

**Dillon Eustace
Investment
Management
Finance Bill 2010**

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

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FINANCE BILL 2010 – INVESTMENT MANAGEMENT

Introduction

The Minister for Finance made reference in Budget in December 2009 to the importance of the financial services industry and his intention to introduce changes to enhance the competitive position of the Financial Services industry and in particular the investment management industry. Consequently, it is not surprising that there were a number of measures proposed in the recently published Finance Bill (the “**Bill**”) to enhance Ireland as a leading location for investment management.

UCITS IV

The UCITS IV Directive is designed to facilitate the further development of the cross border funds market in the EU; however tax has been identified as one of the main barriers to the successful implementation of the UCITS IV Directive. In this regard the Bill proposes a series of measures to help funds that are seeking to benefit from the implementation of UCITS IV Directive.

Amongst other things the UCITS IV Directive provides that UCITS management companies located in one EU jurisdiction may manage UCITS funds domiciled in another EU jurisdiction. There are concerns in various EU member states that the appointment of a management company could bring a foreign UCITS within the charge to tax in the management company’s home jurisdiction. The Bill provides that in the case of an Irish management company managing a non-Irish UCITS, which is not otherwise Irish tax resident, the non-Irish UCITS will not be taxable in Ireland as a result of appointing an Irish UCITS management company (i.e. the management company will not be bring the profits of the foreign UCITS within the charge to Irish tax) and such funds will be treated as foreign funds for the purposes of Irish unit-holders with comparable tax rates to investments in Irish regulated funds.

Stamp Duty

The Bill provides for relief from stamp duty arising on the transfer of funds assets under fund mergers and reorganisations thereby providing for the effective reorganisation of funds into a Master/Feeder structure (which are now permitted under UCITS IV). However it should be noted these provisions are not restricted to UCITS and therefore this should increase Ireland’s attractiveness as a jurisdiction of choice for the amalgamation of non-UCITS.

The Bill also removes a potential technical exposure to Irish stamp duty arising on the transfer of assets between different sub-funds within the same unit trust. These provisions will be effective from the passing of the Act.

Non-Irish Resident Declarations

Irish regulated funds are required to deduct exit tax when making a payment to an investor unless the funds are in possession of a declaration by the investor to the effect that the investor is either not resident or ordinarily resident in Ireland for tax purposes or is an exempt Irish investor. As the vast majority of Irish domiciled funds in the international funds sector are distributed solely to non-Irish residents, it is considered that the current requirements present a disproportionate administrative burden on industry. In addition, existing procedures under the European Anti-Money Laundering legislation already highlight any investor holding an Irish passport or address. Consequently the Bill contains provisions that will permit non-resident investors to invest in an Irish fund without the need to make a declaration of non-residence. In order to do so the funds must obtain approval from the Irish Tax Authorities. Typically, the approval will apply to funds that are marketed exclusively outside of Ireland. This provision will be effective from the passing of the Act.

Irish Management Company – Extension of Category of Exempt Irish Investors

The Bill amends the definition of an Irish fund management company to exclude references to IFSC and Shannon financial services operations (i.e. a technical amendment to update the definition of a “qualifying management company”). The purpose of this is to remove the uncertainty that existed with regard to the status of such entities as exempt Irish investor’s as a result of defunct terminology in the current definition. Exempt Irish investors may receive a return of their investment in Irish funds free of Irish withholding tax, so the extension of the withholding tax exemption for certain categories of Irish investors is welcomed. This provision will be effective from the passing of the Act.

Removal of technical exposure to capital acquisitions tax for non-Irish investors in foreign funds administered in Ireland

The Bill removes a technical exposure to Irish gift and inheritance tax (capital acquisitions tax) in respect of non-Irish domiciled funds that are administered in Ireland (where the share register is maintained here). This provision will be effective from the passing of the Act.

Exempt Unit Trusts

Where throughout a year of assessment all the issued units in an unauthorized unit trust are assets such that if those units were disposed of by the unit holder any gain accruing would be wholly exempt from capital gains tax (otherwise than by reason of residence), then gains accruing to the unit trust in that year shall not be chargeable gains. This type of trust is

commonly referred to as an exempt unit trust as it is exempt from tax on its income and gains. Typical unit-holders include Revenue approved pension schemes and charities.

The Committee Stage amendments to the Bill contain measures that will require trustees (or person duly authorized to act on their behalf), where they are satisfied that, all the units in the exempt unit trust throughout a year of assessment, are assets (as described above) to make a declaration to that effect, in respect of the year of assessment. Furthermore, the trustees will be required to provide to the Revenue Commissioners a statement (on or before 28th February in the year following the year of assessment) in respect of that year of assessment stating (i) whether the aforementioned declaration has or has not been made; and (ii) certain details in relation to each unit holder (e.g. name and address).

This provision is to apply for the year of assessment 2010 and subsequent years.

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