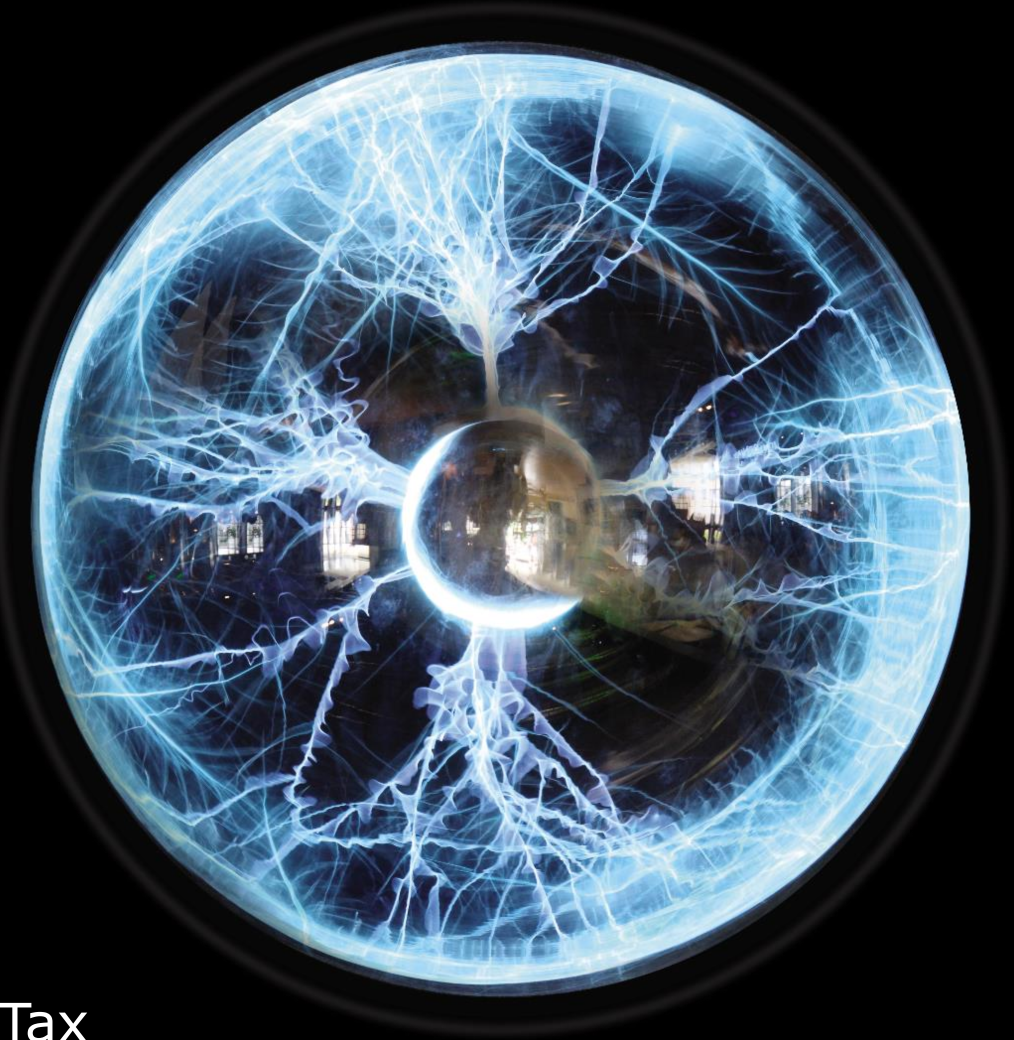

Link ‘n’ Learn

Investment Management Tax
Outlook 2018

15 February 2018

Introduction

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Agenda

1 **Introduction**

2 **UK Tax**

- Proposed changes in non-UK resident taxation for investors holding UK real property investments;
- New Trust Registration requirements in the UK;

