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Taxation of Real Estate Investments for Non-Resident Investors and Structuring Options – a discussion on the tax consequences of investing in real estate in Ireland and considerations for tax efficiency through efficient structuring

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Irish Transfer Pricing Firm of the Year 2015
International Tax Review

European Law Firm of the Year 2015
Hedge Fund Journal

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Irish Pensions Awards

Financial Times 2012-2014
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Introduction

- The structuring alternatives set out below are dependent upon:
  - the facts and circumstances of each individual case,
  - the profile of the acquiring party and its group (where applicable),
  - the level of debt involved, and
  - the expected net rental profits arising in Ireland.
- The structuring alternatives set out below are indicative and for discussion purposes.

Key Irish tax heads / considerations

- Income / Corporation Tax
- Capital Gains Tax (“**CGT**”)
- Stamp Duty / Transfer Tax
- Withholding taxes on rents, interest, distributions, salaries
- VAT (Value Added Tax)
- Local Property Tax
- Capital Acquisitions Tax (Inheritance tax and gift tax) (“**CAT**”)
- RCT (Relevant Contracts Tax)
- Domicile levy
- Interest deductibility
- No wealth tax or net asset taxes

Options discussed

- Option 1 – direct acquisition by an Individual
- Option 2 – acquisition by a non-Irish incorporated and tax-resident company
- Option 3 – acquisition by an Irish investment fund
- Other structuring alternatives and variations

Option 1: Direct acquisition by an Individual

Non-Irish resident individual (“**Individual**”)

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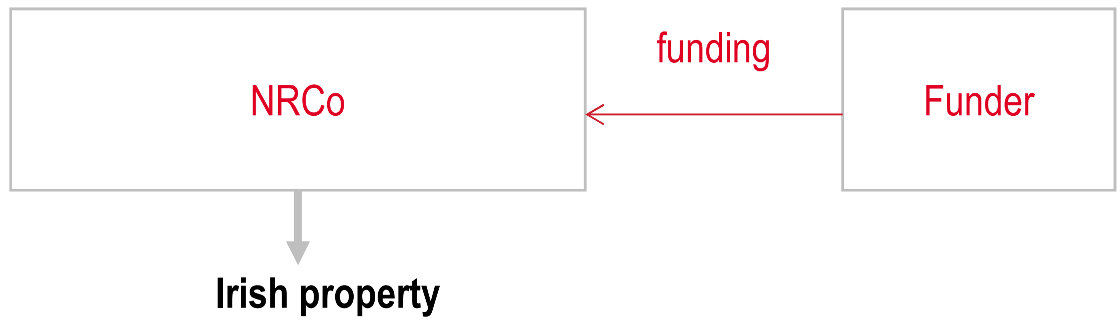
Irish property

Irish Tax Summary:

- Stamp duty at 2% on acquisition of Irish non-residential property
- Net rental profit subject to Irish income tax at 40%, plus Universal Social Charge (“**USC**”) at up to 11%
- Gain on subsequent disposal of Irish property subject to Irish CGT at 33%
- Non-Irish tax advice should be sought by the Individual to confirm the non-Irish tax treatment of rents received by the Individual and gains arising on the sale of the property
- Query: Credit in Individual’s home jurisdiction for Irish tax paid?
- Potential Irish CAT considerations in future
- Withholding tax on rents to be managed

Option 2: Acquisition by a non-Irish incorporated and tax-resident company (NRCo)



Note: the acquiring company could be in any one of a number of low tax jurisdictions.

Irish Tax Summary:

- Stamp duty at 2% on acquisition of Irish non-residential property
- Net rental profits subject to Irish income tax at 20%
- Gain on subsequent disposal of Irish property subject to CGT at 33%
- Interest on (related-party) borrowings can reduce the net rental profits subject to Irish tax
- Gain on sale of NRCo likely to be subject to CGT at 33%
- Irish CAT position to be considered
- Withholding tax on rents to be managed

Option 3: Acquisition by an Irish corporate qualifying investor alternative investment fund (QIAIF)

Non-Irish resident investor (“**Investor**”)

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QIAIF in ICAV form*

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Irish property

*The ICAV (Irish Collective Asset-management Vehicle) is a corporate entity. A QIAIF can also be set up as a unit trust, a limited partnership or a public limited company (plc)

Irish Tax Summary:

- Stamp duty at 2% on acquisition of Irish non-residential property
- Net rental income not subject to Irish tax in hands of QIAIF
- Distributions made by QIAIF to the Investor are not subject to Irish withholding tax, where the Investor has made appropriate non-resident declaration to the QIAIF
- No CGT or other Irish tax on the sale of the property by the QIAIF or on the sale of the QIAIF by the Investor (provided appropriate non-resident declaration made to the QIAIF)
- Non-Irish tax advice should be sought by the Investor to confirm the non-Irish tax treatment of rents received by the QIAIF and distributions from, and gains arising on the sale of, the QIAIF
- No transfer taxes on the issue, redemption or transfer of shares in the QIAIF

Option 3: Acquisition by an Irish corporate qualifying investor alternative investment fund (QIAIF)

- The ICAV has access to Ireland's extensive double taxation agreements minimising the effects of foreign withholding taxes on returns on investments
- Exemptions from VAT for many services required by a fund (in particular fund management services)
- The ICAV is able to make an election under the US "check the box" rules to be treated as a "pass through" entity for US federal income tax purposes

High level tax pros and cons

	Acquisition by an Individual	Non-Irish resident company structure	QIAIF (ICAV) structure
Pros	• Usually used in the context of home jurisdiction benefits • Ensures "one level" of tax only	• Rental profits subject to Irish tax at 20% • Two exit routes available – sale of shares in NRCo or sale of the asset • Potentially no transfer taxes on NRCo shares	• Income and gains roll up in Ireland tax free • No exit taxes • No transfer taxes on ICAV shares • Irish CAT exemption • US tax advantages
Cons	• Rental profits subject to Irish income tax at 40% plus USC at up to 11% • Sale of property subject to Irish CGT at 33% • Income and gains subject to additional tax in home jurisdiction • Potential Irish CAT issues	• Sale of Irish non-residential property subject to Irish CGT at 33% • Sale of NRCo shares potentially subject to Irish CGT at 33% • Consideration of home jurisdiction legislation required • Potential Irish CAT issue	• Cost of maintaining a regulated entity • Consideration of home jurisdiction legislation required

Other structuring alternatives and variations

- Life Assurance Policies
- Partnerships / Co-ownerships
- Real Estate Investment Trusts (“REITs”)
- Using an Irish resident company for property development / trading activities
- Trusts

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