



Finance Act 2016 changes affecting the Irish tax treatment of Irish real estate funds

Finance Act 2016 introduced a new tax regime for certain Irish regulated funds that invest, or intend to invest, in Irish real estate and related assets. The changes do not affect Undertakings for Collective Investment in Transferable Securities (UCITS), non-Irish funds, or funds that have an international investment focus, including funds holding non-Irish real estate. As a result the vast majority of Irish regulated funds continue to be exempt from Irish tax on their income and gains with no Irish tax on payments to non-Irish resident and exempt Irish resident investors, subject to certain conditions being satisfied.

Irish resident UCITS funds are not affected by the Finance Act 2016 changes

Irish Real Estate Funds

The amendments define an Irish Real Estate Fund ("IREF") as a fund or sub-fund which:

- Derives 25% or more of its market value from assets deriving their value directly or indirectly from Irish land and similar assets (e.g. shares/loans);
- Is dealing in or developing land;
- Carries on a property rental business or;
- Has as its main purpose, or one of its main purposes, the carrying on of an Irish property business.

With some exclusions, **unit holders in an IREF may be subject to 20% withholding tax** on defined "IREF taxable events" including distributions and redemption payments deriving from:

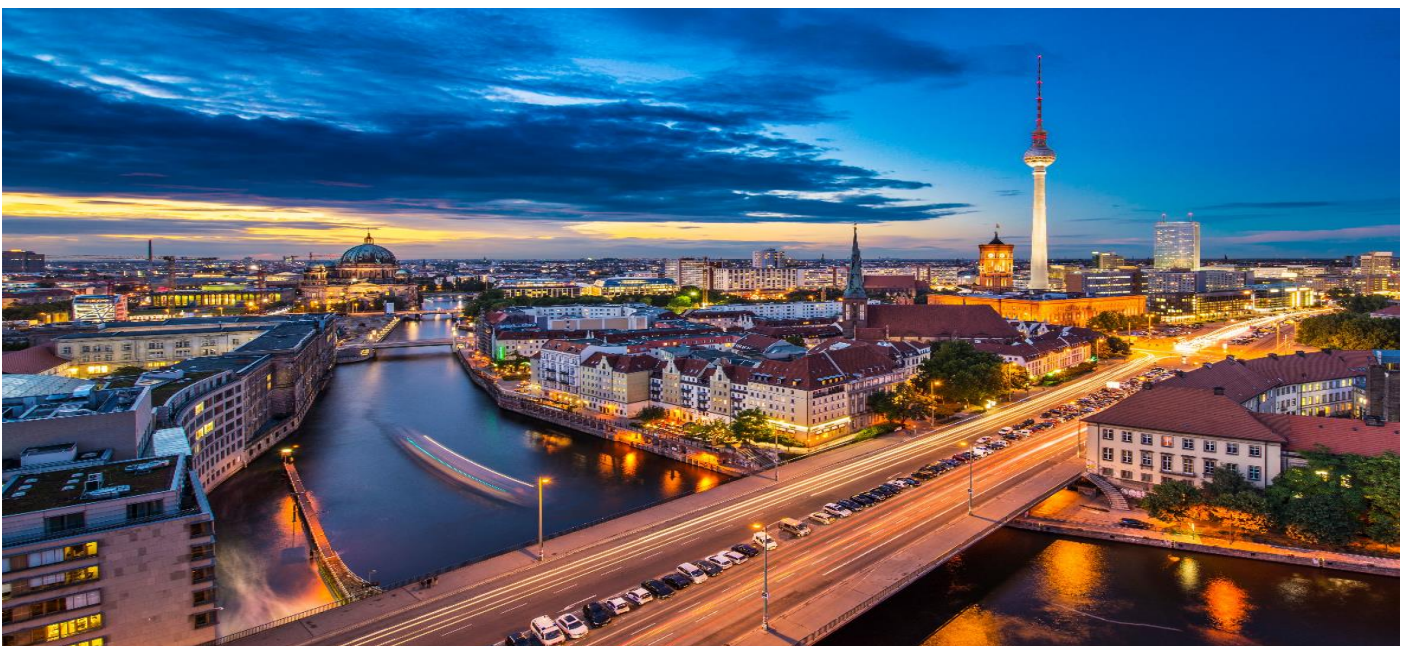
- Property related income (effectively rental profits, trading profits and interest arising on certain loans secured on Irish property);
- Realised gains on investment properties held for less than 5 years;
- All realised and unrealised gains on investment properties held by a personal portfolio IREF ("PP IREF") i.e. an IREF whose assets or business can be influenced directly or indirectly by an investor, a connected person of an investor or a person acting on their behalf.

