The taxation of offshore funds managed in Ireland and using the services of an independent authorised agent resident in Ireland

Part 27-05-01

This document should be read in conjunction with Chapter 5, Part 27, TCA 1997, and section 1035 and section 1035A TCA 1997

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Revenue
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1 Introduction

The purpose of this manual is to outline the tax treatment of –

- Certain offshore funds which are formed under the laws of a jurisdiction other than Ireland, but which are managed in Ireland.
- Certain non-resident persons, including offshore funds, who avail of the services of an independent authorised agent who is an investment or asset manager resident in the State.

2 Offshore Funds Managed in Ireland

The relevant legislation is contained in section 747G TCA 1997.

2.1 Relevant UCITS

The term 'UCITS Directive' refers to the European Union (EU) Undertakings for Collective Investment in Transferable Securities (UCITS) IV Directive, which was adopted across Member States in 2009 and transposed into Irish law in July 2011. The Directive provided for the co-ordination of laws, regulations and administrative provisions relating to UCITS. The legislation transposing the Directive allows for UCITS funds to be marketed across the EU and for the cross-border management of such funds in the EU. Consequently, UCITS formed under the laws of one Member State, may be managed by a management company regulated under the laws of another Member State, that is, a 'relevant UCITS'.

2.2 Relevant AIFs

The Alternative Investment Fund Managers Directive (AIFMD) was transposed into Irish law in July 2013. The Directive regulates the management of collective investment funds that do not qualify as UCITS. The legislation transposing the Directive allows for Alternative Investment Funds (AIFs) formed under the laws of a jurisdiction other than Ireland to be managed by a manager authorised in Ireland, that is, a 'relevant AIF'.

3 Tax treatment

3.1 General

The provisions of section 747G operate to ensure that a fund (whether constituted as a Plc, an ICAV, a unit trust or such like), which would not otherwise be within the charge to tax in Ireland, is not brought within such a charge solely as a result of having an Irish manager.

3.1.1 Fund level

Section 747G(2) provides that —

- A UCITS formed under the law of an EU Member State, other than Ireland, will not be liable to tax in Ireland by reason only of having a management company that is authorised under Irish law

  and

- An AIF formed under the laws of a jurisdiction, other than Ireland, will not be liable to tax by reason only of having a manager that is authorised under Irish law.

3.1.2 Investor level

Section 747G(3) provides that —

- Irish resident investors in a 'relevant UCITS' will be treated as unit holders in an offshore fund (refer to Tax and Duty Manuals Part 27-02-01 and Part 27-04-01 for more details)

  and

- Irish resident investors in a 'relevant AIF' will be treated as unit holders in an offshore fund.

4 Non-resident persons, including offshore funds, using the services of an Independent Authorised Agent

Section 1035 TCA provides that, subject to section 1035A, a non-resident person will be assessable and chargeable to income tax in Ireland in respect of any profits or gains arising through or from any factorship, agency, receivership, branch or management in the State, in the name of the factor, agent, receiver, branch or manager.

Section 1035A is a relieving provision that removes a potential liability to Irish tax that may arise to a non-resident person carrying on a financial trade in the State through an independent investment/asset manager who is resident in the State.

A financial trade is defined as a trade exercised in the State by a non-resident person through an authorised agent, within the terms of the authorised agent's authorisation.

4.1 Authorised Agent

An authorised agent is –

1. A person acting under the Investment Intermediaries Act, 1995;
2. A person acting under the Regulation 8 of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017);

3. A person acting under an authorisation corresponding to 1 or 2 above given by the competent authority of an EU Member State for the purpose of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, and which provides an investment service through a branch or agency in Ireland pursuant to the European Union (Markets in Financial Instruments) Regulations 2017;
4. A credit institution within the EU;
5. A company authorised in Ireland under the UCITS Regulations that is carrying on a trade consisting of, or including, the management of 'relevant UCITS' whether they are in the form of unit trusts, common contractual funds or investment companies.
6. Irish authorised Alternative Investment Fund Managers ("AIFMs"), or an Irish branch or agency of an AIFM authorised under the laws of another EEA State.

4.2 Independence of Authorised Agent

In order for the authorised agent to be independent in relation to the non-resident person carrying on a financial trade, that agent must –

- Act in the ordinary course of the agent's business in an independent capacity and the commercial relationship between the agent and non-resident person must be as at arm's length,
- Have limited economic involvement in the trade of the non-resident person. This means that the profits or gains of the financial trade carried on through the authorised agent should not exceed 20% of the non-resident person's total profits or gains from their financial trade. This limit may only be breached if Revenue is satisfied that such a breach is of a temporary nature.
- Not otherwise act for the non-resident person.

4.3 Corporation Tax

Section 1040 TCA 1997 provides that the provisions of sections 1035 and 1035A apply in the same manner to a company subject to Corporation Tax as to a person subject to Income Tax.