To begin with, I wish to highlight that non resident investors in property funds and Section 110 companies are two mutually exclusive measures for tax avoidance.

Section 110 companies are the vehicle of choice for buying up distressed mortgages in Ireland. These companies operate in a tax-neutral manner.

Irish regulated Alternative Investment Funds, QIAIFs and ICAVs, are the vehicle of choice for non-resident investors who invest in Irish property directly. These structures facilitate a zero-tax situation from income or gains for non-resident investors in Irish property.

In my opinion, a deliberate attempt has been made by the Minister for Finance to conflate these two issues, to avoid implementing anti avoidance measures related to non resident investors using Irish Alternative Investment Funds to avoid tax on Irish Property Holdings.

In light of this, I am making two submissions, the first of which will deal with non resident investors using Irish Alternative Investment Funds to avoid tax on Irish Property Holdings and the second which will deal with Section 110 companies buying up distressed mortgages in Ireland and engaging in aggressive tax avoidance.

1. **Submission to Budgetary Committee – Non resident investors using Irish Alternative Investment Funds to avoid tax on Irish Property Holdings – Deputy Pearse Doherty – 6 October 2016**

Successive governments have deliberately designed into our tax law as a system that allows for foreign owned property funds to have no tax liability on the hundreds of millions of rental income that they receive here each year from the billions of property they own here, they also have no tax liability on the gains they have made here over the past number of years.

Irish authorised regulated Alternative Investment Funds have been buying up property at a ferocious speed over the past number of years and since the crash these foreign owned property funds have become major players in the Irish property market. These investment funds have aggregate holdings here of over €477 billion as at July 2016[1], with Irish property making up a significant portion of this.

These funds usually structured as either as Qualifying Investor Alternative Investment Fund (QIAIF) or Irish Collective Asset Management Vehicles (ICAV), are regulated by the Central Bank and would be classified as an investment undertaking according to Irish tax legislation. As Minister Noonan confirmed to me earlier this year Irish "tax legislation provides a tax exemption to the (investment) undertaking itself and to certain investors, for example investors not resident in the State."

QIAIFs are advertised by Davy as the "vehicle of choice for private investors who are undertaking large scale investment in real estate"[2].

Irish income tax on rental income and Capital Gains Tax on the disposal of Irish real estate can be eliminated altogether for non-Irish resident investors where Irish real estate is held through an Irish

[1] Irish Funds Association http://www.irishfunds.ie/facts-figures/irish-domiciled-non-ucits
[2] Davy http://www.davy.ie/binaries/content/assets/davypublic/fund-services/brochures/investing-in-irish-real-estate-via-a-qiaif_mar15_final.pdf

regulated fund. Investment Undertakings ("funds") are not subject to Irish taxation on any income or gains they may realise from their investments.

In addition, also enabled through Irish tax legislation is the fact that there is no Irish withholding taxes in respect of distributions or any encashment, redemption, cancellation or transfer of units in the investment undertaking in respect of investors who are non Irish resident.

Tax free income and gains for non residents from property when held through a fund is not standard practice

As seen in Kennedy Wilsons accounts regarding its property investments in other countries, it is subject to corporate income tax at 25% on taxable profits generated within its Spanish subsidiaries. Income tax is payable at 20% on rental income deriving from UK investment properties[3].

Other European countries have safeguards to ensure that income and gains sourced in their countries i.e. rental and capital appreciation from property located in their respective country is taxable even when held through fund vehicles.

In general non residents German individual or corporate income tax owed from such income is generally paid by a deduction of German withholding tax from the distribution or deemed distribution of the investment fund's earnings in an amount of 26.375%. Withholding tax applies to income from to German-sourced dividend income.

Also in general France applies a 30% withholding tax on French source dividend income from these fund structures when the dividends relates to French property income and gains for non resident investors.

This has been of major concern since it came to light in April 2016

On the 5th April following media reports about the abuse of these funds for property deals including by Denis O'Brien, I questioned the Minister for Finance about this scandal and tabled a number of questions to the Minister seeking a clampdown.

In his reply to me in April Michael Noonan said : "Should these investigations uncover tax avoidance schemes or abuse, which erodes the tax base and causes reputational issues for the State, then appropriate action will be taken and any necessary legislative changes that may be required will be put forward for my consideration."

That is now over five months ago. We now have almost weekly revelations about non resident investors in Alternative Investment Funds (QIAIFS and ICAVs) operating here and not paying their fair share of tax. I even exposed the fact that the Central Bank which is supposed to be regulating these Alternative Investment Funds is itself paying rent to one of them.