An IREF taxable event may also arise where an investor:

- disposes of units of an IREF (other than on a redemption, cancellation or repurchase by the IREF) for consideration of at least €500,000;
- sells or transfers, for consideration of at least €500,000, the right to receive accrued profits/gains of the IREF that have arisen on Irish property assets, without the sale/transfer of the related IREF units.

In such circumstances, the 20% withholding obligation falls on the party by or through whom the payment is made; that party is also obliged to remit the tax withheld to Irish Revenue within 30 days and provide certain details relating to the transaction.

Unit holders in an IREF may be subject to 20% withholding tax on IREF taxable events



Anti-avoidance

The new legislation contains various anti-avoidance measures affecting funds whose asset selection can be influenced by investors (PP IREFs), as well as funds who execute certain transactions aimed at circumventing the application of the IREF withholding tax. Certain exemptions can apply from the PP IREF provisions where, for example, a connected party is the investment manager of the fund but the investor is treated the same as any third party investor and has no influence over the fund. Exemptions also apply for certain structures involving multiple funds where the ultimate beneficiary is widely held. Specialist advice is recommended in analysing such exemptions.



Exclusions

The Finance Act 2016 changes allow exemptions from the 20% withholding tax for certain types of investors who complete and provide the relevant tax declaration form to the IREF. Such "good investor" categories include:

- Irish or EU/EEA pension fund *
- Irish or EU/EEA Life Assurance business *
- Irish or EU/EEA Investment Undertaking (fund) *
- S.110 Securitisation Companies
- Irish tax resident individuals / plain vanilla Irish tax resident corporates
- Irish Charities
- Irish Credit Unions



*Where EU/EEA pension funds, life assurance businesses or investment funds have an indirect holding in an IREF, then withholding tax may be deducted but can be subsequently reclaimed by the shareholder. EU/EEA pension funds, life companies and investment funds must be subject to equivalent supervisory and regulatory arrangements as those in Ireland.

Where an investor does not fall within one of the above exclusions, relief from IREF withholding tax may be possible under the terms of a relevant double tax treaty.

Tax return and payment relevant to IREFs

An IREF is required to make an annual return and payment of IREF withholding tax to Irish Revenue, the deadline being:

- 30 January, where the IREF's accounting period ended between 1 January and 30 June of the previous calendar year;
- 30 July, where the IREF's accounting period ended between 1 July and 31 December of the previous calendar year.



The annual return will include the following details of each investor in respect of which IREF withholding tax arose in the relevant period:

- The name, address, tax identification number and holding of the investor;
- The value and date of each IREF taxable event;
- The amount of IREF withholding tax deducted on each IREF taxable event.

Similar details must also be provided to each affected investor in a statement issued by the IREF at the time of the taxable event.

Effective Date

The amendments apply to IREFs with accounting periods commencing on or after 1 January 2017. However, the amendments impact profits arising pre 1 January 2017 if distributions from such profits are made after this date.

Irish Revenue have acknowledged that as the IREF regime is new, it may take a number of weeks or months for IREFs to obtain the appropriate declarations from "good investors". Therefore, withholding tax need not be applied on IREF taxable events involving "good investors" which occur before 30 June 2017, providing the appropriately completed declaration is in place by 1 July 2017.



Suggested Actions

The new IREF rules are complex and can affect certain Irish funds (and structures which include Irish funds) in ways that might not be anticipated. Fund managers and promoters should ensure that they are clear on the likely impact (if any) of the IREF rules and in particular, should consider the following:

- Whether the IREF rules apply to their fund range;
- Investor profile and likely impact on specific investors;
- Working with the administrator of the fund to calculate and apply the IREF withholding tax, where relevant;
- Liaising with Deloitte tax specialists to assist with the tax analysis, including advice on the calculation methodology;
- Collection of IREF declarations from "good investors";
- Updates required to fund documentation e.g. subscription form, prospectus, administration agreement.

For any queries, please do not hesitate to contact us.

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