime in Ireland needs to be reviewed and overhauled to simplify the tax treatment of these investments for taxpayers and in turn increase compliance.

We understand that the offshore funds legislation was originally introduced in 1990 as an anti-avoidance measure to prevent arrangements whereby fund income was “rolled up” tax free within a foreign fund and the original legislation provided that the gains arising on disposal of the interest in the offshore fund were subject to income tax at the higher rate. Further to Finance Act 2001, the offshore fund rules were amended to bring the tax treatment of certain offshore funds (being those located in EU/EEA/OECD territories) in line with the tax treatment of Irish domestic funds which at the time was subject to income tax at a much lower rate of 23% on the income and gains. It is noted that this change coincided with the introduction of the gross roll-up regime for Irish funds.

Finance Act 2007 limited the scope of the type of funds that would fall within the offshore fund regime i.e. the offshore fund must be similar in all material respects (i.e. “equivalent”) to Irish gross roll ups. Finance Act 2008 and Acts thereafter, increased the rate that applies to income and gains on disposal of qualifying offshore funds in line with that of Irish gross roll up funds (currently 41%).

Non-equivalent EU/EEA/OECD offshore funds and non-EU/EEA/OECD offshore funds are subject to differing tax treatments (as outlined in the table above).

In our view, the tax treatment applicable to investments in both Irish and offshore funds should be simplified.

Therefore, in our view, the tax treatment of Irish investment funds should be simplified as follows:

Types of Fund Investment	**Taxation Treatment for individuals**	**Tax Treatment for companies**
Investment funds	41% exit tax on income and gains. No USC or PRSI.	Corporation tax at 25% on all income and gains

These amendments should simplify the tax treatment applicable to funds and should reduce distortionary behaviour such as investors choosing their investments based on the tax implications as opposed to their investment outcome. On this basis, it would be preferrable for investors in Irish funds to be taxed on a self-assessed basis with no deemed disposal events and with loss relief available.

We have included further comments on the Irish and offshore fund regime within our responses to further queries below.

<u>Withholding tax regime for Intermediaries</u>

We had considered whether a withholding tax regime could be brought in for Irish domestic intermediaries, for example, Irish stockbrokers to withhold tax on chargeable events arising from Irish or EU ETFs and pay this tax over to revenue on behalf of the investor. This withholding tax could be the final liability to tax on the investments. Such a regime could simplify the filing of tax returns or reduce the number of taxpayers required to file a tax return. However, we discounted this regime for the following reasons;

- It places an administrative burden/cost on Irish stockbrokers/private banks and therefore may put Irish domestic providers at a disadvantage to foreign stockbrokers/intermediaries.
- Taxpayers who have investments with stockbrokers/private banks are likely to have other investments that will require them to file a tax return, such as Irish rental properties.

(2) Irish Deposit Interest

The current rate of deposit Interest Retention Tax (DIRT) is 33% which is deducted at source from deposit interest earned by Irish resident individuals. This is the final liability to income tax however PRSI may arise on deposit interest earned. Irish resident companies are exempt from DIRT. We note that the Commission of Taxation and Welfare in their 2022 report recommended that deposit interest should instead be subject to the marginal rate of income tax together with USC and PRSI and that this should be collected at source under a mechanism similar to the real time reporting system currently in place for PAYE. We note that this recommendation by the Commission of Taxation and Welfare is as a result of their mandate to consider options for reform on the balance of tax of earned income, consumption and wealth. While the recommendation that deposit interest is subject to the marginal rate of income tax appears to be the fairest treatment, rather than a fixed 33% rate, the cost of implementing a system to collect the tax at source may result in significant cost and resources, particularly given the current low levels of deposit interest rates in Ireland over the last number of years. Furthermore, the recommendations by the Commission to apply real time reporting similar to PAYE would require each individual with a bank account to provide their annual tax credit certificate to ensure the tax is correctly applied and may result in PAYE individuals being required to file tax returns to obtain refunds/pay further tax where DIRT is incorrectly applied.

If DIRT were instead to be collected via self-assessment, it could result in a significant number of individuals being brought within the self-assessment system to account for DIRT on small amounts of deposit interest, which in turn could result in non-compliance and a reduced collection of DIRT.

In our view, the marginal rate of tax could be applied to deposit interest by financial institutions. Financial institutions can continue to withhold the tax at source (40% instead of 33%), without introducing a PAYE like system. Where an individual is taxed at the standard rate, they can apply for a refund through their annual income tax return. While we believe that a marginal rate should apply to most investors, we believe that the current exemptions for people aged 65 and over, and for people who are permanently incapacitated, should remain in place. Introducing a marginal rate of tax on deposit interest further helps to simplify the taxation of investment products and also enables the introduction of USC on such investments.

(3) Life Assurance Products – New Basis Life Assurance Exit Tax (LAET)

Life assurance business written on or after 1 January 2001 is referred to as 'New Basis Business' and is subject to what is referred to as a 'gross roll up' regime whereby broadly profits roll up within a life policy until a 'chargeable event' occurs at which point Life Assurance Exit Tax (LAET) may arise on policyholder profits. Shareholder profits are taxable at the trading rate.

Essentially the regime ensures that there is no annual tax imposed on policyholders' funds and the investment return is taxed only on the happening of a chargeable event.

Broadly the LAET for individual policyholders is 41% on income and gains and 25% where the policyholder is a company.

In our view the regime for life assurance companies should broadly align with the regime for Irish domiciled funds. On that basis we would recommend that the LAET regime, as it currently applies at source on New Basis

Business life assurance products, be removed and that policyholders be taxed on a self-assessment basis on other (actual) chargeable events.

In an environment where there is convergence between the tax rate applicable to “gross roll-up” Irish domestic funds and life assurance companies, it would be important that there is also an alignment in the rate with that applies to Irish deposit interest. Taxation rate divergence on deposits may not have been a significant factor for investment decision making in recent years given very low interest rates. However, a rising/high interest rate environment, deposits will become a more attractive option for investors. In order to avoid a tax arbitrage between certain savings products over other investment types (e.g., between perhaps bank savings over an investment policy) a convergence between the taxation on gross roll-up funds discussed above, and tax applied to deposit interest is recommended. To converge rates in the manner as described (i.e. apply a marginal rate of withholding to deposit interest) would help to reduce any tax system arbitrage and ensure fair treatment and conformity across these investment classes. This would help avoid the potential for tax rates to skew investment decision making in favour of certain financial products.

Life Assurance Products – Old Basis

We refer to Q27 in relation to commentary on the Old Basis Business or I-E regime for life assurance products written on or before 31 December 2000.

Question 26. If any investment returns continue to be taxed on a final liability basis what link, if any, should there be between the rate of DIRT and the rate of tax applied to other investment products? Should consideration be given to reintroducing a "non-standard" rate to any products?

Please see our comments above.

Question 27. Are there places where the taxation of investment income and gains need to be simplified or modernised? For example, in relation to the taxation of ETFs, the old basis of taxation for life products, or harmonising the exemptions from IUT and LAET.

We have set out our comments below on measures to simplify the taxation of (1) Irish and offshore funds and (2) life products.

(1) Irish & Offshore Funds

Offshore funds/ETFs

It is our view that the taxation of offshore funds, which includes ETFs, should be simplified as the current legislation governing same is complex and difficult for taxpayers to navigate. In order for a tax payer to determine if their investment falls within the offshore fund regime, they are required to,

1. Establish if the investment is a material interest as defined in the tax legislation;
2. Determine if the fund is located in an EU, EEA or OECD country with which Ireland has a double tax agreement; and
3. Consider if the fund is similar in all material respects to an Irish gross roll up.

While the current Revenue guidance makes it clear that certain investments, such as UCIT regulated funds (including ETFs) domiciled in Ireland and the EU, fall within the offshore fund regime, difficulties arise when considering offshore funds/ETFs that are not UCITs regulated, such as ETFs domiciled in the US. This has become more challenging as a result of the change to the Revenue guidance in September 2021, where prior to same, Revenue had accepted that US ETFs should fall outside of the offshore fund regime.

