

THE REAL ESTATE  
INVESTMENT  
STRUCTURE  
TAXATION REVIEW

FOURTH EDITION

Editors

Giuseppe Andrea Giannantonio and Tobias Steinmann

THE LAWREVIEWS

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STRUCTURE  
TAXATION REVIEW

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# PREFACE

The real estate sector plays a crucial role in the global economy and social environment.

In particular, the commercial property sector offers the infrastructure needed for the growth and development of entrepreneurship and business, including offices, shops, industrial and logistics premises, and hotels. In Europe alone, commercial real estate represents a business of €8.5 trillion.

The real estate sector is also a fundamental source of employment. In 2019, the European real estate sector employed 4.2 million people – more than the car manufacturing and telecommunications sectors combined. Moreover, it provides residential accommodation and is seen as a tool to meet social and public needs. New types of properties are emerging and have increasingly been included in investment portfolios, such as senior living, student accommodation and life sciences. In addition, urban regeneration has become a key element of many decisions taken at EU level, boosting city renovation, decarbonisation and green transition. In this respect, the NextGenerationEU recovery fund will play a key role in supporting this transformation.

In this context, attracting investments from institutional investors such as pension funds, insurance companies and sovereign wealth funds is crucial for the growth of the real estate sector. In particular, it is desirable that those investors are involved in both financing large development projects and investing in properties held for rent.

Based on market practice, investments from foreign institutional investors are mainly carried out indirectly rather than through direct acquisitions, and particularly through specialised vehicles such as non-listed real estate funds, listed property companies and real estate investment trusts.

The emergency caused by the covid-19 pandemic over the past couple of years has affected the real estate sector like so many other sectors. Although any disturbance to private real estate valuations is normally only revealed over time, listed real estate stocks suffered a sharp decline in 2020. However, thanks to strategies put in place after the 2008 global financial crisis (GFC) (most notably restructuring of debt), the listed sector's recovery was five times faster than that following the GFC. With investors increasingly focusing on thematic investment, the post-crisis landscape has been characterised by higher demand for alternative real estate sectors and assets, accelerating a process of transformation that was already ongoing.

After a deep recession in most of the European economies in 2020 due to the pandemic, 2021 has been characterised by an economic recovery that, in principle, was forecasted to continue on a more moderate path in 2022 and 2023.

However, in April 2022, inflation in the eurozone reached a record level (7.5 per cent) due to heightened uncertainty and geopolitical risks as well as skyrocketing energy and raw material prices caused by the war in Ukraine. This is not slowing down investments despite the uncertainty, because the sector has strong fundamentals.

Based on the above, national legislators are facing a new phase of uncertainty, inflation and geopolitical risks that will have an impact on new provisions aimed at stimulating or attracting selected investments in their countries. Part of the NextGenerationEU recovery fund might be reviewed in light of new ‘what if’ scenarios as well as tax credits and allowances resulting from increased costs of construction. Any review of national legislation should also take into account international sanctions against Russia.

We are convinced that the role of the real estate sector as an economic, employment and social catalyst needs to be supported by a legislative framework that increases transparency and competitiveness and simplifies, as well as standardises, bureaucratic processes.

However, within the European Union, the covid-19 crisis, the conflict between Russia and Ukraine and, consequently, the rise in inflation have all had different impacts on different countries. This will, of course, further exacerbate differences between the interventions made by legislators in the individual jurisdictions, with allowances, tax credits, and other tax provisions introduced and applied very differently from one Member State to another. Generally, these disparities reflect the level of impact those elements have in particular jurisdictions, the economic policies followed by their respective governments and the level of resources available to achieve those aims.

Correlatively, national legislators will need to adapt any new provisions to those pre-existing types of specialised real estate investment vehicles that currently benefit from tax exemptions or other advantageous tax allowances, for both direct and indirect tax purposes.

Given all of the above, the aim of this volume is to provide a useful guide to those international and institutional investors that are willing to invest in real estate properties located in Europe and elsewhere, and to illustrate in a comparative manner possible alternatives for the establishment of investment platforms in Europe and investment vehicles at a local level. In particular, each country-specific chapter provides insights from leading experts into key tax considerations and investment opportunities based on the relevant national legislation. Furthermore, in this edition, we have sought to provide indications of any allowances and facilitations introduced temporarily in response to the current economic crisis that might also present investors with investment opportunities in specific countries.

We would like to thank the authors of this volume for their extensive expertise and their efforts to ensure the successful outcome of this work. We hope that the reader finds this volume useful and we welcome any comments and suggestions for improvement for the next edition.

