



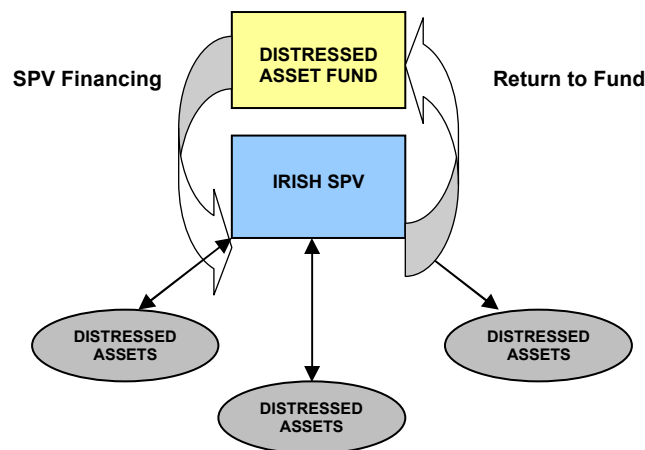
**INVESTING IN DISTRESSED ASSETS  
USING IRELAND AS A TAX EFFICIENT SPV LOCATION FOR INVESTING IN GLOBAL  
DISTRESSED ASSETS**

**(July 2009)**

**INTRODUCTION**

For many years, Ireland has been a popular jurisdiction for the establishment of special purpose vehicles (SPVs) for investing in all types of distressed financial assets. As the global market for distressed assets continues to grow, investors, originators and arrangers may be interested to note that Ireland as a jurisdiction is well placed, in terms of its legal and tax framework, to maintain its position as the location of choice for such SPVs. The benefits of using an Irish SPV for investing in distressed assets are set out below.

Many distressed asset funds encounter tax inefficiencies when seeking to invest directly in distressed assets. In the majority of cases, this results from the fact that the funds themselves would suffer withholding tax upon receipt of returns from direct investments. An Irish SPV can, in most cases, invest directly in distressed assets without suffering such tax charges. As a result, many distressed asset funds have been establishing and financing Irish SPVs in order to invest in distressed assets indirectly through such Irish SPVs.



**ONSHORE STATUS**

Ireland is a member of the European Union (EU) and also of the Organisation for Economic Co-operation and Development (OECD). In the current environment many investors, originators and arrangers prefer not to use offshore or tax haven entities in their transaction structures. In fact, many investors, originators and arrangers of distressed asset transactions will only structure their investments via SPVs located in EU or OECD member countries.

Ireland is not a tax haven. It is an onshore EU tax jurisdiction and in coming to Ireland arrangers and originators must deal with the Irish tax position and must ensure, through careful planning and advice, that the tax analysis required is achieved. It is critical in any distressed asset transaction to minimise any liability to taxation arising to either the SPV or the investors in the SPV.

## TYPE OF SPV ENTITY

An Irish private limited company can be used as the SPV for the majority of distressed asset transactions. A private limited company requires a minimum of two directors, can have a minimum share capital of EUR1 and can be incorporated in five working days.

## TAXATION OF SPV

Irish tax legislation provides for specific tax treatment for qualifying SPVs. A qualifying SPV must be resident in Ireland for tax purposes. It must acquire financial assets or enter into swaps or other legally enforceable financial arrangements with a market value of at least €10 million, although this financial requirement only applies to the first transaction entered into by the SPV. It must enter into all transactions on an arms length basis.

The SPV may acquire, hold, manage or enter into any of the following financial arrangements (either directly or indirectly, for example through a partnership):

- shares, bonds and other securities
- futures, options, swaps, derivatives and similar instruments
- invoices and all types of receivables
- obligations evidencing debt (including loans and deposits)
- leases and loan and lease portfolios
- hire purchase contracts
- acceptance credits and all other documents of title relating to the movement of goods
- bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments
- greenhouse gas emissions allowances
- contracts for insurance and contracts for reinsurance

Profits arising from the activities of a qualifying SPV are chargeable to corporation tax as if the SPV was a trading company. This is very important as it ensures that a tax deduction is available in respect of any interest expense incurred by the SPV. Through proper and careful planning the position can be achieved such that the SPV earns a minimal profit (there is no specified minimum amount required by law) subject to the corporation tax rate of 25 per cent.

A combination of the treatment of the SPVs as similar to trading companies for the purpose of calculating their tax liability and the availability of a tax deduction for payments of interest by the SPV (including on profit participating loans or notes or swaps) ensures that the SPV is both profit neutral and tax neutral. It is also important to note that although the SPV must notify the Revenue Commissioners of its existence, no special rulings or authorisations are required in Ireland in order for the SPV to achieve this tax neutral status.

