

Irish Real Estate Funds advance clearance procedures

Part 27 /Chapter 1b

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Introduction

The Irish Real Estate Fund (“IREF”) regime was introduced in Finance Act 2016. The legislation is set out in Chapter 1B of Part 27 of the Taxes Consolidation Act 1997 (TCA). An IREF is an Irish investment fund which invests at least 25% of its assets in Irish real estate.

This manual sets out the agreed administrative practice for the application, in the specific circumstances outlined, of withholding tax in sections 739Q(3) and 739T TCA.

1. Withholding Tax obligations

An IREF taxable event is essentially any way in which the profits and gains of the IREF are transferred to the unit holder. The taxable events can be split into two groupings, being those to which the IREF is party and those to which the IREF is not. This distinction is relevant when it comes to the application of withholding taxes.

1.1. IREF taxable event to which the IREF is party

The IREF is party to the following IREF taxable events:

- (a) The making of a distribution by the IREF.
- (b) The cancellation, redemption or repurchase of units from a unit holder. This applies whether the IREF is in the course of liquidation or otherwise.
- (c) An exchange of units in one sub-fund of an umbrella fund for units in another sub-fund of that umbrella fund. This applies whether or not the other sub-fund is an IREF.
- (d) The issuing of bonus units by the IREF.
- (e) An IREF ceasing to be an IREF (*this is subject to the main purpose test e.g. while a fund may not meet the 25% threshold it would be reasonable to consider that one of the main purposes of the fund is to acquire IREF assets*).

Withholding tax under s.739P is operated on these events.

1.2. IREF taxable event to which the IREF is not party

The IREF is not party to the following IREF taxable events:

- (f) The disposal of a unit by a unit holder to someone other than the IREF.
- (g) The transfer of the right to receive any accrued profits without the sale of the underlying unit.

Withholding tax under s.739T is operated on these events.

1.3. Repayment of withholding tax

Section 739Q(3) deals with the repayment of withholding tax which can fall due under section 739P or section 739T. Broadly speaking, it provides that an investor which is a widely held pension scheme, investment undertaking or life assurance company (or an EEA equivalent) which has invested indirectly in the units of an IREF may be entitled to a refund of any withholding tax suffered. Such an investor is entitled to claim a refund

of withholding tax if, had it invested directly in the units of the IREF, no withholding tax would have applied. Operating a withholding tax which is ultimately refundable places an administrative burden on both Revenue and the taxpayers involved. In an effort to lessen that administrative burden Revenue are prepared to deal with certain scenarios on an administrative basis.

This administrative measure will only apply in situations where any amount of withholding tax if paid over to Revenue would subsequently be reclaimed in full.

Form 739Q(3) and Form 739T are attached to this document.

The mechanisms which are set out in this manual are subject to stringent criteria and apply strictly in the circumstances outlined.

2. Mechanics of a tax clearance system for repayment of tax via intermediaries (Section 739Q(3))

Concerns have been raised regarding how indirect investors, who are entitled to seek a refund under section 739Q(3) may avail of their refund in a timely manner. These indirect investors could have a significant time lag of up to 18 months between a taxable event on which IREF tax is deducted and the actual payment date on which this tax is payable to the Revenue, before which Revenue could not issue a refund.

To facilitate such repayments it is proposed that the indirect investor can avail of an advance clearance facility with Revenue. The intermediary entity, being the unitholder in the IREF through whom the indirect investor has invested, may make an application on Form 739Q(3) to Revenue for authorisation for the IREF to, depending on the circumstances, either:

- (a) make the payment without deducting tax which would subsequently be refundable or
- (b) pay an amount equal to the tax which has been withheld under section 739P directly to the indirect investor.

Once Revenue is satisfied with the application, authorisation will issue to the IREF. The Revenue authorisation will direct the IREF to either make the payment gross of withholding tax, or to pay the tax withheld directly to the indirect investor rather than to Revenue, depending on the traceability of the relationship between the indirect investor and the IREF. This will relieve the IREF of the obligation to pay that amount of tax to Revenue on the relevant tax payment date but the amounts must be included in the return submitted to Revenue under section 739R.

2.1. Conditions for availing of advance clearance - Form 739Q(3)

Pension schemes, investment undertakings or life assurance companies may have invested in an IREF indirectly for historic non-tax reasons. If such an investment had been a direct investment, then the pension scheme, investment undertaking or life assurance company would not be a specified person. Therefore, where such indirect

investments exist, if the pension scheme, investment undertaking or life assurance company, or EEA equivalent of these, can show to Revenue that:

- (a) It indirectly invested in the units of an IREF,
- (b) That the IREF is not its PPIREF,
- (c) That IREF withholding tax or withholding tax under section 739T would be operated in respect of an IREF taxable event to which it is entitled,
- (d) That that withholding tax is not otherwise repayable, and
- (e) Had it invested directly in the IREF no withholding tax would have arisen under section 739T,

Then advance clearance from operating withholding tax may be sought via Form 739Q(3).

