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Finance Bill 2016 Update: Proposed Amendments to Ireland's Section 110 Regime: Irish Real Estate Related Assets

20 October 2016

Finance Bill 2016 was published today and contains some important clarifications to the proposals published on 6 September 2016 to amend Ireland's Section 110 regime in respect of profits derived from Irish real estate. A summary of the updated proposals is set out below.

What was clarified?

The clarifications confirm the targeted nature of the proposals which are intended to tax gains on Irish mortgage loan portfolios acquired through Section 110 companies.

Section 110 companies that have no exposure to Irish real estate remain unaffected by the proposed amendments. In addition, consistent with the announcement when the proposals were first published, securitisation transactions involving Irish mortgage loans such as CMBS and RMBS, as well as CLOs, are now expressly excluded from the scope of the provisions. Loan origination by a Section 110 company has also been expressly excluded.

Next steps

The Finance Bill will be debated over the course of the coming weeks. Once enacted, it is proposed that the new provisions will apply to the Irish real estate related profits of a Section 110 company for accounting periods commencing on or after 6 September 2016, with a deemed split for tax purposes where an accounting period straddles that date.

What is proposed?

The proposed amendments seek to amend the tax treatment of Section 110 companies investing in loans secured on Irish real estate by ring-fencing the Irish real estate related business and restricting the level of interest which may be deducted for tax purposes.

Irish real estate ring-fence

The business of holding and/or managing loans secured on, and which derive their value or the greater part of their value directly or indirectly from, Irish real estate (referred to as "specified mortgages"), is to be treated as a separate business of a Section 110 company, referred to as a "specified property business". Certain derivatives which provide exposure to such loans and to Irish real estate are also to be treated as a specified mortgage and therefore part of the specified property business. The type of assets within scope has been narrowed to reflect the targeted nature of the proposals. Thus, shares or units in an Irish REIT or other Irish real estate vehicle and unsecured bonds are now outside of the scope of the proposals.

The ring-fenced business will continue to be taxed under the provisions of Section 110 but will be subject to a new restriction on the ability for the Section 110 company to deduct profit participating or excessive interest. Subject to certain exclusions, an interest cap will apply such that a Section 110 company will only be entitled to deduct against the profits of its specified property business, the amount of interest which would have been payable had it entered into a loan on reasonable commercial terms. Any excess interest above this rate will not be deductible against the profits of the business, which profits will be subject to corporation tax at the 25% rate applicable to Section 110 companies.