Ireland has signed 50 double tax treaties with other countries and the terms of the appropriate treaty can ensure that the income in respect of the underlying assets acquired by the SPV can be paid to it without any withholding or other taxes. This can provide a significant advantage for Ireland over the use of tax haven jurisdictions where withholding tax can otherwise result in significant tax leakage in the transaction. Ireland has currently signed a double tax treaty with each of Australia, Austria, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Israel, Italy, Japan, Korea (Rep. of), Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, the Republic of Turkey, United Kingdom, USA, Vietnam and Zambia. The number of tax treaties to which Ireland is a party is increasing every year. New agreements with Albania, Argentina, Armenia, Azerbaijan, Belarus, Bosnia Herzegovina, Egypt, Kuwait, Moldova, Morocco, Serbia, Singapore, Thailand, Tunisia and Ukraine are in the course of negotiation or approval.

## TAXATION OF INVESTORS / NOTEHOLDERS

- **Income tax**

Where interest is paid by a qualifying SPV to any person resident in an EU Member State (other than Ireland) or in a jurisdiction with which Ireland has signed a double tax treaty there is a domestic exemption from Irish income tax on the receipt of such interest.

However, if this domestic exemption does not apply due to the residence of the provider of finance to the SPV, there is a long standing unpublished practice in Ireland whereby no action will be taken to pursue any liability to such Irish tax in respect of persons who are regarded as not being resident in Ireland provided such persons are not otherwise subject to tax in Ireland or do not seek to obtain repayment of tax in respect of other taxed income from Irish sources.

- **Withholding tax**

In general, withholding tax at the rate of 20 per cent. must be deducted from interest payments made by an Irish company. However, an exemption from the charge to Irish interest withholding tax, known as the EU/DTT exemption, is provided under domestic legislation.

Under the EU/DTT exemption, there is no obligation to withhold tax in respect of interest payments made by a qualifying SPV to any person who is resident in an EU Member State (other than Ireland) or in a jurisdiction with which Ireland has signed a double tax treaty (DTT).

SPVs can also be financed by way of total return swaps, and in general, withholding tax does not apply to swap payments.

Other exemptions from withholding tax are also available (such as the Quoted Eurobond exemption for listed bonds and an exemption for specific types of notes with a maturity of less than two years etc.).

## VALUE ADDED TAX

In general, the activities of a qualifying SPV are exempt activities for VAT purposes and therefore there is no obligation on the SPV to charge VAT in respect of its activities. The SPV is typically not in a position to obtain a repayment of any VAT incurred by it in respect of services received. No charge to Irish VAT arises in respect of corporate administration services supplied to a qualifying SPV. Further, it is notable in relation to distressed asset transactions that no charge to Irish VAT arises in respect of asset management services supplied to a qualifying SPV.

## CONCLUSION

Ireland has a highly regarded regulatory regime and has consistently introduced and refined its legislation dealing with structured finance transactions. Ireland is also an onshore jurisdiction that is an EU Member State, a member of the OECD and within the eurozone. Ireland, like the UK, is a common-law jurisdiction. Ireland has a large double taxation treaty network and has a domestic infrastructure capable of implementing the most difficult distressed asset deals (such as experienced corporate administrators, lawyers, auditors etc) in a cost effective manner. All of these factors now combine to make Ireland a very attractive jurisdiction in which to locate SPVs to invest in distressed assets.

---

For further information, please contact:

[Turlough Galvin](#)

Distressed Assets Group  
Matheson Ormsby Prentice  
70 Sir John Rogerson's Quay  
Dublin 2  
T: +353 1 232 2232  
E: [turlough.galvin@mop.ie](mailto:turlough.galvin@mop.ie)  
W: [www.mop.ie](http://www.mop.ie)

[Suzanne Lynch](#)

Distressed Assets Group  
Matheson Ormsby Prentice  
70 Sir John Rogerson's Quay  
Dublin 2  
T: +353 1 232 2554  
E: [suzanne.lynch@mop.ie](mailto:suzanne.lynch@mop.ie)  
W: [www.mop.ie](http://www.mop.ie)

*The Information in this document is provided subject to the Legal Terms and Liability Disclaimer contained on the Matheson Ormsby Prentice website. The material is not intended to provide, and does not constitute, legal or any other advice on any particular matter, and is provided for general information purposes only.*

© Matheson Ormsby Prentice 2009