**Giuseppe Andrea Giannantonio**

Chiomenti  
Milan

**Tobias Steinmann**

EPRA  
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June 2022



# IRELAND

*Ted McGrath, Anne Tobin, Lisa McCarthy and Diane Courtney*<sup>1</sup>

## I OVERVIEW

### i Investment vehicles in real estate

Irish real estate is a popular investment opportunity for both Irish resident and non-Irish resident investors. Understanding the Irish tax landscape is key to any investment decision, and investors should factor the potential Irish tax implications on the acquisition, rental and ultimate disposal of Irish real estate into their decision. Investors might wish to invest in Irish real estate directly through an Irish or non-Irish corporate entity or a tax-transparent partnership (e.g., an Irish investment limited partnership (ILP)). For larger investments, it might be preferable to invest via an Irish real estate fund (IREF) or an Irish real estate investment trust (REIT). We outline below some of the Irish tax considerations that should be taken into account in making any investment decision.

### ii Property taxes

There are a number of Irish taxes to consider when investing in, owning and disposing of Irish real estate.

#### *Indirect taxes*

##### *Stamp duty*

The purchaser incurs the liability for stamp duty, which is normally levied at 7.5 per cent of acquisition price for commercial property and 2 per cent for residential property (1 per cent on the first €1 million).

It might be possible to obtain a stamp duty refund if stamp duty at 7.5 per cent was paid on the acquisition of land on which residential housing is then built. There are a number of conditions that need to be met, including that building must commence within 30 months of the date of the acquisition of the land to obtain such refund, and there is a cap on the maximum amount of stamp duty that may be refunded.

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<sup>1</sup> Ted McGrath, Anne Tobin and Lisa McCarthy are partners and Diane Courtney is an associate at William Fry.

## VAT

The VAT treatment of a real estate sale will be dependent on the nature of the building, how it is used and its VAT history. Depending on the circumstances, the sale may also be subject to transfer of business relief, which may essentially exempt the sale from VAT. VAT on real estate is a complex area. The VAT implications of any real estate sale (including any capital goods implications) should be considered carefully and documented appropriately from a contractual perspective.

VAT incurred on the purchase of the real estate and on ongoing costs may be reclaimed depending on the VAT profile of the real estate and the nature of the use to which the real estate is put.

### ***Other tax considerations***

There are also a number of other relevant tax considerations in respect of Irish real estate. Some of these include the following.

- a* Local property tax (LPT) and rental registration: an annual LPT applies to Irish residential properties with any unpaid liabilities attaching to the property. Residential tenancies must be registered with the Residential Tenancies Board and registration is a condition of tax relief for interest incurred on the acquisition of the real estate.
- b* Tax compliance: irrespective of the holding structure chosen, Irish tax payment and compliance obligations will normally apply.
- c* Relevant contracts tax (RCT): RCT is a withholding tax that applies in Ireland to payments made by principal contractors to their subcontractors for certain construction operations. The rates of RCT are zero per cent, 20 per cent and 35 per cent, with an applicable rate dependent on the subcontractor's tax compliance history. A principal contractor is required to register for RCT and provide certain information to the Irish tax authorities (Revenue Commissioners), including the identity of the subcontractor, estimated contract value and duration, and location or locations at which the relevant operations will take place. There are significant penalties if a principal contractor fails to operate RCT correctly.
- d* Rates: non-residential properties are subject to rates, namely a commercial property tax. The commercial tenant would normally be liable for the rates, but if the building is vacant, the landlord becomes liable.
- e* VAT on management fees: services that are connected to real estate are typically considered to be provided wherever the real estate is situated. As such, when property management fees are incurred in respect of Irish real estate, they are likely to be subject to VAT in Ireland (irrespective of where the recipient of the service is established).
- f* Capital acquisitions tax (CAT): CAT may apply to a gift or inheritance of Irish real estate, regardless of the residence or domicile of the parties. The person who receives the gift or inheritance has the liability for CAT, which is charged at the rate of 33 per cent above certain tax-free thresholds, which depend on the relationship between the donor and the donee.

### ***Direct taxes***

Net rental income earned (as calculated under the relevant tax principles) is subject to Irish tax, irrespective of the residence of the investor. Irish resident and non-Irish resident corporate investors should be subject to corporation tax at 25 per cent on their net rental income. Operational expenses directly relating to the real estate should be deductible and capital allowances might also be available.

Interest on loans to acquire, improve or repair a property should normally be deductible against taxable rental income. There are various anti-avoidance provisions that can seek to deny an interest deduction, such as the EU Anti Tax Avoidance Directive (ATAD) interest limitation rule (ILR),<sup>2</sup> anti-hybrid mismatch provisions and the reverse hybrid mismatch provisions.<sup>3</sup>

Gains arising on disposals of Irish real estate held as investment assets are subject to Irish capital gains tax (CGT) at the rate of 33 per cent, regardless of whether the vendor is Irish tax resident; in other words, it has a worldwide application. A gain arising on the sale of unlisted shares in a company that derives the greater part of its value from Irish real estate is also subject to CGT at the rate of 33 per cent, regardless of whether the vendor is Irish tax resident; it also has a worldwide application.