The Budget is now less than a week away and Sinn Féin is calling for an end to the withholding tax exemption for non-resident investors in funds when dividends from the funds relate to Irish source activities, with withholding tax of at least 20% being applied. It is time for the non resident investors in Alternative Investment Funds to pay their fair share in relation to income and gains from Irish land and property.

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3 Kennedy Wilson Accounts to 30 June 2016 - http://www.kennedywilson.eu/media/1541/16-08-05-kwe-h1-16-results_final.pdf

Sinn Féin have been looking under the bonnet of these funds to see the scale of this aggressive tax avoidance

Sample case studies below:

i) Kennedy Wilson Plc – Major Irish Landlord

Property investment giant Kennedy Wilson Europe Real Estate (KWER) - which holds circa €1 billion of assets in Ireland - pays no tax here because it owns its Irish investments via two qualifying investor alternative investment funds.

Accounts	**6 months to 30 June 2016**
Rent	£22 million – Circa €26 million
Value of investment property	£892 million – Circa € 1 billion

Tax section per Kennedy Wilson accounts 30 June 2016

"The Company is tax resident in Jersey but liable to any foreign tax on activities in its overseas subsidiaries. **Investments in Ireland are held through two Irish qualifying investor alternative investment funds, which are exempt from any Irish taxation on income and gains.** The cost of maintaining these regulated funds, including depository, AIFM and administrator costs, are included within Administrative Expenses. The Italian portfolio is held through a regulated close-ended alternative investment fund which is exempt from Italian tax on income and gains. **The Group is subject to corporate income tax at 25% on taxable profits generated within its Spanish subsidiaries. Income tax is payable at 20% on rental income deriving from UK investment properties.** The total tax charge for the Period is £2.9 million. This has reduced from 2015 (£3.2 million) due to successful capital allowance reviews undertaken in the last twelve months."[4]

ii) IPUT plc - IPUT Property Fund

IPUT is the largest unlisted property vehicle in Ireland.

IPUT plc is authorised and regulated by the Central Bank of Ireland as a qualifying investor alternative investment fund (QIAIF).

The firm focuses it's investments on commercial property in Dublin.

The public sector makes up 6% of it's rental income.

2015 Annual Accounts	€
Net rental income	85.8 million
Net asset value	1.76 billion
Dividends *	79.2 million

4 Kennedy Wilson Accounts to 30 June 2016 - http://www.kennedywilson.eu/media/1541/16-08-05-kwe-h1-16-results_final.pdf

Non resident investors comprise 27% of Fund and accordingly pay no tax on that Irish source income.[5]

iii) The Davy Property Fund

The Davy Irish Property Fund is a commercial property fund invested 100% in Irish property and available for investment by Qualifying Investors from Ireland and overseas.

The Fund aims to provide investors with a long term investment in Irish commercial property while providing quarterly income distributions. The Fund is authorised as a Qualifying Investor Alternative Investment Fund ("QIAIF") by the Central Bank of Ireland. All overseas investors in this fund will not pay a penny in Irish tax on earning from their portion of this fund.

Davy prospectus[6]
€342.5 million Net Asset Value as at 31st July
€19.4 million Projected Income for 2016

vi) Cedar Real Estate Fund – valuation of circa €100 million [7]

Cedar Real Estate Investments Plc, are paid €2.65 million per annum rent in relation to office space leased to the Central Bank and pay no tax on this income[8].

Cedar is designated as an Alternative Investment Fund per Central Bank listing at 31 July 2016[9].

Cedar Real Estate Investment Plc is ultimately wholly owned by Starwood Property Trust Inc[10], an American vulture fund, and as such its owners are not resident in the State. It's regulated fund structure and ownership model allow for it, through Irish tax legislation, to be exempt from tax in the State.

iv) Denis O'Brien

Denis O'Brien used an ICAV (QIAIF), Real Estate Development & Investment Fund ICAV[11], last year when he sold the LXV building, St Stephens Green last year, for €85 million.

O'Brien's is non resident for tax purposes and when he reportedly made an estimated profit of over €30 million from the sale in St Stephen's Green….. Capital gains tax at 33%, of €10 million was avoided due to the fact that there was no tax in the ICAV and Denis O'Brien in non Irish resident

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5 IPUT Plc 2015 Annual Accounts - http://www.iput.ie/investor-relations

6 Davy Prospectus http://www.davy.ie/real-estate/dipf
7 Market Watch – August 2015 -http://www.marketwatch.com/story/10-q-starwood-property-trust-inc-2015-08-04
8 Parlimentary Response https://www.kildarestreet.com/wrans/?id=2016-06-16a.292
9 Central Bank Registrar http://registers.centralbank.ie/DownloadsPage.aspx
10 Cedar Real Estate is a subsidiary of Starwood Property Trust as seen in Consumer Protection documentation regarding merger www.ccpc.ie/file/21923/download?token=UPf7U4KW
11 Central Bank authorised listings http://registers.centralbank.ie/DownloadsPage.aspx

v) Irish Residential Properties (IRES) REIT – beneficial interest of 15.75% held by a QIAIF

Ires has emerged as the country's largest non-government landlord, with a portfolio of 2,288 apartments across Dublin, with an annual rent roll of circa €40 million.

