

IMPACT OF THE BACKDATED VAT CHANGE FOR DUTCH-BASED CLOs

Europe's market for collateralized loan obligations experienced a revision to an existing Dutch ruling. The revision will affect certain vehicles with a value-added tax and will (negatively) impact equity returns.

In February 2020, various directors of CLO special purpose vehicles domiciled in the Netherlands have been informed by the Dutch tax authorities that an annual 21% tax will be applied to the vehicle's management fee. A decision that is highly likely to be appealed by Dutch law firm Baker & McKenzie Amsterdam N.V.

This 21% VAT applies to all outstanding Dutch SPV CLOs and warehouses and is back dated to 1 April 2019 and the backdated VAT bills could be as much as €300-400k and similar amounts per annum on ongoing basis.

A SOLUTION? IRELAND!

The above-mentioned revision of an existing Dutch ruling obviously has no effect in Ireland. Therefore, Ireland as a domicile for your CLOs could be a solution.

Apart from the difference in VAT over the management fee, the ongoing running costs for CLOs in Ireland are approximately up to 30% less than in the Netherlands. Additionally, the liquidation process is significantly easier and more cost effective in Ireland. But there are many more advantages to Ireland as domicile.

- Irish SPVs are permitted to appoint discretionary investment managers and to engage in loan origination and to acquire partly paid loans.
- CLO SPVs in Ireland are not required to make a specified minimum profit, fall outside the scope of AIFMD, and any collateral management services supplied to an Irish CLO SPV are exempt from Irish VAT. Generally, an annual profit of 1.000€-1.250€ is retained in an Issuer Profit Account.
- There is a low tax cost due to Irish tax legislation which provides for special treatment in relation to Irish CLO SPVs under 'section 110' of the Irish tax code.
- There is no requirement for an Irish CLO SPV to be licensed or authorized by the Central Bank of Ireland.
- Non-EU managers can be appointed without the need of an EU MiFID II license.

The Central Bank of Ireland has issued clear guidance that an Irish CLO SPV does not need to seek authorization as, or appoint, an Alternative Investment Fund Manager (AIFM) under AIFMD, if it is either a financial vehicle engaged solely in activities where economic participation is by way of debt or other corresponding instruments which do not provide ownership rights in the financial vehicle as are provided by the sale of units or shares or a registered "financial vehicle corporation" (FVC Regulation).

Exemptions from the charge to Irish interest withholding tax should apply including:

- the "quoted Eurobond" exemption (a security issued by a company, quoted on a recognized stock exchange and carries a right to interest (usually with a non-Irish paying agent, if the notes are not cleared); and
- the "qualifying person" exemption (interest payments made by an Irish CLO SPV to any person who is not resident in Ireland and who is regarded as being a resident of a jurisdiction with which Ireland has entered into a double tax treaty).

WHY IRELAND AS A CLO ISSUER DOMICILE?

The Republic of Ireland is a popular country in which to set up business. Setting up business is quick, easy and cost-effective. It has a stable tax and legal structure, with attractive 12.5% corporate tax rates.

The country has a well established and recognized common law legal system, is politically stable and is committed to remaining part of the EU. The benefits accruing to the access to the European market and Eurozone remain a bonus, particularly in light of Northern Ireland's departure from the EU as part of Brexit.

The Republic of Ireland is a signatory to FATCA and over 70 double tax treaties. It has a track record for delivering for international investors and boasts many of the top global companies which have established business operations here.

TRUSTMOORE IRELAND

The most popular type of corporate entity for European CLO Issuers is an Irish Designated Activity Company (DAC). It is a private company limited by shares and can be incorporated, within 3-5 working days, with a share capital of only 1€. Trustmoore Ireland can help you set this up quick and worry-free. Orphan Status and Bankruptcy remoteness can be achieved by having a Share Trustee in place to hold the share(s) of the Issuer on trust. We have a Share Trustee vehicle in place which can easily assist in the structure.

Our team-members, spread across our Amsterdam and Ireland offices, have many years of CLO experience and worked on over 300 CLOs since the inception of the first European CLOs (called CDO then..) back in 1999. Our team can establish and set up your CLO from scratch and provide all the services you require in a consistent and dedicated manner. With all this experience we're able to help you with your new CLOs and any CLO move of jurisdiction.

Apart from this CLO solution, we are proud to provide a personal and tailored client-first approach to all our clients. Our firm is wholly owned by our management and we are truly independent and free of any conflict of interest. We are a single point of contact with an international team of expert presence in all the main financial jurisdictions. We embrace challenges, devise solutions and invest in long term relationships and innovative solutions.

As a unique, boutique-style corporate service provider, we provide management and administrative services involving ABS, CLO, MBS, multi-jurisdictional programs and repackaging's as well as other structured capital market transactions. Our clients include financial institutions, multinational corporations, private equity and asset managers.

AN OVERVIEW OF OUR STRUCTURED FINANCE & CAPITAL MARKET SERVICES

Governance

- SPV Incorporation
- Capitalization and ownership
- Company secretarial services
- Local Tax registration
- Transaction management, coordination and support
- Directorships – independent, personal and corporate
- Post-transaction dissolution

Administration, accounting, tax and tailored reporting

- Transaction, management and statutory accounting
- Consolidated financial statements
- Financial statement preparation under various GAAP systems
- Perform NAV calculations (for investor reporting)
- Cash management and payment services
- Audit coordination and support
- Tax computing and filings (VAT/CIT/PFIC)
- Regulatory reporting (ECB/FATCA/CRS/EMIR)
- Investor reporting

Trustee related

- Security-trustee services
- Collateral agent
- Escrow agent
- Data Agent
- Calculation and verification agent

Specialist services:

- KYC and compliance coordination
- Back-up issuer administrator
- Back up Cash Manager
- Independent Review Party
- Asset Valuation

KYC and compliance coordination:

- Identification of investors
- Sanction screening (WorldCheck)
- PEP screening (WorldCheck)
- Transaction Monitoring (automated using ComplianceWise)
- Enhanced Due Diligence (LexisNexis)
- FATCA/CRS reporting
- AIFMD Compliance
- EU MLD Compliance
- Compliance with local requirements

FIND OUT HOW WE CAN HELP YOU AND CONTACT US TODAY:



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