Section 980 of the Taxes Consolidation Act 1997 (TCA 1997) ensures the functioning of the CGT regime by placing a responsibility on the purchaser to withhold 15 per cent of the total consideration on the purchase of certain assets and pay it over to the Revenue Commissioners. These assets include Irish real estate and unquoted shares in a company deriving the greater part of their value from Irish real estate. Sales proceeds in excess of €500,000 (€1 million in the case of residential property) will be subject to 15 per cent withholding tax if a CGT clearance certificate (Form CG50A) is not provided to the purchaser. The clearance certificate is generally available when the vendor is tax resident in Ireland, there is no CGT arising on the disposal or any CGT liability that does arise has been paid.

Guidance published by the Revenue Commissioners states that, in general, a loan secured on Irish land and a security that derives the greater part of its value from Irish land are both land for CGT purposes.

## **II ASSET DEALS VERSUS SHARE DEALS**

### **i Corporate forms and corporate tax framework**

#### ***Irish special purpose vehicle***

An Irish tax resident special purpose vehicle (SPV) acquiring Irish real estate is required to register for Irish corporation tax and (in most cases) VAT. These registrations can be obtained by completing and filing the relevant tax registration forms with the Revenue Commissioners.

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2 Ireland introduced an ATAD-compliant interest limitation rule in the Finance Act 2021, which became effective for accounting periods commencing on or after 1 January 2022.

3 The reverse hybrid mismatch rules apply to tax periods commencing on or after 1 January 2022.

Net rental income earned (as calculated under the relevant tax principles) should normally be subject to Irish corporation tax at 25 per cent. Operational expenses directly related to the real estate should be deductible, and capital allowances might also be available. Interest on loans to acquire, improve or repair a property should normally be deductible against taxable rental income. There are various anti-avoidance provisions that can seek to deny an interest deduction, such as the EU ATAD ILR, the anti-hybrid mismatch provisions and the reverse hybrid mismatch provisions.

If an Irish company realises a gain on the disposal of a property, a charge to Irish CGT at 33 per cent normally arises. The gain is calculated based on the sales proceeds (net of the incidental costs of disposal) less acquisition cost (plus the incidental costs of acquisition) and less any enhancement expenditure.

Sales proceeds in excess of €500,000 (€1 million in the case of residential real estate) will be subject to 15 per cent withholding tax when a CGT clearance certificate from the Revenue Commissioners (Form CG50A) is not provided to the purchaser.

The sale of Irish real estate might also result in the potential clawback of capital allowances when the value of the assets on which allowances are claimed exceeds their tax written-down value.

All transactions entered into with related parties are required to be completed on an arm's-length basis in accordance with Ireland's transfer pricing rules.

Depending on the ownership of the Irish SPV, it may be considered a close company and incur a close company surcharge on undistributed income.

The VAT treatment of a real estate sale will be dependent on the nature of the building and its VAT history. Depending on the circumstances, the sale may also be subject to transfer of business relief, which may essentially exempt the sale from VAT. VAT on real estate is a complex area. The VAT implications of any real estate sale (including any capital goods implications) should be considered carefully and documented appropriately from a contractual perspective.

A gain arising on the sale of unlisted shares in an Irish SPV that derives the greater part of its value from Irish real estate is also subject to CGT at the rate of 33 per cent.

Irish dividend withholding tax (DWT) at the rate of 25 per cent might need to be operated if the Irish SPV is paying dividends. However, Ireland has a broad range of exemptions from DWT under domestic legislation.

Irish interest withholding tax (WHT) at the rate of 20 per cent might need to be operated on interest payments. Ireland also has broad domestic exemptions from WHT on interest.

### ***Foreign entity***

The Finance Act 2021 introduced a change from the income tax basis of taxation to the corporation tax basis of taxation for rental income paid to non-Irish resident corporate landlords. The change took effect from 1 January 2022 and means that a non-Irish tax resident corporate entity owning Irish real estate is required to register for Irish corporation tax and (in most cases) VAT. These registrations can be obtained by completing and filing the relevant tax registration forms with the Revenue Commissioners.

The payment of rent to foreign landlords is generally subject to 20 per cent withholding tax on rents. The tenant is normally obliged to withhold this tax. However, the appointment of a local Irish collection agent avoids this withholding obligation. However, such agent takes on responsibility to the Revenue Commissioners to ensure that any Irish tax arising on the rents is paid. Any such withholding tax is available as a credit against the foreign landlord's Irish corporation tax liability.

