MATHESON ORMSBY PRENTICE

STRUCTURED FINANCE AND ASSET MANAGEMENT UPDATE

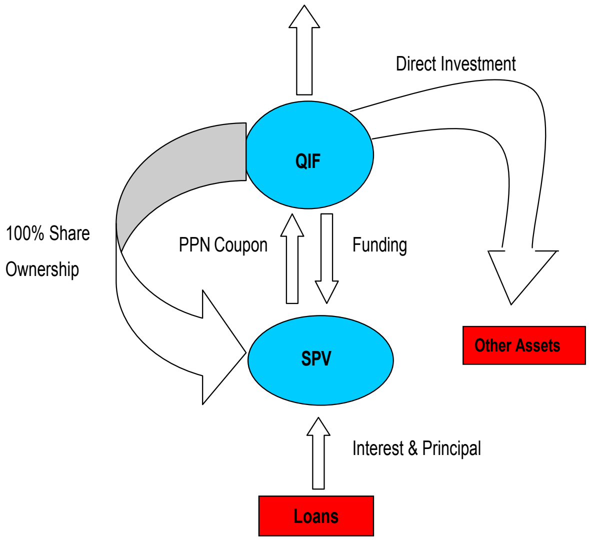
DUAL FUND/SPV STRUCTURES

Investors often express a preference for investing in either units issued by investment funds (equity) or debt securities issued by special purpose vehicles (SPVs), notwithstanding the fact that both types of securities can be structured so as to provide the same type of exposure and return. Investors who wish to invest in a pool of underlying international loans or debt securities via an intermediary entity will be very familiar with investing in debt securities issued by Irish SPVs. However, such investors will not be so familiar with investing in units issued by Irish investment funds. This position may soon change due to the increasing popularity of a new type of dual fund/SPV structure.

It is true that investment funds are not always suitable entities to use to invest in portfolios of international loans (distressed or otherwise) due to the fact that investment funds (being tax exempt entities) are not always entitled to the benefit of double tax treaties (DTTs). The lack of an entitlement to benefit from DTTs means that local withholding tax will sometimes arise on interest payments in the country of origin of the borrower. SPVs, on the other hand, are generally entitled to the benefit of DTTs, thus ensuring that no withholding tax arises on interest payments in the country of origin of the borrower under the international loans. The main benefit of the dual fund/SPV structures is that it facilitates fund investors obtaining exposure to loan assets on a tax efficient basis.

BASIC FEATURES

A dual fund/SPV structure may be summarised as follows:



1. an Irish SPV is established as a "qualifying company" for purposes of Section 110 of the Irish Taxes Consolidation Act ("**Section 110**");

2. an existing or newly established Irish regulated fund (typically, a qualifying investor fund ("**QIF**")) subscribes for a nominal amount of share capital in the Irish SPV;

3. the QIF provides funding to the SPV by way of a profit participating loan or by subscribing for a profit participating note in the SPV. In turn, the SPV uses the funding to acquire distressed loans in jurisdictions with which Ireland has a double taxation treaty;

4. the QIF may also (and frequently does) invest in other assets outside of any investment made via the SPV; and

5. the coupon paid by the SPV to the QIF comprises virtually all of the return received by the SPV in respect of the underlying loans (only a small profit is retained by the SPV).

ADVANTAGES OF THE DUAL FUND/SPV STRUCTURE

No withholding tax: the return on the underlying assets can usually be made to the investors in the QIF without any deduction for local withholding tax. This is because the SPV is entitled to benefit from Ireland's wide and growing double taxation treaty network and is therefore entitled to receive interest payments free from withholding from borrowers in jurisdictions with which Ireland has a tax treaty. In turn, no Irish withholding tax arises on the interest payments made by the SPV to the QIF.

Regulated investment: the investors have the benefit of investing in a regulated product – the QIF requires the approval of, and is regulated by, the Irish Financial Services Regulatory Authority.

Equity investment: the structure represents an equity investment for the ultimate investors in the fund. As stated above, some investors prefer (and in some cases may be required to) invest in equity rather than debt.

Tax-exempt status of the fund: investors in the QIF will continue to benefit from its tax exempt status notwithstanding the underlying investment it makes via the SPV.

Taxation of the SPV: while the SPV is not tax exempt it only pays tax on the small profit it retains after taking a deduction for interest payments made to the QIF.

Speed: a QIF can be incorporated within five days and authorised by the Irish Financial Services Regulatory Authority within 1 day (after the QIF documents have been finalised and the promoter has been approved) and an SPV can be incorporated within five days.

FURTHER INFORMATION

For more information on the establishment of a QIF click here and for more information on the establishment of an Irish SPV click here.

For information on our Structured Finance and Derivatives Group please click here and for information on our Asset Management and Investment Funds Group please click here. Alternatively call +353 1 232 2000 and ask to speak to any of the following partners in our Structured Finance and Derivatives Group or our Asset Management and Investment Funds Group.

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