3 **International Tax**

4 **Irish Tax**

- Introduction of iXBRL reporting for Irish funds (likely property funds initially)
- New return form for Irish Real Estate Funds expected in 2018
- Updated guidance expected on Irish securitisation companies (which are often used in structures with fund vehicles)
- Changes to Certificates of Residence by Irish Revenue
- Extension of Irish CbCR reporting deadline for FY16 to 28 February
- Changes to Investment Limited Partnership legislation expected in 2018

5 **Conclusion**

UK Tax

Autumn Budget 2017 – UK Tax on Gains for Non-residents
Investment in Real Property

Overview and scope of proposed changes

- From **April 2019**, UK tax will be charged on gains made by non-residents on disposals of UK property
- Indirect property disposals will also be within the charge to UK tax – 75% property rich rule and 25% investment threshold
- Certain existing exempt investors may not be within the scope of the new rules
- Offshore Property Unit Trusts will fall within the new rules.
- The existing exemption within the residential property CGT rules for certain widely held companies will be abolished from April 2019.
- There are **anti-forestalling rules** against treaty shopping applicable from 22 November 2017.

Rebasing

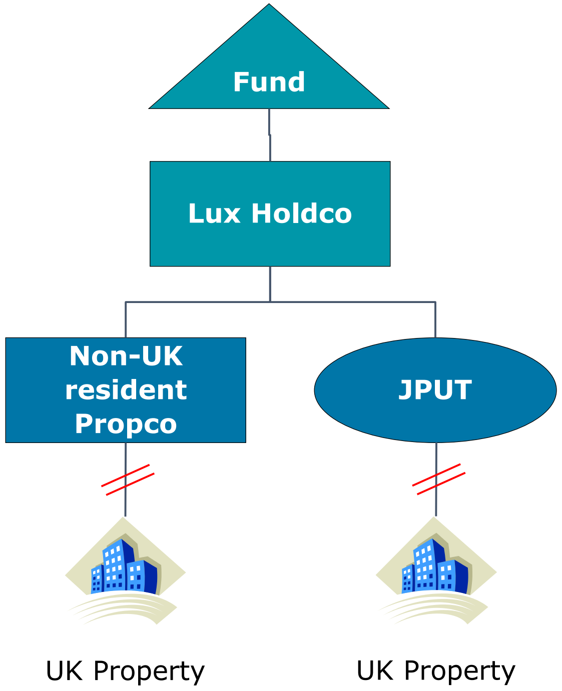
- Existing commercial property holdings (held both directly and indirectly) and indirect residential property holdings will be rebased as at April 2019,

Consultation

- The government has released a consultation on the new measures. Responses are due by 16 February 2018.

Autumn Budget 2017 – UK Tax on Gains for Non-residents

Direct disposal of UK property ('Direct Charge') – General example



UK tax implications under current rules

- Gains realised on a direct disposal of UK commercial property by non-UK tax resident investors - outside the scope of UK taxation
- Gains realised on a direct disposal of UK residential property after 6 April 2015 by a non-UK resident person - subject to non-resident capital gains tax charge at a rate of 20%, subject to an exemption for widely-held persons.

UK tax implications under proposed changes

'Direct charge'

- From April 2019, any gains realised by non-UK residents on a disposal of UK property will fall within the charge to UK tax.
- Offshore Property Unit Trusts (e.g JPUTs), which are treated as corporates for CGT purposes, will also fall within the new rules.