It might be possible to recover VAT incurred on the purchase of the real estate and on ongoing costs, depending on the VAT profile of the real estate and the nature of the use to which the real estate is put.

The Irish tax implications on the disposal of Irish real estate by a non-Irish tax resident corporate entity are broadly similar to those outlined for an Irish SPV. The CG50 clearance provisions (as discussed above under 'Irish special purpose vehicle') also apply.

The disposal by non-Irish resident shareholders of their shares in the foreign entity could also come within the charge to Irish CGT if the foreign entity's shares are unlisted and derive the greater part of their value from Irish real estate. Relief under the terms of the relevant double taxation agreement is generally not available other than in a small number of cases.

## **ii Direct investment in real estate**

The direct Irish tax implications of investing in Irish real estate by corporate entities (Irish or non-Irish) are discussed above. The indirect tax considerations are set out below.

### ***Stamp duty***

The purchaser bears the liability for stamp duty, which is normally levied at 7.5 per cent of the acquisition price for commercial property and 2 per cent for residential property (1 per cent on the first €1 million).

It might be possible to obtain a stamp duty refund if stamp duty at the 7.5 per cent level was paid on the acquisition of land on which residential housing is then built. There are a number of conditions that need to be met to obtain such refund, including that building must commence within 30 months of the date of the acquisition of the land, and there is a cap on the maximum amount of stamp duty that may be refunded.

### ***VAT***

The VAT treatment of a real estate sale will be dependent on the nature of the building and its VAT history. Depending on the circumstances, the sale may also be subject to transfer of business relief, which may essentially exempt the sale from VAT. VAT on real estate is a complex area. The VAT implications of any real estate sale (including any capital goods implications) should be considered carefully and documented appropriately from a contractual perspective.

VAT incurred on the purchase of the real estate and on ongoing costs may be reclaimed depending on the VAT profile of the real estate and the nature of the use to which the real estate is put.

### iii Acquisition of shares in a real estate company

#### *Stamp duty*

Stamp duty at the rate of 1 per cent applies on the transfer or conveyance of shares in an Irish incorporated company. No stamp duty arises when shares are newly issued by an Irish incorporated company. The transfer or conveyance of shares in a non-Irish incorporated company is generally outside the scope of Irish stamp duty.

Section 31C of the Stamp Duties Consolidation Act 1999 (the SDCA 1999) is an anti-avoidance provision. When the provisions of Section 31C of SDCA 1999 apply, the rate of stamp duty applicable on the acquisition of shares in a real estate company is 7.5 per cent. The provisions may apply to companies (Irish and non-Irish incorporated), certain collective investment undertakings (particularly IREFs, discussed below) and partnerships. The provisions of Section 31C of the SDCA 1999 apply when two conditions are met:

- a the control test: there is a conveyance or transfer on sale of shares or marketable securities, units, or interests that derive the greater part of their value from (non-residential) Irish real estate and the transfer results in a change in the person or persons having control over the real estate; and
- b the purpose test: it is reasonable to consider that the real estate:
  - was acquired with the sole or main aim of realising a gain from its disposal;
  - was or is being developed with the sole or main aim of realising a gain from its disposal; or
  - was held as trading stock.

For acquisitions of certain residential property made on or after 20 May 2021, Section 31E of the SDCA 1999 imposes a 10 per cent rate of stamp duty on the acquisition of 10 or more residential units within a 12-month period. The term 'residential units' includes houses and duplexes but not apartments. The 10 per cent rate does not apply if a person acquires nine residential units within a 12-month period; however, if a 10th unit is acquired, the 10 per cent rate applies and additional stamp duty is payable on each of the prior acquisitions.

The 10 per cent rate will also apply to shares, units in an IREF or interests in a partnership that derive value, directly or indirectly, from residential units. Similar to the position introduced by Section 31C of the SDCA 1999, for the 10 per cent rate to apply, the transfer must result in a change in the person or persons having control over the residential units.

#### *CGT*

Gains arising on the disposal of unquoted shares deriving the greater part of their value from Irish real estate are subject to CGT at 33 per cent. Sales proceeds in excess of €500,000 (€1 million in the case of residential property) will be subject to 15 per cent withholding tax if a Form CG50A is not provided to the purchaser.

#### *CAT*

CAT may apply to a gift or inheritance of Irish shares in an Irish incorporated company. The person who receives the gift or inheritance has the liability for CAT, which is charged at the rate of 33 per cent above certain tax-free thresholds, which depends on the relationship between the donor and the donee.