Taxpayers and tax advisors are now required to review the prospectus of each offshore fund/US ETF that they have invested in to establish if offshore fund is similar in all material respects to an Irish gross roll-up. While 15 / 20 years ago, an individual may have one or two fund investments as part of their stockbroker portfolios, the growth in the funds industry has led to individuals having numerous fund investments, particularly in ETFs. It is now not unusual for clients to have 40 - 50 investments in ETFs within their stockbroker portfolios. Therefore, to carry out a review of all offshore funds/US ETFs annually can be extremely time consuming, resulting in increased compliance costs for taxpayers, and may lead to taxpayers applying incorrect tax treatment to their investments. In our experience to date, while Irish stockbrokers will confirm whether an investment is a material interest as defined in the tax legislation, most stockbrokers will not advise their client's as to whether the fund is similar in all material respects to an Irish gross roll-up fund. Where the investor has investments with overseas stockbrokers, obtaining information on the Irish tax treatment of their investments becomes even more challenging. Therefore, the onus is on the taxpayer and their tax advisor to interpret the fund literature in establishing if that fund is similar to an Irish gross roll up fund. We would suggest that there are strong arguments that the offshore funds regime should be reframed to align with well-established international principles (i.e. the AIF rules) as to what constitutes an investment fund, rather than relying on a complex and subjective case-by-case analysis of each entity's legal and regulatory features. Such amendments could be ringfenced to apply to funds not established in "non-cooperative" jurisdictions.

Even where it can be established that the investment falls within the offshore fund regime, the taxpayer must also be aware of and navigate the following additional factors to ensure compliance with the legislation;

- **Remittance basis of tax** – Irish resident and non-Irish domiciled individuals are subject to the remittance basis of tax in Ireland. However, one of the exceptions to the remittance basis of tax are gains arising on regulated offshore funds as the gains are subject to tax under Case IV, Schedule D. Gains arising on the disposal of regulated offshore funds are subject to tax in Ireland regardless of whether the gains are remitted to Ireland or not.

- **The eight-year deemed event** – Please refer to our comments below.

- **Death of unit holder** – While capital gains tax falls away on death, death is deemed to be an exit event under the offshore fund rules. While a credit is available for exit tax against inheritance tax where the beneficiary retains the investments for a period of 2 years, the credit is limited to the amount of the inheritance tax paid. Furthermore, where the executors sell off the investments in the funds, the benefit of the credit is lost which can result in a significant tax cost. This deemed event on death makes investments in offshore funds less attractive than investments in equities.

- **Discretionary trust surcharge** – while the 41% exit tax applicable to income and gains from offshore funds is currently intended to be the final liability to tax, the wording of the legislation gives rise to uncertainty as to whether the trust surcharge of 20% is applicable to income and gains arising to trustees who have invested in offshore funds, giving rise to a total tax liability of 61% on income and gains from these investments. If the income from Irish and offshore funds will instead fall under the marginal rate of tax, discretionary trusts should be subject to 20% income tax on the distributions and the surcharge applicable to same. Gains should be subject to capital gains tax in line with the proposed treatment for individuals.

Old Basis of Taxation for Life Assurance Products

The taxation of domestic life assurance companies and their policyholders depends on when life assurance business was written. In its broadest sense life assurance business written on or before 31 December 2000 is referred to as 'Old Basis Business' which is subject to a regime knows as the "I-E" (or income less expenses) regime which has its origins in historical case law.

The "I-E" tax computation in respect of Old Basis Business is based on investment return (e.g., broadly investment income plus chargeable gains less management expenses) as opposed to trading profits. The investment return is apportioned between policyholders and shareholders; the policyholders' share being taxed at a corporation tax rate equal to the standard rate of Income Tax (20%) (which is a final liability tax for policyholders) and the shareholders' share being taxed at the standard rate of corporation tax (12.5%).

The Old Basis Business or I-E regime is essentially a tax regime which is unique to Irish life assurance companies. While taxation under this regime is complex, and in some instances burdensome, it is, however, a declining part of most domestic life companies' business.

In light of the complex nature however of legislation, guidance and practice in this area in our view some level of simplification would be welcomed in this area, balanced with an appreciation that Old Basis Business is a decreasing portion of the insurance portfolio of many domestic life insurance companies. Given the highly complex nature of the regime close consultation with the industry players would be recommended prior to any changes in this area. The question of the impact to existing policyholders of any change to the regime would also need to be factored into considerations.

Please refer to our response to Question 30 below in relation to harmonising the exemptions available in respect of IUT and LAET.

Question 28. Given the differences in the data reported to the Revenue Commissioners under international reporting standards when compared to domestic reporting obligations, should additional reporting be introduced to, for example, facilitate the pre-population of tax returns where tax liabilities are to be self-assessed?

Currently the information pre-populated on the annual Form 11 for individuals includes Irish employment and pension income and social welfare payments (such as the state pension) received by the individual in the tax year. We note that Ireland has signed up to a number of information exchange agreements which require foreign banks, life companies, funds, credit units etc. to report certain information in relation to Irish resident account holders. In addition, we note that under domestic reporting obligations, Irish funds and Irish life policies report certain details to Revenue in respect of Irish resident individuals/companies. In our view, the pre-population of the Form 11 for data reported to Revenue for taxpayers would be helpful in increasing compliance.

In particular, we would note that the Investment Undertaking Tax (IUT) returns required under S.891C TCA 97 and CRS returns filed with Irish Revenue are required to include certain details in relation to investors, including names, addresses, tax reference numbers, investment number, value of investments and in the case of CRS reporting, the gross amount of any interest, dividends and gains on the sale of the assets. As such, in our view, the reporting requirements under 891C and CRS should be aligned, and the details reported on same should be pre-populated into the Form 11 returns. This would simplify the compliance and reporting process for individual taxpayers.

We would also recommend that additional reporting for Irish funds should be introduced such that after the occurrence of each chargeable event, a statement should be provided investors outlining the value of the chargeable event. The issue of such statements to investors should ease the compliance process when it comes to preparing the annual income/corporation tax returns, particularly if the taxation of such investments moves to a self-assessment system. It is noted that if the tax calculations were to move to a self-assessment basis, we would not expect that Irish fund administrators would be required to calculate the tax due and, in that case, should only be required to provide a statement reflecting the value of the chargeable event.

Question 29. Where investments in investment undertakings, life policies or offshore funds give rise to a loss, no relief is available against other income. Where an individual has a gain on one such product and a loss on others, that loss may not be offset against the gain on a similar product. Is it desirable that loss relief, or a limited form of loss relief, be introduced for investments in these products? Note that reliefs cannot be given where the tax is a final liability tax deducted at source.

The offshore regime was introduced into Ireland during a time where international investment by Irish taxpayers was at a minimum. Today, international investment is something which many Irish investors can partake in from sitting in the comfort of their own homes on their phones. It is understandable when the regime was first introduced why loss relief was not allowed as the only funds available to Irish investors were gross roll-up funds. Today, however, investors have much more flexibility as to how and where they allocate their capital

As such, loss relief should be available on a net basis across all investment classes.

Question 30. Are there differences within the regimes (e.g. in relation to who can make a declaration under LAET compared to those who may make a declaration under IUT) which should be addressed.

There are a number of differences between the investors who can make declarations for the purposes of IUT and LAET which, in our view, should be addressed.