Applicable UK tax rates

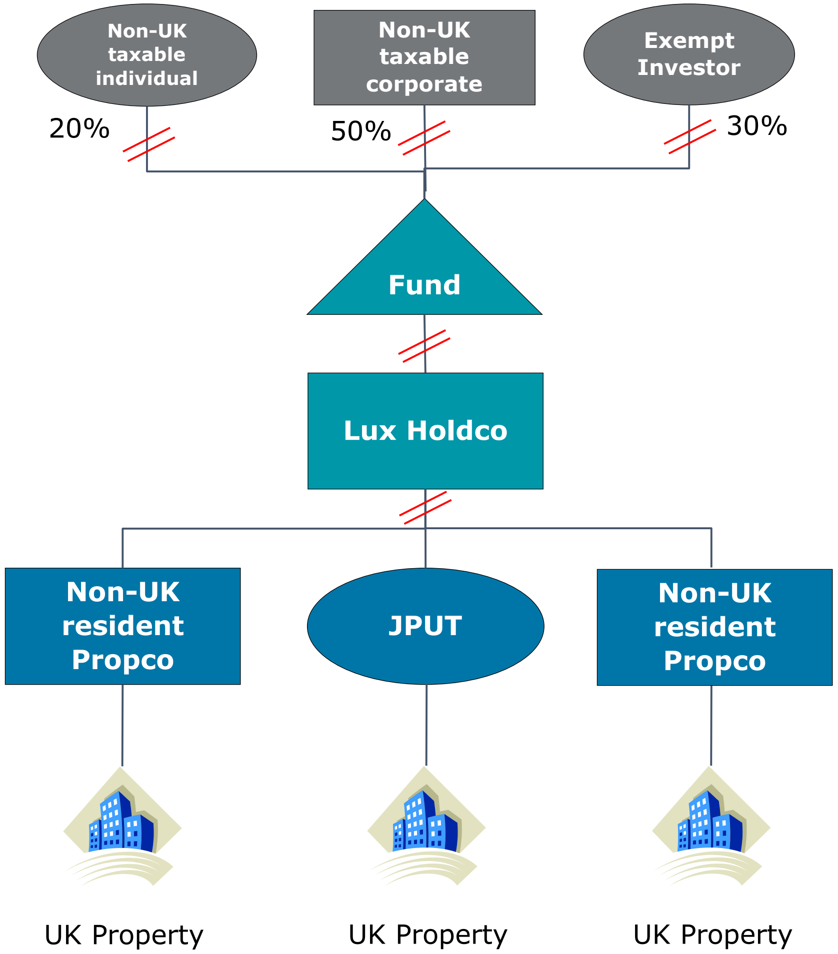
- The applicable tax rate for gains realised on disposal by corporate bodies will be the UK corporation tax rate (currently 19%, scheduled to reduce to 17% from 1 April 2020).
- The applicable tax rate for individuals, trusts and personal representatives will be the same as the appropriate UK capital gains tax (CGT) rates (i.e. 20% or 28%).
- Capital losses and other losses may be used in line with corporation tax rules.

Rebasing

- Only gains realised after 1 April 2019 should fall within the new rules

Autumn Budget 2017 – UK Tax on Gains for Non-residents

Indirect disposal of UK property interest (‘Indirect Charge’)



UK tax implications under current rules

- Gains realised on an indirect disposal of UK property interest by non-UK tax resident persons should generally fall outside the scope of UK taxation

UK tax implications under proposed changes

‘Indirect charge’

- From April 2019, any gains realised by non-UK residents on a indirect disposal of UK property interests will fall within the charge to UK tax, where there is a sale of an entity (or group) of which greater than 75% of the gross asset value derives from UK land.
- This is triggered by the sale of an interest by any owner who has held at least a 25% interest in the entity over the last 5 years prior to disposal. Other interests will be aggregated.