## **VAT**

There is no Irish VAT on the acquisition of shares in an Irish company.

### **III REGULATED REAL ESTATE INVESTMENT VEHICLES**

#### **i Regulatory framework**

Irish alternative investment funds (AIFs) can be split between those that are regulated and supervised by the Central Bank of Ireland (CBI) and those whereby the manager of the Irish AIF is regulated under the EU Alternative Investment Fund Managers Directive (AIFMD).

#### **ii Overview of the different regulated investment vehicles**

We have outlined below the main Irish regulated investment vehicles used to invest in Irish real estate.

#### ***Irish real estate fund***

The Irish Collective Asset-management Vehicle (ICAV)<sup>4</sup> is an Irish regulated corporate investment fund that is authorised and regulated by the CBI. It is a popular vehicle for real estate investment. When 25 per cent or more of the value of the Irish fund is derived from Irish real estate, the ICAV is known as an Irish real estate fund (IREF). An IREF is subject to a specific set of tax rules and is generally used for larger real estate investments (e.g., over €100 million) and multiple real estate investments.

Rental income and gains earned by an IREF are exempt from Irish tax. However, distributions and gains on redemption or sale and other means of passing profits from the IREF to non-Irish resident investors (other than certain EU pension funds, EU life assurance companies and EU regulated investment funds) are subject to the IREF tax at 20 per cent. Irish resident investors are subject to a different tax regime: the investment undertaking tax (or exit tax).

There are measures to limit the benefit of highly leveraged IREFs; these include a loan to cost (LTC) restriction and a financing cost restriction. Only interest incurred on debt up to a limit of 50 per cent of the cost of the property assets will be deductible. When debt is greater than 50 per cent, there is a formula to treat any interest as income of the IREF, which gives rise to a tax charge for the IREF at 20 per cent.

In addition, there is also a financing cost restriction whereby financing costs are essentially restricted to 80 per cent of the IREF's profits. Any excess over this amount gives rise to a tax charge for the IREF at 20 per cent. There is a provision to not double-count interest between the LTC restriction and the financing cost restriction. Third-party debt may be excluded from the remit of the rules, subject to complex anti-avoidance provisions.

An IREF should not be subject to Irish tax on the disposal of Irish property. However, if an IREF ceases to be an IREF (i.e., it no longer derives 25 per cent or more from Irish real estate), this is treated as an IREF taxable event, potentially giving rise to an IREF tax liability.

A gain on the disposal of units in the IREF by non-Irish resident investors should normally be subject to IREF tax at 20 per cent.

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<sup>4</sup> Irish variable capital companies or unit trusts are also regulated investment funds that can be used to hold Irish real estate.

The management (i.e., investment management, administration and marketing) of an IREF is generally exempt from Irish VAT. The receipt of certain services from outside Ireland that are subject to VAT, such as legal services, results in a requirement to register and self-account for Irish VAT. The VAT recovery entitlement of an IREF should be based on the VAT treatment of the real estate held (i.e., whether or not opted to tax).

### ***Investment limited partnership***

An ILP is an unincorporated common law partnership. An ILP is typically established as a qualifying investor alternative investment fund under the Investment Limited Partnerships Act 1994 (as amended) and is authorised and regulated by the CBI pursuant to the Irish AIFMD Regulations.

The ILP is structured through a limited partnership agreement (LPA) between a general partner and limited partners, the general partner being equivalent to the manager and the limited partners essentially shareholders.

Since the introduction of the Investment Limited Partnerships (Amendment) Act 2021, ILPs can now establish themselves as umbrella funds with segregated liability across subfunds. The assets and liabilities of each subfund are separate from each other, belonging exclusively to the partners holding an interest in that particular subfund. This, along with new provisions for migration of ILPs in and out of Ireland and the streamlining of the redemption and withdrawal process, has made the ILP a more attractive investment structure.

The ILP is treated as transparent from an Irish tax perspective. The relevant income, relevant gains and relevant losses are treated as arising or, as the case may be, accruing to the limited partners in accordance with the terms of the LPA as if directly in the hands of the investor. Each partner in an ILP that invests in Irish real estate is required to register for Irish tax and file annual Irish tax returns.

The management (i.e., investment management, administration and marketing) of an ILP is generally exempt from Irish VAT. The receipt of certain services from outside Ireland that are subject to VAT, such as legal services, results in a requirement to register and self-account for Irish VAT.

There is an exemption from stamp duty on the transfer of a limited partnership interest in an ILP. However, when the provisions of Sections 31C or 31E of the SDCA 1999 (discussed above) apply, a 7.5 per cent or a 10 per cent stamp duty exposure on the assignment of limited partnership interests arises.