The table below shows the Irish investors who can make declarations for IUT and LAET. We would suggest that the following investors be added to the list of investors who can make declarations for LAET, in order to better align these regimes:

- Investment limited partnerships;
- Special investment schemes;
- Exempt unit trusts, as defined in section 731(5)(a) TCA 1997;
- Qualifying management companies;
- The National Treasury Management Agency or a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment Act 2014) of which the Minister for Finance is the sole beneficial owner, or the State acting through the National Treasury Management Agency; and
- Securitisation companies within the meaning of section 110 TCA 1997

Irish resident investors who can make declarations for IUT	**Irish resident investors who can make declarations for LEAT**
a pension scheme;	a life assurance company,
life assurance company;	an investment undertaking
another investment undertaking;	a charity,
an investment limited partnership;	a Personal Retirement Savings Account (PRSA) provider,
a special investment scheme;	a credit union,
an exempt unit trust as defined in section 731(5)(a) TCA 1997;	the Courts Service,
a charity;	the National Asset Management Agency,
a qualifying management company;	an exempt approved pension scheme or trust scheme to which section 784 or 785 applies;

a person who is entitled to exemption from income tax and capital gains tax by virtue of section 784E and the units held are assets of an approved retirement fund or an approved minimum retirement fund and the qualifying fund manager has made the appropriate declaration;	approved retirement funds under section 784A and approved minimum retirement funds under section 784C; or
a person who is entitled to exemption from income tax and capital gains tax by virtue of section 787I and the units held are assets of a PRSA and the PRSA administrator has made the appropriate declaration;	a PEPP provider within the meaning of Chapter 2D of Part 30
a credit union within the meaning of section 2 of the Credit Union Act 1997;	
a company that is within the charge to corporation tax in the case of money market funds;	
the National Asset Management Agency;	
the National Treasury Management Agency or a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment Act 2014) of which the Minister for Finance is the sole beneficial owner, or the State acting through the National Treasury Management Agency;	
the Motor Insurers' Bureau of Ireland in respect of an investment made by it of moneys paid to the Motor Insurers' Insolvency Compensation Fund under the Insurance Act 1964 (amended by the Insurance (Amendment) Act 2018);	
a securitisation company within the meaning of section 110 TCA 1997; and	
a person who is entitled to exemption from income tax and capital gains tax by virtue of section 787AC and the units held are assets of a PEPP and the PEPP provider has made the appropriate declaration.	

Question 31. How should derivative products which mirror the performance of regulated investment products be taxed? Should they be taxed at the same rate as the investment product they mirror or should they be taxed under first principles?

The Department of Finance's 2017 tax strategy group report on "Capital & Savings Taxes" noted an increase in the market of derivative products which aim to mirror the performance of regulated collective investment vehicles without attracting the higher rates of tax. As recommended, moving the taxation of investors in collective investment vehicles/regulated offshore funds to the marginal rate of tax would bring derivative products into a level playing field. However, it is noted that implementing such a taxation on derivative products may be complex and such a regime would likely not apply to Irish individuals, as the issuers of such derivative products would likely be banks or other financial traders who would be issuing same as part of their ordinary trading activities.

Please note that our comments above do not include the tax treatment of spread betting. Spread betting involves betting on the direction of a financial instrument e.g. shares, etc. An investor bets on whether a financial instrument will rise or fall in value. Spread betting is currently operated under a bookmaker's licence in Ireland and is therefore not subject to tax. Should these types of derivative products be brought within the scope of tax, it may lead to investors building up large capital losses being available to offset capital gains on other investment products.

Question 32. Are any additional anti-avoidance rules required for any of the measures suggested in answer to previous questions?

We do not believe that very targeted anti-avoidance rules should be required for the measures suggested in answer to previous questions.

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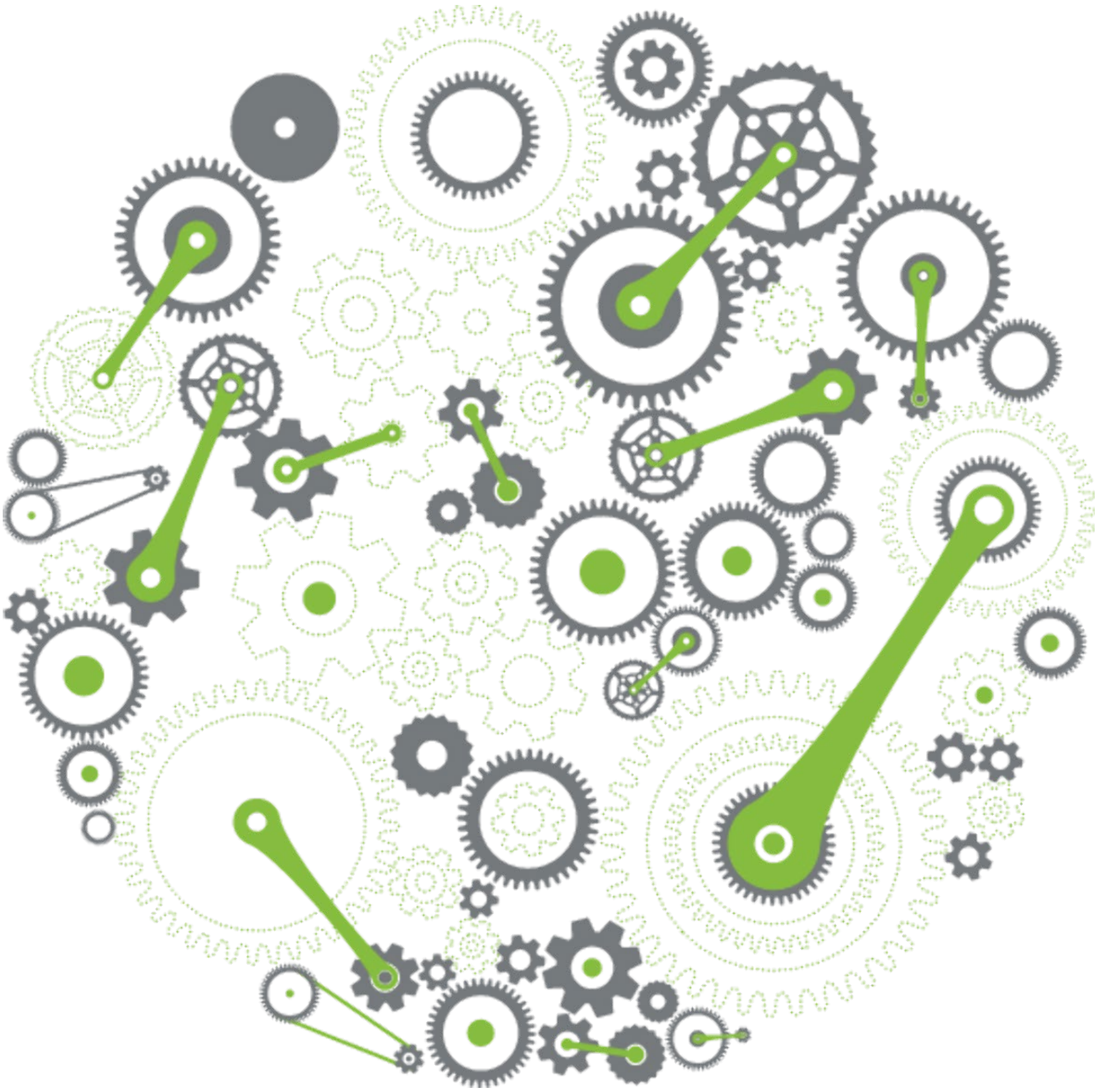

Funds Sector 2023: A Framework for Open, Resilient & Developing Markets

Public Consultation Response

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Funds Sector 2030: A Framework for Open, Resilient & Developing Markets
Public Consultation - Section 6 The role of the REIT and IREF regimes

Dear Sirs/Mesdames,

We are pleased to submit comments on behalf of Deloitte Ireland LLP in response to Section 6 The role of the REIT and IREF regimes of your consultation document of 21 June 2023. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact me at 01-417 2417 or my colleague Michael Raine at 01-417 2224.

Yours sincerely,

Pádraig Cronin

Pádraig Cronin
Partner & Vice Chairman

Executive Summary

Institutional investors, both Irish and foreign, have played an important and positive role in the Irish real estate sector since the Global Financial Crisis ("GFC"). In the aftermath of the GFC, institutional investors deployed significant amounts of capital that assisted with the recovery of the Irish economy, in particular providing the finance to unwind distressed debt and finish uncompleted developments. Institutional investors are now a key player in the Irish real estate sector, not only in terms of developing and holding real estate investment assets but also in financing real estate development. Such financing includes lending to local developers engaged in the development of residential units that in many cases are acquired by first time buyers.

Separately, it should be noted that the growth of institutional funding has reduced the exposure of the Irish pillar banks to property development and by extension reduced the risks to the wider Irish economy. Also, non-bank lending allows for equity investment rather than debt which assists with economic stability.

