
Finance Bill 2008

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Finance Bill 2008

1. Investment Undertakings (Funds) - Key Amendments

The Finance Bill 2008 (as initiated) was released yesterday 31st January 2008 and there have been some welcome amendments included to assist the funds industry in administering the 8 year deemed disposal rules.

2. 8 Year Deemed Disposals

Section 36 of the Finance Bill amends the operation of the eight-year deemed disposal provisions for Irish resident or ordinarily Irish resident investors ("**Irish Resident**") as introduced by Section 50 of the Finance Act 2006. While the legislation is quite complex, in summary the new amendments provide that the administrative burden of applying the onerous 8 year deemed disposal provisions should for the most part lie with the Irish Resident investors where they account for a small proportion of the fund's (or the sub-fund's in the case of an umbrella scheme) overall investments.

The main provisions are as follows:

1. **De Minimis level** – Where taxable Irish Residents hold less than 10% of the fund (calculated by value of shares) or in the case of an umbrella fund, 10% of the sub-fund (calculated by value of shares), then the obligation to account for the tax on any gain arising on an 8 year deemed disposal will be the responsibility of the investor on a self assessment basis (as opposed to the fund or its service providers) i.e. the investor will be required to include the relevant details in their annual return and account for the tax themselves. This however, will only apply provided (i) the fund has made an appropriate election and (ii) it provides in each year of assessment a statement to the Revenue Commissioners in electronic format approved by them, certain details for each unit holder (including a nil return, where applicable) by the 31st of March in the year following the year of assessment.
2. **Repayment of Excess "first tax"** - Where taxable Irish Resident investors hold less than 15% of the fund (calculated by value of shares) and a refund of tax arises (e.g. subsequent loss on an actual disposal) and the fund has made an appropriate election, the amount of excess first tax over the "second tax" will be repaid by the Revenue Commissioners to the relevant investor rather than by the fund (on receipt of a claim by the investor). This removes the responsibility of the fund or its service providers having to track the tax over the lifetime of the units and puts the onus on the unit holder to claim the refund directly from the Revenue Commissioners.

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3. **Valuation at 30th June or 31st December** – The Bill also provides that, for purposes of 8-year deemed disposal, the investment undertaking can make an irrevocable election, in relation to the 8-year rule, to value the units at the 30th June or 31st December prior to the date of the chargeable event rather than at the chargeable event itself. This is to avoid having to carry out valuations at various dates during the year resulting in a large administrative burden on the investment undertaking (hence their Administrators).
 4. **Other** - There are some additional amendments which involve technical adjustments to facilitate the operation of the legislation as intended, although it appears that these may require further amendment.

There are also some practical matters that will still need to be resolved and it is intended that the current Revenue guidelines (dated April 2003) in relation to gross roll up funds will be updated accordingly.

3. Fund Reorganisation/Amalgamation Relief

Chargeable Event / Exit Tax

The current legislation provides for an exemption from exit tax (if any) on the cancellation of units where it is part of a scheme of reconstruction or amalgamation of funds. The cost of the acquisition of the new units is then taken as the cost of the original units. However, Revenue's view was that the current legislation was not wide enough to cover the re-organisation/amalgamation of sub-funds from different umbrella funds because it requires the issue of units by an investment undertaking (new undertaking) to the unit holders of another investment undertaking (old undertaking) in exchange for the transfer of **all** the assets and liabilities from the old undertaking to the new undertaking. An umbrella scheme (not the individual sub funds) is defined as an investment undertaking.

Consequently, the new provisions propose to extend the above exemption to the exchange of units in a sub-fund or sub-funds of one umbrella fund for those in another umbrella fund (again the date of acquisition of the new units is then taken as the date of acquisition of the old units). The exemption will be given on condition that the exchange is effected for bona-fide commercial reasons and not primarily for the purpose of avoiding liability to taxation.

4. Stamp Duty

The above amendment by itself would be of limited effect if stamp duty legislation was not updated accordingly. To that end the Bill proposes the introduction of a new stamp duty legislation, which will provide an exemption from stamp duty on an instrument made for the purposes of or in connection with the reconstruction or amalgamation of an investment undertakings under the new rules provided above. This exemption will apply to instruments executed on or after the date of the passing of the Finance Act 2008.

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