

# Irish Financing SPV's using section 110

## Introduction

With the use of section 110 of the Taxes Consolidation Act, 1997, many leading financiers have made use of Ireland for the structuring of SPV's relating to debt. The SPV can either stand alone, as considered here, or can be combined with an Irish QIF (Qualifying Investor Fund) with an SPV below it.

## Main Points to note

The main points to note through the use of the structure are the following:

- The Irish SPV can normally be structured to be tax neutral as a variety of profit extractions mechanisms are available
- Ireland currently has 56 double tax treaties, making it one of the better locations to use to structure debt offerings
- A number of exemptions can be relied upon to avoid withholding taxes on payments to investors. These are dealt with below.
- A wide variety of financial assets can be accommodated
- SPVs can be listed on the Irish Stock Exchange

## The Section 110 SPV

The Irish section 110 SPV is based on the provisions of section 110 of the Taxes Consolidation Act, 1997 (as amended).

The Irish SPV pays tax at 25% on its profits. However, it is possible to structure the vehicle so that it can use any number of techniques to strip our profits on underlying investments. It can also invest in a large number of qualifying assets, though these must be valued at at least €10m or equivalent on the first day on which it acquires the qualifying asset.

## Qualifying Company

In order to participate under the section 110 dispensation, the SPV must meet the following requirements:

- a. It must be resident in Ireland;
- b. It must acquire "**qualifying assets**";
- c. It must carry on in Ireland the business of the holding and/or management of qualifying assets;
- d. It must not carry on any other activities;
- e. It must acquire €10m of qualifying assets on day one;
- f. It must notify the Irish tax authorities by making a filing of its section 110 status
- g. It must operate at arm's length

## Qualifying Assets

A 'qualifying asset' is defined as a financial asset or an interest in a financial asset. A financial asset includes any of the following:

Shares, bonds and other securities

Futures, options, swaps, derivatives and similar instruments

Invoices and all types of receivables  
Obligations evidencing debt (including loans and deposits)

Leases and loan and lease portfolios

Hire purchase contracts

Acceptance credits and all other documents of title relating to the movement of goods

Bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments

Greenhouse gas emissions allowance

Contracts for insurance and contracts for reinsurance

### **Tax and Profit Neutrality**

Although the section 110 SPV is liable to corporation tax at a rate of 25% on taxable profits, the underlying taxable profits are calculated using trading principles. Utilising these principles means that it is possible to structure the entity to result in its being tax neutral.

This is typically achieved by way of its expenses being deductible for tax purposes and if book/tax differences in the taxation of deductibility of income and expenditure are minimal.

### **Tax Residence**

The SPV must be tax resident in Ireland, and in order to do so meet one of the following tests:

- a central management and control test; and
- an incorporation test.

### **The SPV must also carry on Business in Ireland**

This is typically satisfied via the participation of (often) two Irish resident directors in the affairs of the SPV and the use of an Irish administrator to handle accounting and secretarial type issues.

### **Financing and Withholding Tax**

As it is used as a finance company, a section 110 company is usually financed with debt. Three classic routes are then used to avoid withholding taxes on interest payments out of Ireland. These are the following:

#### **DTA's**

Obviously treaty relief is available where the recipient is in a country with which Ireland has a Double tax Agreement.

#### **Eurobond exemption**

SPVs can also use the "*Eurobond*" exemption. A "*Eurobond*" is a security which is quoted on a recognised stock exchange and carries a right to interest (i.e. zero coupon bonds do not qualify).

### **Wholesale debt exemption.**

Irish section 110 SPVs can also use the "*wholesale debt*" exemption to avoid Irish withholding tax. This exemption is quite complex but in general is available where the debt security maturity is less than 2 years and is in denominations of at least \$500 000, and the recipient is not tax resident in Ireland.

### **Profit neutrality**

Profit neutrality can then be achieved through using Profit participating loan notes or Total Return Swaps. It may also be possible to use more common place techniques such as management and arrangement fees.

### **Transfer Pricing**

The transfer pricing rules contained in The Finance Act 2010 do not apply in the context of a section 110 SPV

### **SPV Corporate Structure**

SPVs are often established as private companies but could be done as a public one.

Private companies can make any number of offers of debt securities. However, this is typically done is where the notes are issues in minimum denominations of €50 000.

### **Key Contact:**

If you require advice or assistance in regard to any of the matters raised in this article, please contact your usual contact or

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