7th September 2016

Irish SPVs holding Financial Assets secured on Irish Real Estate – Proposed Legislative Amendments

On 6th September the Irish Minister of Finance announced proposed amending legislation to Section 110 of the Taxes Consolidation Act, 1997 focused exclusively on financial assets (loans, shares, etc) that derive their value, or the greater part of their value, directly or indirectly from land in Ireland ("specified property business").

In announcing the proposed amendments the Minister for Finance acknowledged that a number of concerns had been raised recently about the possible uses of section 110 companies to avoid paying tax on Irish property transactions and it was *"in light of these concerns, and due to the highly technical and complex nature of the amendment, that he was publishing* the proposed amendments to protect the Irish tax base. The Minister also acknowledged that "*further targeted proposals in relation to the use of funds in the Irish property market are being considered*."

Under the proposed amendments, with effect from 6th September the specified property business of a section 110 company (SPV) should be treated as a separate business and although generally speaking will be taxed similarly to other business of an SPV, the deductibility around payments of interest, to the extent that it is in excess of an arm's length rate and/or profit participating, will be restricted to payments made to certain Irish and EU/EEA persons. These new rules apply to profits arising after the date of the announcement.

For further information on any of the issues discussed in this article please contact your usual contact or:

David Lawless
DD: + 353 (0)1 673 1765
david.lawless@dilloneustace.ie

Sean Murray
DD: + 353 (0)1 673 1764
sean.murray@dilloneustace.ie

Note that these new proposed amendments will have no effect on SPVs used to acquire financial assets that do not derive the greater part of their value from Irish land, so these amendments should have no effect on the vast majority of SPVs. Indeed the Minister for Finance when announcing the amendments strongly reiterated the importance of the SPV industry to Ireland stating that "*the securitisation regime was designed to improve Ireland's offering as a location for the conduct of financial services* and that it has achieved that broad goal as "*the financial services industry now makes use of these securitisations as a support to financial intermediation".* He further acknowledged that "*such financing is useful for the productive economy as it can underpin the supply of finance to industries and companies in Ireland, Europe and further afield* and that the "*importance of securitisation has further been recognised by the European Commission through their work on Capital Markets Union, of which one of the aims is to seek to build a sustainable securitisation regime across the European Union*."

The draft legislation (including any further amendment to same in the interim) will be included in the upcoming Finance Bill which will be published in mid-October and typically signed into law by the end of 2016.

Dillon Eustace

DILLON EUSTACE

Dublin
33 Sir John Rogerson's Quay, Dublin 2, Ireland.
Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands
Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands.
Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York
245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A.
Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo
12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan.
Tel: +813 6860 4885 Fax: +813 6860 4501.