With regard to residential property, the Department of Finance has estimated that €13.5 billion of development funding per annum, comprising both debt and equity, will be required to develop the current 'Housing for All' target of an average of 33,000 homes per year. Of this €13.5 billion, an estimated €11.4 billion will be required from private capital sources. While Irish domestic banks may provide a portion of this, the majority of this will need to come from other sources, in particular from institutional investors. The scale of investment required to fund the property market, both debt and equity, is not available domestically and, as a result, international capital is required.

The GFC ushered in a period of historically low interest rates together with a period of increasing money supply. Covid-19 added to this dynamic. However, this may not be the case going forward. With rising interest rates across many jurisdictions, quantitative tightening, Bidenomics, increasing cost of debt, price adjustments within real estate and other risks, the market for foreign direct investment may become more competitive in future. Ireland, although attractive due to strong economic and demographic trends is a relatively small market, and therefore cannot provide the scale which many international investors are seeking. Ireland is one destination on a list of potential locations to deploy capital and therefore there is no guarantee that such investors will select to invest in Ireland. Our tax regime can and should be used to ensure continued access to capital going forward. In that regard, we need to provide an attractive and competitive tax regime and certainty for investors.

In our view, the IREF regime should be maintained without any significant amendments. The tax exempt-status of the IREF together with the withholding tax mechanism on distribution of profits are a common feature of European and international funds. As such, investors tend to be familiar with this model. It should be noted that there is a view held by many investors, whether right or not, that the Irish tax system pertaining to real estate is constantly changing. Fundamental changes to the IREF regime would likely bolster this view, creating uncertainty, which acts as a barrier to investment. Investors need to be able to rely on the certainty that has historically been a feature of the Irish tax system.

The 20% IREF WHT rate is not out of sync with other European fund regimes. Increases in the WHT rate could make Ireland a less attractive investment location. We should be cognisant of the current unstable international economic environment, the changing debt market and as already mentioned, the fact that Ireland, although attractive, is not always seen as a prime location for international real estate investors. Accordingly, in our view, the 20% rate of IREF WHT should not be increased. Separately, we would strongly urge against introducing a fund level tax. In particular, this would have a negative impact on Irish pension funds. The tax-exempt nature of funds is a common feature of international fund vehicles and is intended to avoid double taxation being imposed on the pensioner/investor - as the ultimate investor will be taxed when the income/gains are distributed.

While institutional investors have tended to have a preference for the IREF regime, in our view there is a still a case for maintaining the REIT regime. In particular, REIT's offer individual investors the opportunity to invest in high quality real estate assets without the risks associated with direct holdings in real estate. In our view steps should be taken to enhance the REIT regime including changes to the REIT listing requirements and changes to the taxation of shareholders in a REIT. In particular, consideration should be given to exempting shareholders on distributions out of rental profits and gains sourced from the provision of certain categories of residential units including social housing. Consideration should also be given to extending the REIT rules to other types of assets such as renewables.

Prior to making any investment, large investors will model the likely return over the life of the investment. One of the factors in estimating that return is the amount of tax cost associated with the investment. Such tax cost can be significant over the life of the investment. The model will be used in making an investment decision. Subsequent tax changes following investment, can negate some of the assumptions used in preparing the model, resulting in investor losses. If changes are to be made, we would strongly recommend that the current regimes are grandfathered for existing IREF/REIT investors. Giving the design of both regimes, failure to grandfather the existing regimes could be perceived as retrospective taxation. Also, in the event of changes we would suggest that an IREF/REIT be allowed to transfer its business to other corporate type vehicles with any tax liability being deferred.

Over many years, Ireland has developed a reputation as an open economy that welcomes foreign investment. Changes that are perceived to be retrospective can impact Ireland's reputation as a place to do business and impact future investment.

Consultation Questions & Responses

IREF's

Question 33. Are there aspects of the way in which property funds are taxed, or defined, that could be aligned with other existing standards, for example, the recent changes in the Central Bank of Ireland's macro prudential measures for property funds?

Finance Act 2019 introduced rules (S.739LA to S.739LC TCA 1997) that effectively deem part or all of any interest expense of an IREF to be income. Such income is then subject to tax of 20%. These rules are anti – avoidance rules which seek to prevent an IREF using excessive interest to decrease the profits subject to IREF Tax.

These are two legs to these interest rules. The first leg, the "balance sheet leg", taxes part of the interest expense where the amount of debt exceeds 50% of the original cost of the real estate. The second leg, the "income statement leg", taxes part of the interest expense that exceeds a fraction of profits. Generally, these rules do not apply to interest expense on bank loans. The interaction of the two legs together with the bank interest exclusion rules results in significant levels of complexity and often unexpected results e.g., part of the bank interest expense may be taxable where an IREF has bank debt and an interest free shareholder loan.

On 24 November 2022, the Central Bank of Ireland (the Central Bank) published its Macroprudential Policy Framework for Irish Property Funds (the Policy), introducing new limits on leverage in property funds. The Policy introduces a limit of 60% to the ratio of debt over total assets of in scope funds as an authorisation condition under Regulation 26 and, where appropriate, Regulation 9 of the Irish AIFM Regulations. The limit applies to Irish funds which have at least 50% of their assets under management (AuM) directly or indirectly invested in physical Irish property assets (Irish real estate funds).

With the introduction of the CBI rules limiting the level of leverage in an IREF, there is an argument that the balance sheet leg of the above interest restriction rules are no longer necessary. Accordingly, consideration should be given to removing the balance sheet leg. This should result in less complex calculations.

Question 34. IREFs invest in property of all descriptions, as developers, financiers and landlords. Do IREFs, and the regime as it is currently designed, support investment in housing policy objectives?

There is a significant variety of investor types including private equity, pension funds, sovereign wealth funds, insurance and life assurance businesses. These investors use various types of legal entities including plain vanilla corporates, partnerships and collective investment fund vehicles. These investors will have varying requirements - some will have to use regulated vehicles, others will prefer non – regulated vehicles (due to the cost and complexity involved with regulated vehicles), some will desire tax transparent vehicles etc.

While it may be impossible to cater for every need, Ireland should seek to maintain a wide range of legal entities that appeal to a wide range of potential investors. It should be noted that many jurisdictions provide more than one type of investment vehicle.

As mentioned above, in our view, the IREF regime together with the 20% WHT should be maintained without any significant amendments.

While not specific to IREF's, the VAT treatment of residential units held to let is a significant issue for IREF's investing in residential units. The rate of VAT on the acquisition of new Irish property is 13.5%. For an investor, acquiring property with the intention to let, such VAT is generally a final cost. This is a significant cost and puts Ireland at a competitive disadvantage compared to other jurisdictions. For example, in the UK, the development and sale of new residential buildings is zero-rated (meaning the VAT on development costs can be recovered) meaning an investor suffers no VAT cost. Also, Luxembourg and Italy offer VAT rates of 3% and 4% respectively where certain conditions are met. A reduction in the VAT rate should make housing projects more viable for developers and increase the supply of residential units for sale and for let.

Question 35. How does the IREF regime compare to property fund regimes in other comparable EU jurisdictions?

See Appendix I.

While this is only a small sample of the fund regimes available, it can be seen that the IREF regime is not out of step with other European regimes. The IREF regime and the 20% WHT rate is typical of similar type regimes.

Question 36. Are there aspects of the IREF regime that are not operating as intended or that are acting as an impediment to investment?

In our view, the IREF regime should be maintained without any significant amendments. The tax exempt-status of the IREF together with the withholding tax mechanism on distribution of profits are a common feature of European and international funds. As such, investors tend to be familiar with this model. However, we have set out below some minor suggested amendments.

Reconstruction Relief

Both the general corporate tax rules and the Investment Undertaking Tax ("IUT") rules provide for different types of reconstruction relief. With regard to the IUT regime, the rules allow assets to be transferred to other sub-funds or other QIAIF's without triggering IUT tax, provided the shareholders remain the same. No such reconstruction relief is available under the IREF rules. We would suggest that the reconstruction reliefs that are available under the IUT regime should also be available under the IREF regime.

S.739T TCA 1997

On the sale of IREF units, the purchaser must deduct 20% withholding tax ("WHT") from the total consideration and pay same to the Revenue. (S.739T (2) TCA 1997) Where the WHT deducted is in excess of the seller's income tax due (as calculated using the formula in S.739L TCA 1997), the seller may file a tax return and recover part of the WHT. (S.739T (4) & (6) TCA 1997) The WHT deducted will in all cases exceed the amount of income tax payable by the seller i.e., in effect the WHT is applicable to both the capital originally invested and the profit element of the consideration.

