

# Ireland emerging as an onshore investment platform

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Certain jurisdictions, including Ireland, have been traditionally utilized as locations for investment companies, owing to their flexible legal, regulatory, and tax environments. Now Ireland also can help satisfy the growing need for more onshore investment platforms with its access to the European Union (EU) market and a wide treaty network, low domestic taxation, and no withholding tax on outbound payments. This article addresses key considerations in choosing an investment platform location and type. It also provides a flavor of what Ireland can offer in this regard.

The location of an investment platform should be:

- Sound in standing in the international business community.
- Tried and tested.
- An easy place to hire investment professionals.
- Efficient and sustainable from a tax perspective.
- An attractive tax regime for holding and financing activities.
- A member of the EU and/or have an attractive treaty network and low or zero statutory withholding tax rates on interest and dividend flows.
- Attractive in terms of low establishment and operating costs.
- Relatively simple and cost-effective with respect to unwinding from legal and tax perspectives.

Ireland has become an attractive location for establishing investment platforms because of the provisions of its tax treaties; its flexible, favorable domestic law tax reliefs; and the absence of controlled foreign corporation legislation. Ireland offers similar flexibility to offshore operations within a regulated framework in a well-established international financial center. Its vehicles include Section 110 companies, qualifying investor funds, and super QIF structures, which are all explained below.

In addition to meeting the key considerations for an investment platform location, Ireland has:

- No tax ruling requirement. Instead, provision for investment platform vehicles is clearly set out in Irish tax legislation, which increases speed to market and reduces costs.
- Low operating and unwinding costs.
- Access to treaty benefits for Irish corporate and fund vehicles.
- No withholding tax on the repatriation of interest and dividends or redemption from an Irish vehicle to non-Irish investors (treaty or nontreaty resident).

## Key highlights of commonly used Irish investment entities

The following is an outline of Irish vehicles that can offer an efficient investment platform.

### Section 110 company

Ireland has a favorable tax regime for entities known as Section 110 companies. Section 110 refers to the relevant section in Irish tax law that applies to such qualifying companies. A Section 110 company is an Irish resident company that has no specific local management requirements and holds or manages financial assets.

A Section 110 company provides an onshore platform in an environment of increased international focus on tax havens and principles of the Organization for Economic Development, especially transparency. In practice, a Section 110 company can be almost tax-neutral from an Irish perspective. All profit-participating interest payments should be tax-deductible, as should swap payments, management fees, service fees, and other funding costs.

There is no withholding tax on interest payments made by a Section 110 company to persons resident in an EU/ treaty country or on interest payments on “quoted Eurobonds” made to persons resident anywhere. A wide treaty network should limit or eliminate withholding tax on inbound flows into Ireland such as interest, dividends, and royalty payments.

As mentioned above, substance requirements for Irish tax residency purposes are minimal. A Section 110 company can hold a wide range of financial assets—for example, shares, loans, futures, options, swaps, and similar instruments (and partnership interests in same).

### Applications

A Section 110 company has a number of applications as an investment platform. It can be used as an onshore vehicle for offshore investors; for example, an offshore fund would set up a Section 110 company and provide the investment in the company by way of a profit-participating loan. This is an attractive vehicle because of its low effective tax rate, onshore/EU and Eurozone status, and access to Ireland's treaty network with minimal substance requirements.

It can also be combined with other vehicles (such as a qualifying investor fund) and/or used as an investment platform into countries with favorable treaty provisions, such as China.

### Qualifying investor fund (QIF)

The qualifying investor fund (QIF) is one of Ireland's most successful fund structures. Because of their flexibility, QIFs are the vehicles most frequently used for alternative investment funds including hedge funds, funds of hedge funds, venture capital/private equity funds, and real estate funds, as well as for holding investments directly (or via Section 110 companies) in their own right. Since 2007, the Irish Financial Regulator has approved more than 300 QIFs, which can be authorized within 24 hours.

A QIF can offer a tax-exempt, regulated entity in an environment where increased supervision and/or regulation is desired. In addition, it is not restricted to financial assets; it can hold an asset of any class. It can be formed as a company, unit trust, investment limited partnership, or common contractual fund, and it is often used by non-EU promoters to access the EU investor base and/or invest in EU assets.

As a tax-exempt entity, it is not chargeable to Irish tax on income or gains. Also, there is no withholding tax on payments from a QIF to a non-Irish resident, regardless of the recipient's residence. In many instances, a QIF is eligible to take advantage of the Irish treaty network.

### "Super" QIF structure

The use of a super QIF structure, in which a QIF holds investments through Section 110 companies, allows investors to efficiently manage their assets while

optimizing the tax treatment, eliminating withholding tax on outbound payments and mitigating or eliminating withholding tax on inbound payments within a tax-neutral structure.

As a taxable vehicle, the Section 110 company is eligible to take advantage of the Irish treaty network/EU directives. Tax-free payments may be made to shareholders more easily because there is no withholding tax on income distributed from a Section 110 company to a QIF and no withholding tax on the repatriation of interest and dividends or redemption from a QIF to non-Irish (treaty or nontreaty resident) investors.

In addition, no tax ruling is required from the Irish tax authorities for this structure, which increases speed to market and reduces associated costs.

### Applications of QIF and super QIF

The QIF and super QIF are used by offshore investors to finance and hold investments onshore in a tax-efficient manner. The combination of an Irish QIF and a Section 110 company can facilitate a highly efficient, onshore platform structure through minimizing or eliminating inbound tax leakage, offering a low effective tax rate, and having no withholding tax on outbound payments.

The setup costs of a QIF or super QIF structure can be greater than for a Section 110 company because it is regulated and the regulator requires the use of a third-party service provider.

### US tax considerations

A Section 110 company can be formed as a public or private company. However, a QIF can be formed as a public company, unit trust or a partnership, but not as a private company. As such, there is flexibility to set up the entity as an "eligible entity" under the US check-the-box rules and an election can be made to treat the entity as a fiscally transparent entity from a US tax perspective. The decision to make a check-the-box election may depend on a number of considerations. In order to get the benefit of direct foreign tax credits (under Section 901) for taxes paid in Ireland or the source country, a check-the-box election should be made. The source and character of income can also be preserved. Overall, a Section 110 company allows significant flexibility to be used as an investment platform entity, for a broad investor base.

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