Despite restrictions Ires Reit increased rents by up to 12% in its Dublin properties this year and with a "substantial portion" of the portfolio up for renewal in 2017, Ires Reit said this would provide an opportunity for rental increases.

Accounts	At 30 June 2016
Investment properties	€644 million
Rent for 6 months	€18 million
Dividends paid	€13.1 million

Listed on the Irish Stock Exchange, Ires is backed by a Canadian property investment group Capreit.

CAPREIT LP (this is a Canadian Real Estate Investment trust) has an 15.7% beneficial interest in I-RES and has determined that it has significant influence over I-RES. **The beneficial interest is held through a qualifying investor alternative investment fund**[12], Irish Residential Properties Fund, CAPREIT LP's wholly-owned subsidiary – **This ensures that absolutely no taxation is paid in relation to ownership of 15.7% of that REIT.**

Written answers
Thursday, 14 April 2016

What are written answers?

Department of Finance
Irish Collective Asset Management Vehicles

All Written Answers on 14 Apr 2016« Previous answerNext answer »

Pearse Doherty (Donegal, Sinn Fein)

Link to this: Individually | In context | Oireachtas source

85. To ask the Minister for Finance the income, gains and associated taxes paid in respect of qualifying investor funds investing in real estate since their introduction; the tax paid by their associated shareholders by year; and if he will make a statement on the matter. **[6395/16]**

12 IRES REIT Accounts to 30 June 2016 - http://investorrelations.iresreit.ie/~/media/Files/I/IRES-IR/presentations/interim-report-2016.pdf

 **Pearse Doherty** (Donegal, Sinn Fein)

Link to this: Individually | In context | Oireachtas source

86. To ask the Minister for Finance the income, gains and associated taxes paid in respect of Irish collective asset management vehicles investing in real estate since their introduction; the tax paid by their associated shareholders by year; and if he will make a statement on the matter. **[6396/16]**

 **Pearse Doherty** (Donegal, Sinn Fein)

Link to this: Individually | In context | Oireachtas source

87. To ask the Minister for Finance if he has considered anti-avoidance measures in respect of Irish collective asset management vehicles investing in real estate, given the recent revelations concerning massive profits being made in property located here and funnelled through these vehicles, resulting in the Exchequer being deprived of corporation tax, Income tax and capital gains tax earned on profits from source assets; and if he will make a statement on the matter.**[6397/16]**

 **Pearse Doherty** (Donegal, Sinn Fein)

Link to this: Individually | In context | Oireachtas source

88. To ask the Minister for Finance if he has considered anti-avoidance measures in respect of qualifying investor funds investing in real estate, given the recent revelations concerning massive profits being made in property located here and funnelled through these vehicles, resulting in the Exchequer being deprived of corporation tax, income tax and capital gains tax earned on profits from source assets; and if he will make a statement on the matter. **[6398/16]**

 **Michael Noonan** (Minister, Department of Finance; Limerick City, Fine Gael)

Link to this: Individually | In context | Oireachtas source

I propose to take Questions Nos. 85 to 88, inclusive, together.

Irish collective asset management vehicles (ICAVs) were introduced in 2015 as a measure to develop and enhance Irish competitiveness in the funds industry in Ireland and to promote employment in the State.

Qualifying Investor Funds, once authorised by the Central Bank, fall under the definition of an "investment undertaking", in Chapter 1A, Part 27 of the Taxes Consolidation Act

and so are subject to the provisions of that chapter. The legislation provides a tax exemption to the undertaking itself and to certain investors for example investors not resident in the State.

The Revenue Commissioners have informed me that as such funds are not chargeable to tax in respect of relevant profits they would not have the information sought. Exit tax is imposed on Irish resident unit holders but a breakdown of this specific tax head for a qualifying investor fund is not available.

I am further advised by the Revenue Commissioners that they are currently examining recent media coverage concerning the use of investment funds for property investments. Should these investigations uncover tax avoidance schemes or abuse, which erodes the tax base and causes reputational issues for the State, then appropriate action will be taken and any necessary legislative changes that may be required will be put forward for my consideration.