While this WHT is recoverable it does create a significant cash flow cost for the seller together with an administrative burden i.e. the seller will need to register for tax, file a tax return and subsequently wait for a refund.

We would suggest legislating for a type of clearance procedure similar to S.980 (3) (b) (iii) TCA 1997. Broadly, under this sub section, a non – resident may receive a CG50 tax clearance certificate if the CGT on the proposed sale is paid up – front. If the CGT is paid up- front, then the seller may receive all of the sales proceeds without deduction of WHT. It may not be possible to copy the CG50 mechanism exactly as IREF Tax can only be computed after the event i.e. it is necessary to know the accounting reserves at the date of sale in order to calculate the IREF Taxable Amount in S.739L. Instead, we would suggest a WHT clearance mechanism where the IREF agrees to discharge the seller's income tax liability. For example: -

- A unitholder decides to sell its units.
- The IREF agrees to pay the sellers income tax liability associated with the sale of the units.
- The seller advances cash approximate to the income tax due on the sale to the IREF.
- The IREF and the seller make a joint application for a WHT clearance.
- This WHT clearance is provided to the purchaser. The purchaser pays the consideration for the units without deducting WHT.
- At the appropriate date (30 January or 30 July), the IREF pays the Collector General an amount equivalent to the seller's income tax liability.
- Where the final tax is in excess of the amount which the seller pays to the IREF, the seller settles same with the IREF (and vice versa). This is a matter between the seller and the IREF.

S.739O (2) (a) TCA 1997

S.7390 (2) (a) TCA 1997 states: -

"Notwithstanding any other provision of the Tax Acts—

a) for the purposes of affording relief under an arrangement made with the government of a territory outside the State having the force of law under the procedures set out in section 826(1) [.i.e. a Double Taxation Agreement], <u>the IREF taxable amount</u> in respect of an IREF taxable event [which includes a gain on the sale or redemption of units in an IREF together with a dividend from an IREF] and a unit holder—

(i) who is a holder of excessive rights, is income from immovable property, and
(ii) who is not a holder of excessive rights, shall be treated as a dividend,"

A 'holder of excessive rights' means a person [e.g. a unit holder] who is beneficially entitled, directly or indirectly, to at least 10 per cent of the units in an IREF. (S.739O (1) TCA 1997)

Accordingly, for the purposes of determining relief under a DTA, the intended effect of S.739O (2) (a) TCA 1997 is to treat/deem: -

(i) dividends and gains from an IREF as "income from immovable property" in the hands of a holder of excessive rights and
(ii) gains on a sale of units in an IREF or gains on the redemption of units in an IREF as a dividend in the hands of a holder of non – excessive rights.

With regard to holders of excessive rights as most if not all of Ireland's DTA's afford no relief for "income from immovable property", then prima facie the 20% tax referred to above is a final tax cost. The effect of this provision is that Irish domestic law has been used to override internationally agreed treaties.

In our view, using domestic provisions to override treaty provisions does not comply with either Irish or international law and could be seen as an act of bad faith in an international context. This is damaging to Ireland's reputation as a place to do business. We would recommend that this provision is removed to provide investors with certainty.

PPIREF Rules

In the first instance, non-passive EU/EEA pensions funds, life assurance businesses and collective investment vehicles unitholders are subject to IREF Tax. (S.739M (3) TCA 1997) However, the IREF rules do not apply where the investors in such EU/EEA pensions funds, life assurance businesses and collective investment vehicles unitholders are passive investors. (S.739N TCA 1997 (1)). However, this exclusion does not apply where the EU/EEA pensions funds, life assurance businesses and collective investment vehicles invest via intermediary vehicles.

We would recommend that S.739N (1) TCA 1997 is extended to EU/EEA pensions funds, life assurance businesses and collective investment vehicles that invest indirectly through intermediary entities.

We invite comment in relation to the tax treatment of IREFs, in particular in relation to the following:

- **The tax rate applicable to both resident and non-resident investors**
- **The tax exemptions that apply to certain categories of investors**
- **The tax rate applicable at the level of the fund**
- **The overall tax treatment of IREFS – should an alternative mechanism be considered?**

The tax rate applicable to both resident and non-resident investors

The 20% WHT rate is in line with other European jurisdictions. Increasing the rate will mean that Ireland will have a less attractive tax regime versus its competitors. This could have a negative impact in terms of attracting foreign capital. In particular, any tax increase on foreign investors could negatively impact residential development targets and indirectly strategic policy goals such as investment in infrastructure including renewable technology. It is unlikely that Irish banks would have the necessary funds to finance the scale of the investment required. Currently, for many developers, obtaining financing from Irish pillar banks is not an option. Even where financing is obtained from Irish pillar banks, the lending is capped at 60% – 65% of project cost.

There are other risks that need to be considered. Raising tax rates could increase the risk of a sell off by foreign investors with a knock-on effect on Irish banks and investors, including pension funds.

The tax rate needs to be a key attraction for investors to balance other aspects of the Irish market i.e. Ireland does not provide the scale which other markets can, liquidity concerns etc. Accordingly, we would recommend that the IREF tax rate is left unchanged.

There have been some suggestions that the IREF WHT rate should be aligned with the CGT rate of 33%. It should be noted that in an international context, it is common that foreign investors suffer lower effective tax rates as compared to domestic investors. The lower rate reflects the fact that the foreign investor will ultimately likely suffer home country tax. Comparison between Irish and non – Irish investors should not be made without taking account of shareholder level tax. In our view a more appropriate response is to reduce the 33% CGT rate.

The tax exemptions that apply to certain categories of investors

The tax exemption applies to passive life assurance businesses, pension funds and collective investment funds. In an international context, these are typically exempt investors. Any tax will be an absolute cost to these investors thereby reducing the returns of such investors. This would deter such investors investing in Ireland and possibly cut Ireland off from an important source of capital.

The tax rate applicable at the level of the fund

It is internationally accepted practice to exempt the profits at fund level. If tax was imposed at fund level, this would have a negative impact on Irish pension funds and other exempt investors. Any tax will be an absolute cost to these investors thereby reducing the returns of such investors. This would deter such investors investing in Irish real estate and possibly cut the real estate sector off from an important source of capital. Irish pension funds (both public and private) rely on achieving tax exempt returns to ensure they can meet their obligations to pensioners. Such pensioners pay full income tax on the pension as it is drawn down. Any tax at entity level could create funding issues for pension funds.

The tax-exempt nature of funds is a common feature of international fund vehicles and is intended to avoid double taxation being imposed on the pensioner/investor – as the ultimate investor will be taxed when the income/gains are distributed.

The tax-exempt nature of an IREF also assists with raising debt financing.

It should also be noted that IREF's make a significant contribution to the exchequer via IREF Tax, Income Tax, Stamp Duty and VAT.

The overall tax treatment of IREF's – should an alternative mechanism be considered?

We would not recommend material changes to the IREF regime.

REITS

Question 38. REITs invest in property as landlords and as developers of property to hold for rent. Do REITs, and the regime as it is currently designed, support investment in housing policy objectives?

See our responses to Q.34 above.

Question 39. REITs invest in property as landlords and as developers of property to hold for rent. Do REITs, and the regime as it is currently designed, support investment in housing policy objectives?

While REITs are a structure used in many jurisdictions for collective investment in property, Ireland now has only one remaining REIT. Are there aspects of the REIT regime that are not operating as intended or that are acting as an impediment to investment?

EU Main Market Listing

One of the conditions that need to be satisfied to qualify for REIT states is that the parent company is listed on an EU main market listing (this would exclude the UK stock exchange). The rules of a main market stock exchange are onerous, time consuming and costly. Consideration should be given to relaxing or indeed discontinuing this requirement. A number of options are available including: -

(i) Discontinue the listing requirement. It should be noted that neither the USA nor the Netherlands require a REIT to be listed.
(ii) Allow Irish REITs to list on markets other than main markets. For example, UK REIT’s can satisfy the listing requirement by listing on the London stock exchange’s Alternative Investment Market (“AIM”)
(iii) Allow Irish REITs to list on non-EU markets. For example, UK REIT’s can satisfy the listing requirement by listing on the International Stock Exchange (“TISE”) in the Channel Islands.
(iv) The UK REIT rules set aside the listing requirement where 70%+ of investors are institutional investors.