3. Mechanics of a tax clearance system for indirect investors in IREFs (Section 739T)

Concerns have been raised regarding how investors who suffer withholding tax under section 739T which is fully refundable pursuant to section 739T(6), may avail of their refund in a timely manner. Investors who have suffered tax under section 739T must claim a refund in a return of income for the year, filed in accordance with Part 41A, which could lead to a delay in excess of 12 months before a refund can be claimed.

Section 739T imposes a withholding obligation for a purchaser, or person through whom a payment in relation to the happening of an IREF taxable event to which the IREF is not party. This section applies if the proceeds for the sale of the units exceeds €500,000. Multiple disposals to the same person will be treated as a single disposal, as will disposals to persons who are acting in concert or who are connected persons.

To facilitate such repayments it is proposed that advance clearance on the sale of units by:

- A unitholder who is not a specified person, or
- A unitholder who is an intermediary entity through which an indirect investor, would be entitled to a refund of any tax withheld under section 739Q(3), has invested in those units

may be applied for in respect of withholding obligations under section 739T, where no tax liability will arise under section 739O. Once Revenue is satisfied with the application, authorisation will issue to the purchaser to make the payment without operating withholding tax. This will relieve the purchaser of the obligations under section 739T to pay that amount of tax to Revenue.

For example an approved Irish Revenue pension scheme has units invested in an IREF either directly or via a managed property vehicle. The Irish pension scheme wishes to sell its units to a third party purchaser for consideration in excess of €500,000. Section 739T requires that on the payment of any consideration in relation to the happening of an IREF taxable event, the person through whom any such payment is made shall deduct from that payment a such representing an amount of income tax equal to 20% of the payment. In this example as the Irish pension scheme is not a “specified person” for the purpose of section 739K. As the Irish pension scheme is not required to suffer tax

on redemption of its shares or receipt of a distribution, it would be entitled to a refund of any such tax withheld under section 739T.

Providing that a valid application is submitted to Revenue, clearance may be sought in advance of the transaction to allow the consideration be paid by the third party purchaser without deduction of the withholding tax.

It should be noted that transfers of units within a gross nominee account (i.e. a MIFID broker's gross account which purely comprises investors who are not specified persons), or between gross nominee accounts (e.g. on changing from one broker to another) are not subject to a withholding obligation.

3.1. Conditions for availing of advance clearance - Form 739T

Application under Form 739T may be made to Revenue providing that the vendor meets the following conditions:

- (a) The vendor is not a specified person; a copy of the declaration which has been provided to the IREF must accompany Form 739T,
- (b) The application is made on behalf of an investor who is entitled to a full refund of any withholding tax suffered under section 739Q(3) and full details are disclosed with Form 739T.

4. Grounds on which an application can be made

This manual provides where, in the circumstances described above, the obligations to withhold tax which would otherwise fall due under Chapter 1B of Part 27 (TCA) can be dealt with on an administrative basis by Revenue following the receipt of a valid application on Form 739Q(3) or 739T as appropriate, and any additional information which Revenue may require.

5. Administrative Practice

On a written notification being made by reference to this manual, the Revenue Commissioners are prepared to accept that certain payments may be made without the operation of withholding tax, which would otherwise be operated under section 739P or section 739T. The notification must set out the grounds for seeking the administrative practice. The notification will only be considered once accompanied with a valid application form: Form 739Q(3) or Form 739T. The notification must strictly meet the conditions and requirements of this manual as set out in above. All information required on Form 739Q(3) or Form 739T must be provided at the time of application, in addition to any additional information sought by Revenue upon reviewing those forms.

The appropriate application form, Form 739Q(3) or Form 739T, must be completed in full and returned to the address set out on the form, with written notification that it is availing of this administrative practice.

A written notification and appropriate application form should be made in respect of each transaction for which the practice is being applied.

This practice applies from 1 January 2017.

6. Commencement

This manual applies to accounting periods beginning on or after 1 January 2017.

The practice set out in this manual should be relied upon only to the extent that an application is made in good faith and for purposes which do not include tax avoidance. Revenue will monitor requests for confirmation made under this manual and may amend or withdraw this practice at any time if for any reason the transaction undertaken varies in any material way that that applied for. Revenue reserve the right to request further details in response of any information provided and to review transactions in the light of actual events, facts and circumstances at the relevant time.

Form 739Q(3)
Irish Real Estate Funds (IREF)
Application for clearance from withholding tax under section
739Q(3) Taxes Consolidation Act 1997 and TDM 27-01b-01

Please return to: Financial Services (Insurance & Investment Funds) Unit
Large Cases Division
Ballaugh House
73/79 Lower Mount Street
Dublin 2

NOTE: Details of IREF taxable events in respect of which this confirmation is sought must be included in the return made under to section 739R.

