

Ireland's new Finance Bill enhances its attractiveness for Islamic funds

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Ireland has made some important improvements to facilitate Islamic finance transactions in Ireland. Under the Finance Bill 2010, which applies from 1 January 2010, the Irish Ministry of Finance has introduced significant amendments to facilitate Islamic finance transactions in Ireland, especially the origination and issuance of sukuk.

This change is a welcomed Irish legal initiative, the Finance Bill 2010 proposes new legislation that will facilitate sukuk transactions by extending to this form of financing the relieving (tax neutrality) provisions which currently apply to equivalent conventional financing.

The Finance Bill also introduces changes in relation to UCITS management companies and tax. The UCITS structure is one of the commonly used structures for many different types of Islamic funds such as retail Islamic Equity Funds, Shariah-compliant Money Market Funds, Shariah-compliant Exchange Traded Funds (ETFs) etc.



The Finance Bill also extends Irish stamp duty provisions to provide for relief from stamp duty arising on the transfer of fund assets under fund mergers and reorganisations. Specifically, it allows for the effective reorganisation of funds into a Master/Feeder structure, (which is also now permitted under UCITS IV). The Finance Bill also removes the technical charge to Irish stamp duty arising from the transfer of assets from one sub-fund to another within the same unit trust scheme.

Ireland, already an important domicile for Islamic funds, increases its reputation in this space with this significant change. The proposed changes of the Finance Bill 2010 will increase Ireland's competitiveness and attractiveness as a domicile for sukuk issuance and the launch of Islamic equity and other such products. The most significant changes for the Islamic finance industry included in this Finance Bill are outlined below.

Islamic finance

The Finance Bill introduces significant amendments to facilitate Islamic finance transactions in Ireland. This will help to promote Ireland as a more attractive location for international fund raising operations in addition to providing Irish companies with an alternative source of funding.

Essentially, the Bill proposes to introduce new legislation that will facilitate sukuk (i.e. Islamic bond) transactions by extending to this form of financing the relieving provisions which currently apply to conventional financing. The proposed legislation clarifies that the sukuk certificate should be considered a security and confirms that the investment return on that certificate should be treated as interest on a security for the purposes of the Taxes Act (subject to restrictions). In addition, it confirms that the sukuk issuer will be entitled to a deduction in respect of the coupon paid as though

it was a conventional interest payment. The Bill also introduces amendments to the Stamp Acts to ensure that no stamp duty will arise on the issue, transfer or redemption of a sukuk certificate. Amendments have also been proposed to the VAT Act to exempt from VAT specified financial transactions i.e. Islamic finance transactions where those transactions correspond to financial services transactions as listed in the VAT Act.

This is a very welcome addition to Irish tax legislation. There are some issues that don't appear to have been fully dealt with to reflect the intricacies of Shari'a law, however it is possible that drafting changes and refinements may be made prior to enactment.

This proposed change will apply from 1 January 2010.

UCITS management companies

The Finance Bill introduces changes that are aimed at enhancing Ireland as a leading location both for UCITS and non-UCITS funds including Islamic funds. UCITS III and IV brought about fundamental changes to both the management and structuring of UCITS. One of the reforms introduced permits UCITS management companies located in one EU jurisdiction to manage UCITS domiciled in another EU jurisdiction. One of the areas of concern was whether the activities of the management company could bring a foreign UCITS within the charge to tax in the management company's home jurisdiction, e.g. by creating a branch or agency or causing the fund to be regarded as tax resident there. The Finance Bill provides that in the case of an Irish management company managing a non-Irish UCITS, such management company will not be regarded as a branch or agency of the non-Irish UCITS and will not bring the profits of the foreign UCITS within the charge to Irish tax or treat the foreign UCITS as an Irish investment undertaking. In the case of investment by Irish investors in such a foreign UCITS, this will continue to be treated as an investment in an offshore fund taxable under the offshore fund rules, with comparable tax rates to investments in Irish regulated funds.

The Finance Bill also extends Irish stamp duty provisions to provide for relief from stamp duty arising on the transfer of fund assets under fund mergers and reorganisations. Specifically, it allows for the effective reorganisation of funds into a Master/Feeder structure, (which is also now permitted under UCITS IV). The Finance Bill also removes the technical charge to Irish stamp duty

arising from the transfer of assets from one sub-fund to another within the same unit trust scheme.

These provisions will be effective from the passing of the Act.

Non-resident declarations – no longer required for certain funds

The Finance Bill also contains provisions allowing Irish funds to obtain approval from the Irish Revenue Commissioners permitting non-resident investors to make investments in the fund without the need to make the declaration of non-Irish tax residence. Typically, the approval will apply to funds that are effectively distributed exclusively outside of Ireland. Given the representative low level of investment by Irish residents in Irish funds distributed on the international market, this has the potential to remove the not insignificant difficulty of having to obtain the completed tax declarations when investors are investing in an Irish fund range for the first time.

These provisions will be effective from the passing of the Act.

Redomiciliation of funds

Recent company law changes allow corporate funds (Islamic & Conventional) to migrate to Ireland through a re-registration process, whereby the fund company would benefit from its continued existence including the retention of the fund's performance track record post migration, and avoid potential adverse tax consequences and costs that typically arise from a merger of an offshore fund with a new onshore fund. The Irish Financial Regulator is committed to

a coordinated authorisation process to facilitate speed to market, which at present is a key advantage in comparison to delays being experienced in other EU domiciles.

This provision did not necessitate any amendment to existing tax legislation.

Double taxation agreements

Ireland already has a significant and growing tax treaty network and the Irish tax authorities have undertaken to increase the number of double tax treaties in force with Ireland, particularly with countries located in the Middle East. The Bill amends the Tax Acts to include the additional 6 countries with which Ireland entered into a double taxation agreement during 2009 bringing the total number of double taxation agreements currently in place to 54. These countries are Bahrain, Belarus, Bosnia & Herzegovina, Georgia, Moldova and Serbia.

In terms of MENA, a new double tax agreement was signed with Bahrain on 29 October 2009 and negotiations for new agreements with Kuwait, Morocco, Saudi Arabia and the United Arab Emirates have been concluded and are expected to be signed shortly. Negotiations with the governments of a number of additional Middle Eastern countries are expected to commence shortly.

This provision will have effect from the date of the passing of the Act.