Substantial Shareholder

An Irish REIT will become subject to an additional tax charge if it pays a dividend to a Substantial Shareholder. (broadly, a shareholder which owns 10% or more of the shares). In particular, where a shareholder holds 10% or more of the share capital with voting rights in the REIT or is entitled to 10% or more of a distribution, and the REIT has not taken “reasonable steps” to prevent a distribution to such a shareholder, then the REIT shall be deemed as receiving an amount of income equal to the amount of the distribution to the substantial shareholder.

This deemed income is taxable at the 25% rate. The 10% shareholding rule does not apply to a “qualifying investor” i.e., pension funds, life businesses, QIAIF’s, charities and NAMA.

The Substantial Shareholder rule would apply even if the investor itself is widely held. In our view, the Substantial Shareholder rule should not apply where the investor is widely held e.g., no person holds more than 10% of the shares in the investor.

Leverage limits

A REIT’s leverage may not exceed 50% of the market value of its assets. Where there is a down-turn, and market values of real estate fall, the loan to value increases. In addition, loan to values could also increase as a result of interest rate rises. Where the 50% market value test is not met, REIT’s may be forced into selling assets in order to pay down debt. We would recommend that this test is amended, such that, leverage is restricted to 50% of cost.

Question 40. How does Ireland’s REIT regime compare to REIT regimes in other jurisdictions?

See Table in Appendix II.

It can be seen that the Irish REIT regime is not out of step with other European regimes. The REIT regime and the 20% WHT rate is typical of similar type regimes.

Question 41. We invite comment on the tax position in relation to REITs, in particular in relation to the following:

- **The standard REIT structure, common internationally, of exemption for qualifying property profits within the REIT subject to a range of conditions including a requirement that a high proportion of the profits (85 per cent in Ireland) be distributed annually for taxation at the level of the shareholder.**

The Irish regime is broadly in line with other REIT regimes.

- **The tax exemptions that apply to certain categories of investors**
- **The tax rate applicable at the level of the REIT**

It is internationally accepted practice to exempt the profits at the level of the REIT itself. If tax was imposed at REIT level, this would have a negative impact on exempt investors. Any tax will be an absolute cost to these investors thereby reducing the returns of such investors. This would deter such investors investing in Irish real estate and possibly cut Ireland off from an important source of capital.

The tax-exempt nature of funds is a common feature of international fund vehicles and is intended to avoid double taxation being imposed on the pensioner/investor – as the ultimate investor will be taxed when the income/gains are distributed.

REITS AND IREFS

Question 42. Should the IREF and REIT regime continue to exist in tandem?

The policy rationale for the introduction of the REIT regime in 2013 included the following: -

- To attract new sources of non-bank financing to the Irish property market, at a time when the market was stagnating. The limited availability of investment capital from the banking sector was a significant structural issue following the financial crisis. These difficulties were particularly pronounced in Ireland due to a strong reliance on bank financing over other sources of capital investment. The REIT structure was viewed as a practical model to introduce international capital to the property market as the REIT model is recognised and understood by institutional investors throughout the world.
- Reduce dependence on bank financing in the property market and free up available bank financing for use in other industries.
- Prior to the introduction of the REIT regime, investment in property via corporate vehicles was not generally attractive due to the double layer of taxation that applies to profits earned in a company and then paid out to shareholders in the form of dividends. Corporation tax at the higher, non-trading, rate of 25% is payable by companies on rental profits with capital gains tax applying to the disposal of rental properties. Shareholders are then taxable on dividends paid from the after-tax profits of the company. REITs were designed to remove this double layer of taxation. Subject to meeting a number of criteria, including a requirement to distribute annually at least 85% of rental profits to its shareholders, a REIT may qualify for an exemption from tax on qualifying income and gains within the REIT.
- The lack of a suitable method for collective investment, particularly for smaller investors, also led to structural issues in the property market. Prior to the introduction of the REIT regime, the average Irish residential landlord owned between 1.6 and 2.1 properties, and less than 1.25% owned 10 or more properties. These figures indicated a significant concentration of risk in one or two buy-to-let properties for the majority of residential landlords. A failure to let the property, a failure of tenants to pay rent or an adverse movement in interest rates could result relatively quickly in payment default.

- REITs provide a number of benefits to small investors, including:
    - Liquid investment – listed shares can be sold far more easily, more quickly, and at lower cost than a sale of an investment property.
    - It also allows wider access to returns from investment grade property that previously were restricted to large institutional investors only.
    - The investor can diversify their risk by investing in a REIT holding a variety of properties, in contrast to concentrating risk in the purchase of an individual rental property.

While REITs played an important role in attracting foreign capital in the years immediately following their introduction in 2013, today they play a minimal role. This is due to a number of factors including commercial factors and in particular the fact that they never attracted long-term capital.

Nonetheless, we would be of the view that a REIT may still have a role for the following reasons: -

- As per Q.34, Ireland should seek to maintain a wide range of legal entities that appeal to a wide range of potential investors. Many countries provide for multiple investment entities – See Appendix I.
- REIT's offer individual investors an opportunity to invest in prime real estate while diversifying risk.
- REITs are an internationally accepted investment vehicle which exist in most developed countries.
- The legislative architecture is already in place.

In our view, consideration should be given to enhancing the REIT regime – steps include: -

- Expand the REIT regime so that the REIT level exemption applies to income generated from renewables and emergency accommodation. This could either leverage the existing REIT rules or separate rules could be introduced creating a REIT like vehicle.
- In respect of REIT dividends, taxing both resident and non – resident investors at the standard 20% rate of tax.
- Exempting dividends paid out of income derived from social housing, emergency accommodation and renewables.

Question 43. Should the IREF and REIT regime continue to exist in tandem? Is there an appetite for retail investors to invest in property, if so, what is the best type of vehicle to accommodate such investment?

See our comments in Q.42.

On a related matter, consideration should be given to removing the double layer of tax suffered by small investors in real estate where such investor invests via a corporate. There are many advantages of carrying on business through a corporate, not least the availability of limited liability and the ability to source funding. However, many small investors cannot access the benefits of incorporation due to the double layer of tax that would arise. Private investor using a corporate are subject to corporate tax and CGT of 25% and 33% respectively at company level. In addition, a close company surcharge could arise if profits are not distributed with 18 months of the year end. The 25% corporate tax charge plus the close company surcharge could result in a 40% effective tax rate ("ETR") at the level of the company. Shareholders are then taxed at income tax rates and CGT rates of 55% or 33% respectively when funds are extracted. Depending on the facts, this could result in an overall **ETR** of up to 73%! Consideration should be given to allowing individual investors to elect to treat an ordinary corporate engaged in real estate investment as transparent for tax purposes. In such a case, there would only be one layer of taxation.

	Ireland	France	France	France	France	Germany	Germany	Germany	Lux	Lux	Netherlands	UK	US
	IREF	SIIC (REIT equivalent)	OPCI - SPPICAV	OPCI - FPI	SCPI	Public Investment Fund	Special Investment Fund - Opaque	Special Investment Fund - Transparent (Note 4)	Part II UCI - SICAV	SIF - SICAV	FBI (REIT equivalent)	PAIF	REIT
Fund level taxation	Exempt	Exempt	Exempt	Transparent	Transparent	15.825%	15.825%	Transparent	Exempt	Exempt	Exempt	Exempt	Exempt
Distribution requirements - Inccome	No	95%+	85%+	N/A	N/A	No	No	N/A	No	No	100%	100%	90%
Distribution requirements - gains	No	70%+	50%+	N/A	N/A	No	No	N/A	No	No	No	No	No
Shareholder (Non - resident) - WHT Rate	20%	25%/12.8%/15% (Note 1)	25%/12.8%/15% (Note 1)	N/A	N/A	None	None	N/A	None	None	15%/0%	- 25% (Note 5)	15% - 35%
Shareholder (Non resident) - Taxed directly on profits as transparent	N/A	N/A	N/A	25%/20% (Note 2)	25%/20% (Note 2)	N/A	N/A	15%	N/A	N/A	N/A	N/A	N/A
Shareholder (Non resident) - Taxed directly on gains as transparent	N/A	N/A	N/A	25%/19% (Note 3)	25%/19% (Note 3)	N/A	N/A	15%	N/A	N/A	N/A	N/A	N/A
Regulated	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Listed	No	Yes	No	No	No	None	No	No	No	No	No	No	No

Note 1	Subject to treaty relief, for corporate shareholders, French source dividends are subject to a 25% WHT. The WHT rate is 12.8% for non-resident individuals and, under certain conditions, 15% for foreign collective investment undertakings.
Note 2	25% for corporates shareholders. Generally, 20%+ for individuals.
Note 3	25% for corporate shareholders and 19% for individual shareholders.
Note 4	A German Special Investment Fund may elect to be transparent
Note 5	20% on distributions of income. 25% on redemption of shares where held by non-resident corporate.
Note 6	Deductions for dividends paid - effectively exempt.