### ***Common contractual fund***

Common contractual funds (CCFs) are a form of investment fund established by a contractual relationship whereby a management company is established under deed and investors or unitholders buy units in the fund. The CCF does not have a separate and distinct legal personality from the unitholders and the unitholders own the underlying assets in the CCF in proportion to the number of units held.

A CCF is an asset-pooling fund structure allowing cost savings, enhanced returns and operational efficiency through economies of scale. A CCF does not have a separate legal personality and is transparent from an Irish tax perspective. The relevant income, relevant gains and relevant losses are treated as arising or, as the case may be, accruing to the unitholders.



As a tax-transparent entity, a CCF is outside the scope of Irish tax on income and gains (i.e., the income and gains are considered to arise to the CCF's unitholders and not to the CCF itself). Each unitholder in a CCF investing in Irish real estate is required to register for Irish tax and file annual Irish tax returns.

The provision determining that a CCF is transparent for Irish tax purposes applies only when the units of the CCF are:

*an asset of a pension fund or beneficially owned by a person other than an individual, or . . . held by a custodian or trustee for the benefit of a person other than an individual.<sup>5</sup>*

The management (i.e., investment management, administration and marketing) of a CCF is generally exempt from Irish VAT. The receipt of certain services from outside Ireland that are subject to VAT, such as legal services, results in a requirement to register and self-account for Irish VAT.

## IV REAL ESTATE INVESTMENT TRUSTS AND SIMILAR STRUCTURES

### i Legal framework

An Irish REIT is an Irish incorporated company. Its shares must be listed on the main market of a recognised EU stock exchange.

An Irish REIT may be the preferred investment vehicle for large investments (e.g., over €250 million) with a wide investor base. Unlike an IREF, a REIT is traded on a stock exchange with transactions between investors.

### ii Requirements to access the regime

A REIT must meet a number of conditions, including the following:

- a it must be an Irish incorporated company and be resident for the purpose of tax in Ireland only;
- b its shares must be listed on the main market of a recognised stock exchange in an EU Member State;
- c it must not be a closely held company;
- d it must hold at least three properties with no single property representing more than 40 per cent of the total market value of the REIT;
- e it must maintain a property to financing costs ratio of 1.25:1;
- f it must ensure that the aggregate of the specified debt does not exceed 50 per cent of the aggregate market value of the business assets of the REIT;
- g at least 75 per cent of its income must come from its property rental business; and
- h it must have a diversified share ownership and distribute at least 85 per cent of its property income annually on or before the specified date of return date for the accounting period in relation to the REIT.

### iii Tax regime

A company must notify the Revenue Commissioners of its intention to be a REIT (Form REIT 1) and confirm that all of the necessary conditions have been met.

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<sup>5</sup> Taxes Consolidation Act 1997, Section 739I (TCA 1997).

The REIT is designed to provide after-tax returns to investors similar to a direct investment in real estate by eliminating the double layer of taxation at corporate and shareholder level, which would otherwise apply if the real estate was held by a real estate rental company.

Irish rental income and capital gains earned by the REIT are normally tax exempt. Certain gains, such as development gains, can be taxable depending on the specific circumstances.

A REIT must distribute at least 85 per cent of its real estate income annually, and DWT (at the rate of 25 per cent) is normally operated on such distributions. A refund of an element of DWT might be available under the relevant double taxation agreement of the country of residence of the shareholder and Ireland. Such dividends do not benefit from the broad range of domestic DWT exemptions available for non-REIT dividends. The Revenue Commissioners' guidance on REITs clarifies that the EU Parent–Subsidiary Directive can apply to grant an exemption from DWT. This could be the case when an EU tax resident company owns more than 5 per cent of the REIT.

In addition, a REIT must distribute or reinvest the net proceeds of a disposal of a rental property. The REIT will incur a tax charge of 25 per cent of the difference between its distribution requirement and the amount actually distributed. The Revenue Commissioners' guidance also confirms a relaxation in relation to how proceeds from property disposals must be used to avoid the need to distribute those proceeds. The Revenue Commissioners accept that the proceeds can be used to repay debt on other properties if certain conditions are met (the legislative provision refers to only repaying debt on the particular property that was disposed of).

When a REIT makes a distribution to a holder of excessive rights, the REIT will be liable to additional tax. A holder of excessive rights is a person who is entitled, directly or indirectly, to at least 10 per cent of the property income dividend distribution, or who is entitled to or controls, directly or indirectly, at least 10 per cent of the share capital or of voting rights in the REIT (or in the principal company of a group REIT).

If a REIT acquires an asset and develops the asset to the extent that the cost of development exceeds 30 per cent of the market value of the asset at the time the development commenced and the asset is then disposed of within three years of completion of the development, then the corporation tax and CGT exemptions applicable to the REIT should no longer apply.

