

## **Section 110 Companies Legislative Amendment – September 2016**

### **Background on Section 110 Companies**

Section 110 of the Irish Taxes Consolidation Act, 1997 provides advantageous tax treatment for Irish SPVs that meet the “qualifying companies” requirements. Section 110 companies are widely used by non-UCITS funds. “Qualifying companies” must:

- Be resident in Ireland for tax purposes
- Acquire, hold or manage “qualifying assets”
- Carry out a business of holding and/or managing these “qualifying assets”
- Carry out all transactions at arm’s length values
- Carry on no other activities apart from activities which are ancillary to that business.

Section 110 companies must hold “qualifying assets” which include financial assets (e.g. shares, bonds, futures, options, swaps, loan portfolios and lease portfolios), commodities (tangible assets), property and plant and machinery.

In a typical fund structure, the Section 110 company holds the underlying portfolio of assets and issues a profit participating loan note which is then held by the investment fund.

Section 110 companies are liable for tax at 25% on their profits. The taxable profit of a Section 110 company is net of the interest payable on the profit participating loan note. Thus, the actual profit on which tax is based is negligible.

### **Recent Developments**

This week the Irish Minister for Finance announced changes to the Irish Taxes Consolidation Act, 1997 regarding the use of Section 110 companies to invest in Irish property (land, commercial property and residential property). With effect from the 6<sup>th</sup> September 2016, Section 110 companies investing in Irish property will face limitations on the extent to which interest is tax deductible.

It is important to note that the proposed amendments will not affect Section 110 companies which are not involved in Irish property transactions. The Irish Government has also acknowledged the significance of the securitisation and funds sectors in the Irish economy and the benefits that Section 110 companies offer to “qualifying companies”.

### **How can KB Associates Assist?**

KB Associates offers a range of services to investment funds (including those using Section 110 companies) as follows:

- The provision of designated persons to perform UCITS business plan and AIFMD programme of activity managerial functions
- The provision of UCITS/AIF operational support
- The provision of UCITS/AIF management company services
- Service provider selection
- The provision of directors
- MLRO services
- Company secretarial services.

If you would like to discuss any issues raised in this article or related to KB Associates’ services in general, please feel free to contact Mike Kirby (+353 1 667 1980), Peter Northcott (+44 203 170 8813) or Mike Parton (+1 345 946 4224).