	Ireland	USA	UK	Spain (SOCIMI)	Netherlands (FBI Regime - Note 8)	Germany	France (SIIC)
Taxation at fund level							
Rental profits	Exempt	Note 7	Exempt	0%	0%	Exempt	Exempt
Real Estate Gains	Exempt	Note 7	Exempt	0%	Exempt	Exempt	Exempt
Other income/gains	Taxable	Note 7	Taxable	0%	0%	Exempt	Taxable
WHT on Dividends paid to non - residents	20%	15% - 35%	20%	19%	15%/0% (Note 9)	26%	15%
Conditions							
Distribution of income requirement	85%	90%	90%	80%	100%	90%	95%
Distribution of gains requirement	No (Note 4)	0%	0%	50% (Note 6)	No	50% (Note 5)	70%
Close company like requirements	Yes	Yes	Yes (Note 1)	No	Yes	Yes	No (Note 3)
Listing requirement	Yes	No	Yes but not always (Note 2)	Yes	No	Yes	Yes

Note 1 — Unless the only reason is that it has a collective investment scheme limited partnership as a participator.

Note 2 — Ownership condition: either -
– (i) the shares forming the principal company's ordinary share capital are admitted to trading on a recognised stock exchange. This allows the shares in a REIT to be admitted to a wide variety of markets including the UK Main Market, the UK Specialist Fund Segment and the UK AIM (each a market of the London Stock Exchange). Listing on non - UK stock exchanges including the International Stock Exchange (Guernsey) is also permitted.
- (ii) at least 70% of the company's ordinary share capital is owned directly or indirectly by one or more institutional investors. "Institutional investors" generally includes a pension scheme, an insurance company, a charity, a limited partnership which is a collective investment scheme, a UK REIT and the non-UK equivalent of a UK REIT.

Note 3 —
- Shareholders must not hold more than 60% of share capital or voting rights except for subsidiaries of a SIIC parent company
- At the time of the election, 15% of the share capital and voting rights must be held by shareholders, who individually own fewer than 2%

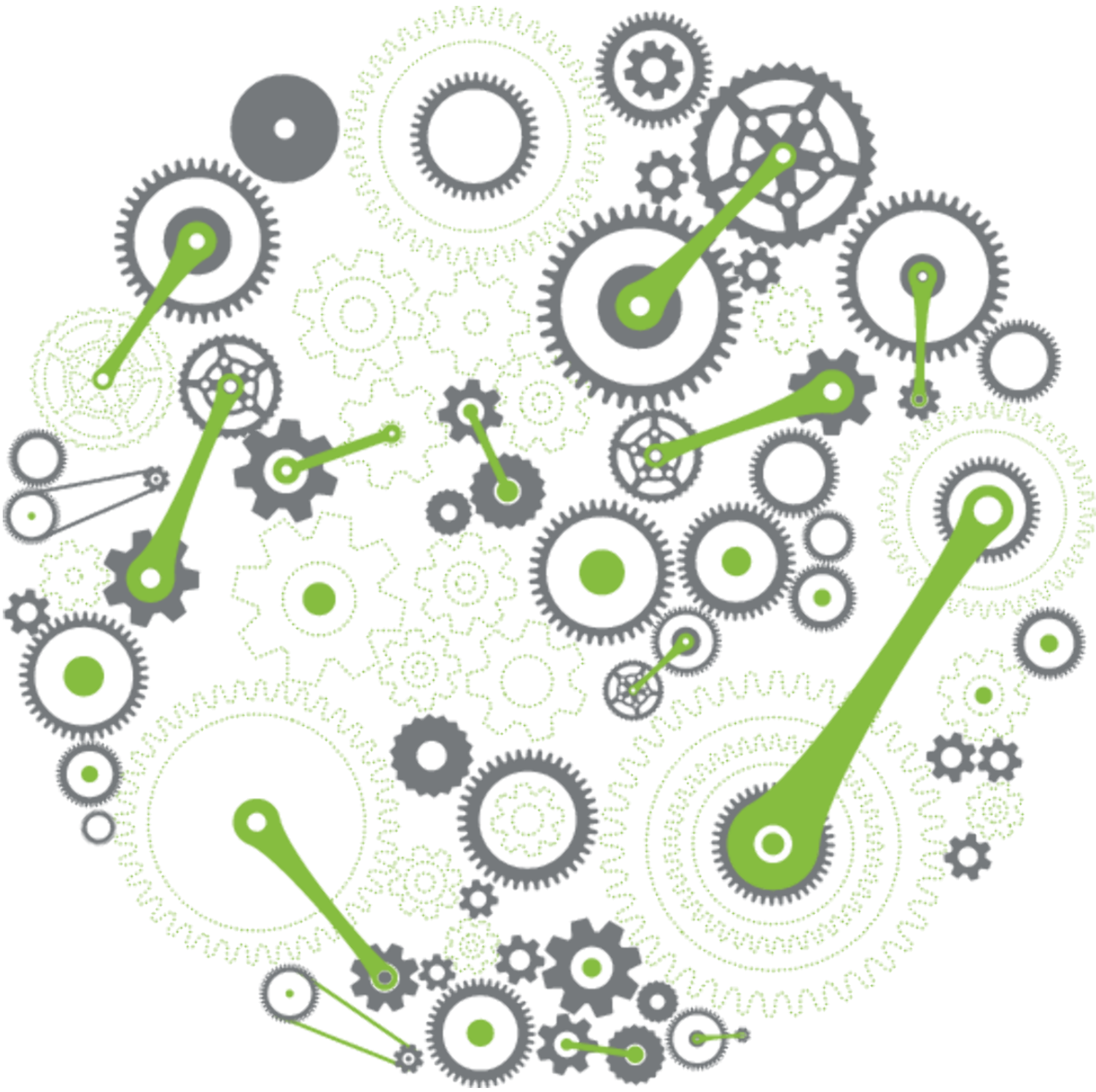
Note 4 — Provided gains are re-invested

Note 5 — Up to half of the proceeds from disposals can be transferred to a reserve. Any unused reserves must be dissolved at the latest by the end of the second financial year after creation. The reserves can either be deducted from the acquisition or construction cost of real estate assets acquired or developed in the respective two years or must be added to the distributable profits in the year in which they are dissolved.

Note 6 — Remaining 50% must be reinvested or distributed within 3 years

Note 7 — Deductions for dividends paid - effectively exempt.

Note 8 — Fiscal Investment Institution Regime (fiscale beleggingsinstelling: FBI)



Funds Sector 2023: A Framework for Open, Resilient & Developing Markets

Public Consultation Response

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Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

Public Consultation - Section 7 The Role of the Section 110 Regime

Dear Sirs/Mesdames,

We are pleased to submit comments on behalf of Deloitte Ireland LLP in response to Section 7 – The Role of Section 110 Regime of your consultation document of 21 June 2023. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact the undersigned at 01-417 2200.

Yours sincerely,

Conor Hynes
Partner & Head of Financial Services Tax

Question 44: What policy objectives should section 110 be supporting?

Ireland's economy is heavily reliant on international investment and attracting such investment. International investors, amongst other things, enable Ireland to maintain a strong economy, support employment, and support the growth of various businesses and sectors.