Applicable UK tax rates and rebasing

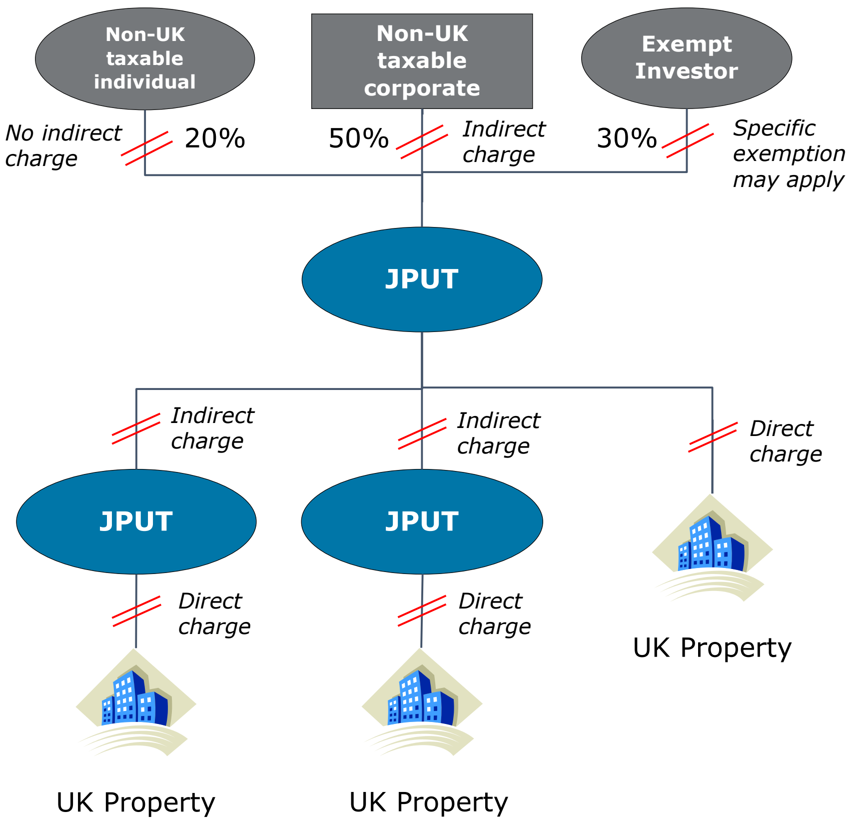
- Same as above

Interaction under UK-Luxembourg DTT

- Under the current UK-Luxembourg double tax treaty (DTT) - the taxing rights of that disposal should be allocated to Luxembourg. Accordingly, even where gains on a disposal would *prima facie* fall within the indirect charge (as outlined above), such gains should be protected under the UK-Luxembourg DTT. There will be anti-forestalling measures and a Targeted Anti-Avoidance Rule (TAAR) to combat abuse of treaties.

Autumn Budget 2017 – UK Tax on Gains for Non-residents

JPUT example



UK tax implications under current rules

- As noted previously, disposals of investment property (both directly and indirectly) should generally be exempt from UK tax, provided certain anti-avoidance provisions do not apply (e.g. Transactions in UK land).

UK tax implications under proposed changes

'Direct charge'

- Gains realised on direct investment property disposals by JPUTs are within scope of the new rules.

'Indirect charge'

- As noted previously, includes disposals of units by a non-resident JPUT.
- Non-resident unitholders will be caught by the indirect charge if their aggregate interest exceeds 25%.
- Certain existing exempt investors may not be within the scope of the new rules, such as pension funds and certain collective investment vehicles. However, their exemption is expected to generally only apply in relation to their direct interest.

Rebasing

- As noted previously.

Applicable UK tax rates

- As noted previously.

Trust registration

UK anti-money laundering requirements

Trust registration

Trustees of taxable relevant trusts must register with HMRC and disclosed beneficial ownership information.

Taxable relevant trusts are relevant trusts liable to pay income tax, capital gains tax, inheritance tax, SDRT, SDLT (or the Scottish/Welsh equivalents).

Record keeping

Trustees must collect information on each of the 'beneficial owners', including name, DOB and role in relation to the trust.

Pension schemes, however, may maintain this information for 'classes' of beneficiaries.

Overview

Further to a European Parliament directive, new UK regulations were introduced in 2017 intended to prevent money laundering.

Certain trustees may now be obliged to register with HMRC and obtain/retain additional information in order to comply with these regulations.

Non-compliance risks incurring penalties.

Exceptions

HMRC have confirmed that unit trusts do not fall within these regulations.

This includes both onshore and offshore unit trusts.