#### **iv Tax regime for investors**

Investing in a REIT provides investors with a way of investing in a diverse real estate portfolio that facilitates risk diversification while not actually owning the real estate. Investing in a REIT also offers smaller investors the opportunity to invest in commercial properties.

Although the REIT is exempt from Irish corporation tax, distributions and gains for the investors are subject to Irish tax.

As noted above, a REIT must distribute at least 85 per cent of its real estate income annually, and DWT (at the rate of 25 per cent) is normally operated on such distributions. A refund of an element of DWT might be available under the relevant double taxation agreement of the country of residence of the shareholder and Ireland. Such dividends do not benefit from the broad range of domestic DWT exemptions available for non-REIT dividends. As discussed above, the Revenue Commissioners' guidance on REITs clarifies that the EU Parent–Subsidiary Directive can apply to grant an exemption from DWT. This might be the case when an EU tax resident company owns more than 5 per cent of the REIT.

Non-Irish resident investors should be exempt from CGT on any gains arising on a disposal of their shares in the REIT as the shares in the REIT are publicly traded.

Stamp duty at the rate of 1 per cent normally applies on the transfer of shares in a REIT.

Irish corporate resident investors may receive distributions from the REIT gross of DWT (once the relevant declaration is in place prior to the payment of the distribution) but should be subject to corporation tax at the rate of 25 per cent on distributions (collected through their corporation tax return) and CGT at the rate of 33 per cent on any gains arising on disposal of their shares in the REIT.

Certain Irish resident investors, including charities and pension funds, may receive distributions from the REIT gross of DWT subject to completing the relevant declaration.

#### **v Forfeiture of REIT status**

A REIT is required to file an annual statement (Form REIT 3) with the Revenue Commissioners confirming that it has met the necessary conditions throughout the year. If the annual statement is not filed or an incomplete statement is filed, the REIT will be treated as having ceased to be a REIT.

If a REIT intends leaving the REIT regime, an uplift in the tax base of properties held at that time to market value arises only if the REIT has been in existence for 15 years.

## **V INTERNATIONAL AND CROSS-BORDER TAX ASPECTS**

### **i Tax treaties**

Ireland has a very extensive double taxation treaty network with 76 double taxation treaties signed, 73 of which are currently in force.

On 29 January 2019, Ireland deposited its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument (MLI)) with the OECD.

The main changes to Ireland's double taxation treaties as a result of the MLI include:

- a* a principal purpose test;
- b* a tie-breaker rule based on mutual agreement to determine residency for dual resident entities; and
- c* dispute resolution measures.

### **ii Cross-border considerations**

There are no restrictions on cross-border investment into Ireland, such as exchange controls or limits on foreign direct and indirect investment in real estate.

### **iii Locally domiciled vehicles investing abroad**

Irish CBI-regulated investment funds that hold non-Irish real estate are generally exempt from Irish tax.

Irish corporates that invest in non-Irish real estate are generally taxable at 25 per cent on net rental income received and at 33 per cent on gains arising on disposals of non-Irish real estate.

## VI YEAR IN REVIEW

### i Real estate market

The Irish real estate market performed well in 2021, considering the vagaries imposed by covid-19. Transactional activity declined in most sectors of the market in the first half of the year because of lockdown restrictions. This activity grew again with the easing of travel restrictions in the latter part of 2021.<sup>6</sup> The third quarter alone boasted transaction volumes of more than double those of the first and second quarters of the year in most sectors.<sup>7</sup> There was a strong finish to the year with €2 billion of commercial property traded in the final quarter, bringing the total investment volume of 2021 to €5 billion.<sup>8</sup>

In the office market, 1.7 million square feet of office space was transacted last year.<sup>9</sup> This is a slight increase from 2020 and was a healthy performance considering the uncertainties surrounding yield potential in this sector and the nationwide transition to remote working. However, the frequently changing guidance on working from home negatively impacted office lettings, with just over 153,000 square metres let last year.<sup>10</sup>

On 11 February 2021, an updated version of the Green Loan Principles (GLP) and Guidance on Green Loan Principles (GLP Guidance) was published by the Loan Market Association, Asia Pacific Loan Market Association and Loan Syndications and Trading Association. The GLP, initially launched in March 2018, set out a framework of market standards and voluntary guidelines that participants are encouraged to adopt across the green loan market.<sup>11</sup>

The Dublin area industrial and logistics sector finished strong in the final quarter of 2021, with 788,551 square feet of floorspace over 41 transactions.<sup>12</sup> The level of production activity in the overall construction sector increased by 7.5 per cent in the third quarter of 2020.<sup>13</sup> This was a bounceback from the earlier quarters when a government-mandated lockdown saw the sector grind to a halt. Annual residential investment rose to €5.5 billion in 2021, €2.5 billion more than the previous year.<sup>14</sup> This was a positive increase and is considered robust, given the uncertainty in market conditions that continued to flow from 2020 into 2021.