From an "Ireland Inc." perspective, to promote Ireland as a location to international investors and multinational companies and in order for Ireland to be seen as an attractive location for investment, Ireland needs to offer a sophisticated and well-developed financial services sector. A key part of the armoury of a well-developed financial services sector is a tax neutral and efficient securitisation regime.

A properly functioning section 110 regime offers many benefits to the Irish economy, not only is it a funding mechanism for the Irish economy and business but it also encourages the diversification of capital markets by increasing the amount of credit in the economy and reducing the cost of funding. It offers an alternative source of funding to our banking system and gives greater opportunity to access capital for businesses and investors. It also allows for the pooling of various types of financial assets and therefore the diversification of risk. Various financial services industries such as aircraft leasing, banking, investments funds and the insurance industry use section 110 companies to refinance assets, to access funding and manage risk.

Ireland currently has a strong securitisation sector. Ireland is a leading European jurisdiction for SPVs, structured finance and securitised structures with Irish SPV assets of €1,058.8 billion, Irish SPV vehicles of 3,312, Irish share of euro area securitisation vehicles of 31.4% with Irish share of euro securitisation assets of 26.6%[1]. As such, Ireland has a well-established securitisation sector, and this should be maintained and enhanced to support Ireland's financial services sector.

Ireland's section 110 regime is part of a suite of financial services offerings that Ireland offers, and many investors use a variety of products which can include a mix of regulated funds and unregulated investment vehicles. The Irish section 110 has offered a complementary unregulated investment vehicle to our regulated investment and funds offering for a number of years. It cannot be denied that there are benefits for investors, in terms of ease of doing business, familiarity with one tax authority, available resources and service providers, location of employees/directors etc to choose one location for both their unregulated investment and regulated investment products. As such, it is important to the financial services industry in Ireland to have a section 110 regime and the section 110 regime has played an important role in the development of other financial services sectors including the funds industry more generally.

Section 110 companies, contribute to the exchequer in terms of revenues generated from support services provided to the companies. Section 110s create employment in the securitisation sector in areas such as legal, accounting, tax, corporate service providers, listing agents etc. and such service providers pay corporation tax, VAT and employment taxes. Section 110s should continue to support employment and the collection of taxes from service providers in Ireland. Considering the earlier comments made on the broader impact that the section 110 regime has on attracting investors to Ireland who also invest in regulated fund products and other financial services products there is a domino effect on job creation and the contribution to the exchequer. Taking into account employment and tax revenues, we need to ensure that the attractiveness of Ireland as a location is maintained.

Access to funding in the Irish economy can also assist the Government with a number of its priorities and policy objectives such as financing various infrastructure and housing initiatives, offering an alternative to bank funding and encouraging various types of investment and the diversification of risk.

[1] Source: IDSA - The Irish Debt Securities Association, https://idsa.ie

Question 45: What changes are needed, if any, to ensure the section 110 regime meets those policy objectives?

As outlined earlier, a properly functioning section 110 regime offers many benefits to the Irish economy and business. It offers an alternative source of funding to our banking system and gives greater opportunity to access capital for businesses and investors. It also allows for the pooling of various types of financial assets and therefore the diversification of risk. Various financial services industries use section 110 companies to refinance assets, to access funding and manage risk.

The key feature of a properly functioning section 110 regime is tax neutrality. Broadly, it must be possible to make relevant payments in and out of a section 110 company on a tax efficient basis and therefore anything that impedes the ability of the section 110 to make such payments in and out on a tax efficient basis would impact the tax neutrality of the section 110 and therefore impede the ability of the regime to function appropriately. As such, the implementation of new tax measures e.g., Interest Limitation Rules, Pillar 2 etc should be monitored to ensure that they are being implemented without unexpected or undue consequences on the section 110 regime.

Given that the tax neutrality of section 110 companies is key to the regime, the mechanism employed in such companies to provide returns to investors may need to be reviewed. Typically, Irish section 110 companies use profit participating notes to provide returns to investors. Such payments can be deductible for section 110 companies where certain requirements are satisfied. The ability to pay profit participating interest may be restricted going forward as a result of the Interest Limitation Rules and also as a result of Pillar 2 which requires interest payments to be on an arm's length basis. We recommend that changes are made to enhance the section 110 regime to ensure that the regime still functions in a way to ensure that returns are provided to investors on a tax neutral basis. The section 110 legislation should include, in addition to profit participating notes, other alternative instruments (e.g., deferred consideration arrangements) which would allow payments to be made without withholding tax and where such payments would be deductible in the calculation of the taxable profits of the company to ensure tax neutrality.

Within the context of tax neutrality and in particular, in ensuring that returns can be provided to investors without tax leakage, the Department of Finance's 'New Taxation Measures to apply to Outbound Payments – Feedback Statement July 2023' has put forward a number of suggestions that could have a detrimental impact to the section 110 taxation regime and Ireland's competitiveness more generally. We refer to Deloitte's separate response to this feedback statement[2] and in particular, our comments in respect of Question 2 that deals with interest payments.

Any action that can be taken to simplify the section 110 taxation regime and that provides clarity in respect of its tax treatment will further support the financial services sector and thus encourage the growth of our economy. The following changes would support this objective.

- The default position included in Section 110(6) TCA 1997 that section 110 companies should compute their profits in accordance with generally accepted accounting practice as it applied for a period of account ending on 31 December 2004, should be updated. While we appreciate this section was included in the legislation to avoid unintended consequences arising in relation to the annual profits of a section 110 company as a result of the introduction of IFRS, this solution is now dated and should be modernised. The number of practitioners that have the relevant expertise in respect of generally accepted accounting practice as it applied for a period of account ending on 31 December 2004 is decreasing over time and as such updating this provision would make section 110 companies more user friendly.

[2] https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Tax/ie-tax-deloitte-submission-on-new-taxation-measures.pdf

- Another change that should be made to increase the attractiveness and competitiveness of section 110 companies in the market would be to remove the requirement to file the "Form S.110 – Notification of 'Qualifying Company' for the Purposes of Section 110 TCA 1997". Instead, the election into the section 110 regime should be included in the Form CT1 on the filing of the first corporation tax return. This would be more in line with other elections and would ease the administrative burden on taxpayers. This would also remove the 8 week notification deadline that currently exists which is a tight deadline and is not equitable in the context of the significant consequences that would arise should the deadline be missed.

- Changes to the anti-avoidance rules would also be welcomed. Section 110 TCA 1997 was updated by Finance Act 2011 to introduce anti-avoidance provisions (see for example, Section 110 (4A)). The subsequent introduction of the Anti-Hybrid Rules and the Interest Limitation Rules however, operate to achieve the same results. Similarly, the general anti-avoidance rule in Section 110(5) TCA 1997 appears unnecessary considering the general anti-avoidance provisions included in Section 811C TCA 1997. This creates an avoidable burden on taxpayers to consider a number of competing rules that ultimately all achieve the same aim. Section 110 should be simplified to remove the anti-avoidance provisions included by Finance Act 2011 and this would make section 110 more user friendly for investors and allow the section 110 regime to meet its policy objectives.

- Finally, we note that the tax and duty manual, TDM 04-09-01, was recently updated with wording referring to the application of Section 452 TCA 1997 and a "double trade" test. This wording appears at odds with the established principle that section 110 companies can apply trading provisions in the calculation of their taxable profits. In addition, it is a long-established practice that section 110 companies make elections under Section 452 TCA 1997. This wording in the tax and duty manual has created uncertainty in relation to the taxation of section 110 companies. In order to maintain the attractiveness of the securitisation regime, such uncertainty should be avoided.

It is clear that there are many benefits to a properly functioning section 110 regime, and it is important that the regime is enhanced and improved where possible. Any action that can be taken to simplify the regime and that provides clarity in respect of its tax treatment should enhance the regime and will further support the financial services sector and thus encourage the growth of our economy.

Ireland also needs to implement a method of completing regular reviews of the section 110 regime in comparison to equivalent structures in other jurisdictions such as the UK and Luxembourg to ensure that we are updating and modernising our regime on a timely basis to ensure that our section 110 regime remains competitive in the marketplace.

Important notice