International Tax

International Tax

Indian non-resident CGT

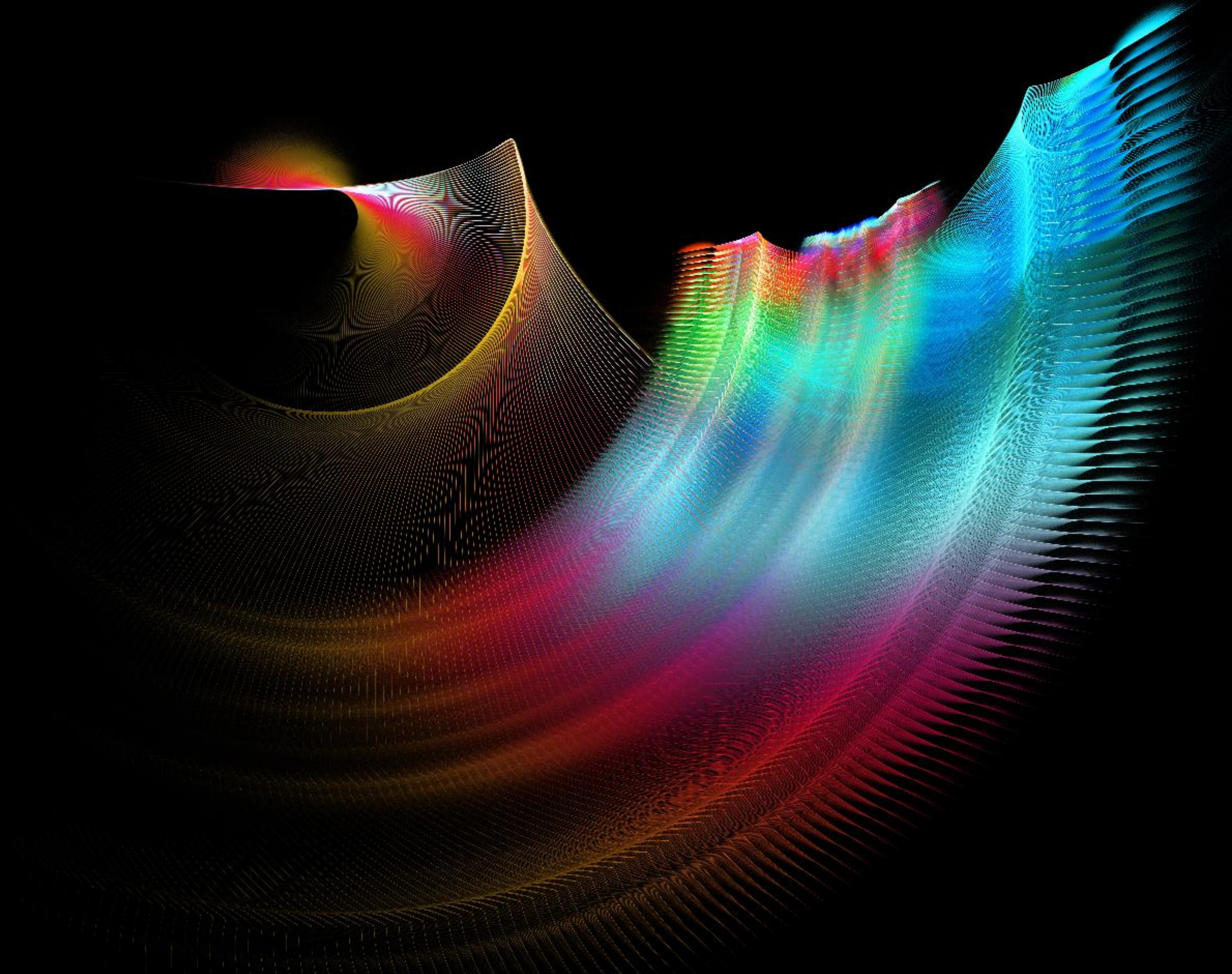
- Union Budget 2018 presented on 1 February.
- Previously non-resident investors were exempt to tax on long term capital gains.
- For disposals after 31 March 2018, long term capital gains will be subject to a 10% tax.
- Grandfathering provisions have been made available for gains accruing until 31 January 2018.
- Minimum 36 months holding period for a capital gain to be considered a long term capital gain.
- 12 months for listed equity shares, listed debentures and Government securities.

