

To note I have dealt with the issue of non resident investors in property funds in my first submission, this submission I will deal with in this submission is Section 110 companies as the two issues are mutually exclusive measures for tax avoidance purposes.

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.

2. Submission to Budgetary Committee – S110 companies buying up distressed mortgages in Ireland – Deputy Pearse Doherty – 6 October 2016

Special Purpose Vehicles (SPVs) with Section 110 status are the vehicle of choice for buying up distressed mortgages in Ireland. These companies are designed to operate in a tax-neutral manner. This, coupled with the massive profits they have been making, has resulted in a huge loss of revenue to the Irish public. This issue is a major public concern, which I have been raising consistently since March 2016.

S110s can operate in a tax neutral manner

Section 110s companies can utilise various techniques to strip profit out on its underlying investments and can reduce or eliminate the tax it is required to pay¹. The International Tax Review states that Section 110 companies are “typically structured so that income earned is matched with its expenditure resulting in minimal taxable profits”.

S110 has facilitated wholesale aggressive tax avoidance for those who bought distressed mortgages in Ireland

Section 110 has been used widely over the past number of years by vulture funds buying up distressed mortgages in Ireland, are earning hundreds of millions of euros annually from mortgage-holders and shifting it offshore while paying as little as €250 in tax to Irish Revenue.

¹ Dillion Eustace

<http://www.dillioneustace.ie/download/1/Irish%20Structures%20for%20investing%20in%20Distressed%20Assets.pdf>

Among the largest purchasers have been Goldman Sachs, Cerberus, Deutsche Bank and CarVal. As was recently reported, Cerberus's accounts for 2014 show that it generated over €140 million of revenue on its Irish assets, but paid less than €2,500 in tax. Likewise, Beltany's 2014 accounts show that it generated income of €44 million but managed to pay just €250 in corporation tax.

Charity use exposed

S110s generally use an orphan entity ownership structure that ensures the entity is not owned by its originating bank or hedge fund but by a charitable trust. Revenue have raised concerns about the use of charities for this purpose as revealed through my Freedom of Information request this year. Dublin's corporate law firms generally establish the charitable trust or provide the use of their existing charitable trusts to SPVs. For example, Matheson has established its own charity, the Matheson Foundation, which it regularly uses to help incorporate SPVs for its clients. Its website says that the Matheson Foundation has two clear goals: to help children in Ireland to fulfil their potential; and to encourage corporate philanthropy in Ireland².

Following this Freedom of Information paper, I wrote to the Charities Regulator to investigate the role of companies designated as charities within this infrastructure. He confirmed to me that he would work with Revenue to look into the issue of abuse of charity status by some schemes. On the 2nd of September the Charities Regulator announced that he is to review charities holding shares in special purpose vehicles on trust.

Proposed changes to S110 are not acceptable

The government's proposed changes to Section 110 companies to restrict their tax-neutral structure when their activities relate to Irish property mortgages is not acceptable, as this amendment will allow for a situation where all portfolios affected can be 'marked-to-market' at 5th September. Accordingly, any unrealised gains on the uplift of Irish property debt up to 6 September will be unaffected by the amendment, leading to a massive loss in Capital Gains Tax to the Exchequer, given that the majority of uplift in value of the loan books affected has already taken place.

To put it in context if the CGT rate was to change under normal circumstances ordinary citizens and businesses are not afforded a lower rate (the government is proposing 0% in its amendment) of CGT for capital gains relating to the portion of unrealised gains to the date of the rate change.

Sinn Féin is calling for all unrealised gains of the affected portfolios to be taxed in accordance with normal Capital Gains Tax rules, as is the case for all other companies paying corporation tax on the eventual date of sale of the affected portfolios.

Furthermore, strict anti avoidance must be put in place so that income from all affected portfolios cannot be written off against exorbitant interest payment, including not allowing S110s to reduce their profits with non bank interest.

² Matheson <http://www.matheson.com/about-us/matheson-foundation>