Investor details

Name of investor: _____

Investor address: _____

Irish tax reference number/TIN of the investor: _____

Country of authorisation of the investor²: _____

The investor would, if the units were held directly, fall within the following paragraph of the definition of 'specified person' in section 739K(1) [tick box]:

- ☐ Paragraph (a) – pension schemes;
☐ Paragraph (b) – investment undertakings;
☐ Paragraph (c) – life assurance companies carrying on life business; or
☐ Paragraph (f) – an EEA equivalent to (a) to (c)

Unit holder details

Name of unit holder: _____

Unit holder address: _____

Irish tax reference number/TIN of the unit holder: _____

Description and number of units: _____

(in respect of which this declaration is being made)

IREF details

Name of IREF³: _____

Tax reference number of the IREF: _____

(in which the units are held)

IREF taxable event details

Date of IREF taxable event: ____ / ____ / ____

IREF taxable amount: [_____]

IREF taxable amount indirectly attributable to the Investor: [_____] being [_____ %]

I certify that:

1. The investor indirectly invested in units in the IREF [group structure (indicating name, address and tax residence of each entity along with a description on the type of entity) required along with third party proofs of ownership].
2. The IREF would not be regarded as a personal portfolio IREF of the investor [detailed explanation of the relationship between the investor and the IREF required].
3. Any withholding tax which would otherwise be operated on the IREF taxable event is not otherwise repayable.

Application is hereby made for confirmation that:

- In respect of a 100% ownership relationship, the IREF may make the payment without operating IREF withholding tax; or
- In respect of any ownership relationship less than 100%, the IREF may directly pay to the investor the portion of the IREF withholding tax deducted under section 739P(1) referable to the portion of the IREF taxable amount indirectly attributable to the Investor.

Signature of applicant: _____

Name of authorised signatory: _____

Capacity in which application is made: _____

Date: _____ / _____ / _____

NOTES:

The clearance provided by this form may be withdrawn if the details are incorrect or if the transaction set out is found to have been made for the purpose of tax avoidance.

The Revenue Commissioners reserve the right to request further details in respect of any information contained in this form.

Form 739T
Irish Real Estate Funds (IREF)
Application for clearance from withholding tax under section
739T Taxes Consolidation Act 1997 and TDM 27-01b-01

Please return to: Financial Services (Insurance & Investment Funds) Unit
Large Cases Division
Ballaugh House
73/79 Lower Mount Street
Dublin 2

Vendor details

Name: _____
Address: _____

TIN.: _____

Purchaser details

Name: _____
Address: _____

TIN.: _____

Is the purchaser connected with the vendor for the purpose of the Taxes Acts? [Yes / No]

Details of relationship between vendor and purchaser: _____

Units transferred

Name of IREF: _____
Address of IREF: _____

Tax reference number of IREF: _____
Description of IREF taxable event: _____
Unitholding prior to IREF taxable event: _____
Date of IREF taxable event: ____ / ____ / ____
Number of units: _____
Proceeds¹: _____

Application is hereby made by/on behalf of the vendor for confirmation that the deduction required by section 739T(2) should not be made out of the consideration arising on the occurrence of the IREF taxable event described herein. The grounds of the application are (Tick the appropriate box):

- ☐ (a) the vendor is not a specified person [copy of the declaration provided to the IREF must be provided]
- ☐ (b) the application is made on behalf of an investor who is entitled to a full refund of any withholding tax suffered under section 739Q(3)

¹ Proceeds must exceed €500,000

Indirect Investor details

Investor address: _____

TIN of the investor: _____

The investor would, if the units were held directly, fall within the following paragraph of the definition of 'specified person' in section 739K(1) [tick box]:

- IREF taxable amount indirectly attributable to the Investor: [] being [%]

1. The investor indirectly invested in units in the IREF [group structure (indicating name, address and tax residence of each entity along with a description on the type of entity) required along with third party proofs of ownership]
2. The IREF would not be regarded as a personal portfolio IREF of the investor [detailed explanation of the relationship between the investor and the IREF required].
3. Any withholding tax which would otherwise be operated on the IREF taxable event is not otherwise repayable.

Signature of vendor: _____

Name of authorised signatory (print): _____

Capacity in which declaration is made: _____

Date: / /

Signature of purchaser: _____

Name of authorised signatory (print): _____

Capacity in which declaration is made: _____

Date: ____ / ____ / ____

The clearance provided by this form may be withdrawn if the details are incorrect or if the transaction set out is found to have been made for the purpose of tax avoidance.

The Revenue Commissioners reserve the right to request further details in respect of any information contained in this form.