French flat rate of WHT on investment income

- Investment income to be taxed at a flat tax rate of 30% (including social surtaxes) for French tax resident individuals from 1 January 2018.
- Requirement to file tax returns and pay the tax by the 15th of the month
- Taxpayers can opt out of the flat rate and can be subject to progressive tax rates.
- Election –all or nothing!
- French paying agent obligations.

Korean non-resident CGT

- Non-residents only subject to capital gains tax where they hold 25% or more in a South Korean company.
- There was a suggested widening of the CGT charge to cover interests of 5% or more held by non-residents.
- Strong industry lobbying.
- Finance Minister Kim Dong-Yeon announced via Reuters last week that the government may delay the extension.
- A review is expected to occur later in the year.



Irish Tax

iXBRL Reporting for Irish Funds

01 Introduced in Finance Act 2017 subject to the issue of regulations by the Minister for Finance.

02 Expected to be targeted (at least initially) at Irish Real Estate Investment Funds (IREFs), following the introduction of the Finance Act 2016 provisions in relation to IREFs

03 Consultation process with Irish tax authorities on practical aspects

04 Penalty for non-compliance will be €1,520

IREF Return Form

- Finance Act 2016 introduced the IREF regime and the requirement for IREFs to file annual returns.
- The IREF return form is expected to be released with guidance in June 2018
- Strictly the first filing deadlines fell in 30 January 2018 (for IREFs with a short accounting period ending on or before 30 June 2017) – concessional treatment?

Updated Guidance Expected for Irish Securitisations

Irish tax authorities have removed the 2012 version of the securitisation company corporation tax guidance notes from their website (as it was more than 5 years old)

Expected that updated guidance will be released in the coming months – industry consultation in progress

Specifically, it is hoped that the updated guidance will cover the Finance Act 2016 & 2017 changes to Irish property rules for securitisation companies, in particular in relation to the following;

- "Equivalent" EU/EEA Pension Schemes, and
- The apportionment of income and expenses to the "Specified Property Business" carried on the by the securitisation company
- The concept of "reasonable commercial return"
- Interaction of the rules with the recent IREF tax legislation

Other Items of Note

Country by Country Reporting-Reminder

Where an entity is an Irish resident constituent entity of an MNE group within the remit of CbC, and the fiscal year end of the ultimate parent of the group was 31 December 2017, a notification should have been made to Revenue by **31 December 2017** confirming the status of the entity within the group for CbC reporting purposes. If this has not been done, it's important that this is actioned immediately.

In addition, Irish Revenue have extended the filing deadline for CbC Reports in relation to fiscal years ending in 2016 to **28 February 2018.**

Certificates of Tax Residence

Revenue released updated guidance in relation to Certificates of Tax Residence in December 2017. From 1 January 2018, all Certificates of Residence will be issued in PDF format via MyEnquiries.

Revenue's guidance is available at the following link and includes templates of what the certificates for Individuals, Partnerships, Companies and Funds will look like.

Expected Changes to Investment Limited Partnership Legislation

The ILP is suitable for a range of investment strategies and it can use various liquidity options making it suitable for PE, real estate, venture capital, infrastructure, credit, lending vehicles, managed accounts, hybrid funds and hedge strategies. ILPs are not subject to legal risk spreading obligations.

The industry is optimistic that the changes will include amendments which will improve the operation of ILPs and align the structure with AIFMD. It is also hoped that the new bill will allow for the establishment of umbrella ILPs and the migrations of ILPs. The change should increase the options available in Ireland for promoters of venture capital and private equity funds.

Conclusion

Q&A

Next Link'n'Learn
Date: Thursday 8th March 2018
Topic: ETF's and Sustainability