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6 2022 Ireland Market Outlook CBRE.

7 *ibid* pg 7.

8 <https://www.cushmanwakefield.com/en/ireland/insights/covid-19-impacts-ireland-real-estate>.

9 <https://www.colliers.com/en-ie/research/q4-2021-dublin-office-market-report>.

10 2022 Ireland Market Outlook CBRE pg 16.

11 A more detailed analysis from William Fry's banking department can be found at <https://www.williamfry.com/newsandinsights/news-article/2021/03/16/sustainable-finance-update-an-overview-of-the-latest-legal-developments-in-sustainable-finance>.

12 <https://www.jll.ie/en/trends-and-insights/research/jll-industrial-market-report-q4-2021>.

13 <https://www.cso.ie/en/releasesandpublications/er/pbci/productioninbuildingandconstructionindexquarter32021/>.

14 <https://www.savills.ie/research-and-news/savills-news/323630/irish-investment-market-tops--5.5bn-in-2021>.

## ii ILP

The Investment Limited Partnerships (Amendment) Act 2021 permits ILPs to be established as umbrella funds, with segregated liability across subfunds. This, along with new provisions for migration of ILPs in and out of Ireland and the streamlining of the redemption and withdrawal process, has made the ILP a more attractive investment structure. Seven ILPs were set up in 2021, and four so far in 2022, as recorded up to 24 March 2022, out of a total of 14 registered ILPs.

## VII OUTLOOK

The prospects for 2022 are promising. The close of 2021 saw Dublin secure its place as the fifth most active real estate market in Europe and achieving 13th rank out of 31 European cities for real estate prospects.<sup>15</sup> The first quarter of 2022 has also seen the vacancy rate in the market created by covid-19 mostly let.<sup>16</sup>

Although the recovery of the sectors hit hardest by the pandemic will be gradual, the opportunities for real estate investment in Ireland will grow as the country reopens.

Some uncertainty remains over long-term office requirements as most companies are still implementing back-to-work programmes for employees. Hybrid working models are being tested by many companies, which places further ambiguity over long-term office rentals. Should these models prove successful, they could lead to a surge in more flexible assets and letting arrangements.<sup>17</sup> There has been an increase in solution-focused dialogue between landlords and tenants in tackling the difficulties brought about by covid-19.<sup>18</sup> As such, the use of short-term leases or break options could be a solution.

Although the retail sector is not as ripe for investment in 2022 compared with pre-covid, because of the sharp increase in e-commerce and the decline in brick-and-mortar sales throughout various lockdowns, this might have a positive effect on other sectors. We also expect retail to reinvent itself to become more of a destination experience. This will be of particular importance in enticing consumers back to physical stores, given the growth in use of digital retail markets over the past two years, which has helped set a consumer habit of buying online.<sup>19</sup>

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15 <https://www.pwc.ie/media-centre/press-releases/2021/emerging-trends-real-estate-europe.html>.

16 Bi-Monthly research report May 2022.

17 <https://www.pwc.ie/media-centre/press-releases/2021/emerging-trends-real-estate-europe.html> 2022 Ireland Market Outlook.

18 2022 Market Outlook.

19 <https://www.pwc.ie/media-centre/press-releases/2021/irish-consumer-insights-pulse-survey.html>.

An environmental, social and governance (ESG) approach is now a major factor influencing property transactions. As such, a preference for sustainable buildings or those with ESG features that align with corporate commitments might emerge. A premium can be charged on green rentals,<sup>20</sup> and whether this develops into a market norm is yet to be seen. The importance of ESG in the real estate market is evident by the fact that awards are available to companies in various sectors. For example, the Pension Real Estate Investment ESG Award 2021 was recently granted to Hines European Core Fund for its ESG credentials. It is also influencing consumer trends,<sup>21</sup> which might impact the type of property to let that is chosen by retailers.

The logistics and the private rental sectors act as replacements for the previously fertile soil of the retail sector and will continue to attract investors looking to redirect their focus to the Irish real estate market. One of the biggest threats to the market is inflation triggered by the Russia–Ukraine conflict. The construction sector, of all sectors, is likely to bear the most severe hit.<sup>22</sup> The extent to which inflation triggers an increase in rent during 2022 remains to be seen for now, with some sources suggesting that the impact will not occur until 2023.<sup>23</sup>

Overall, the gradual retreat of covid-19, coupled with new emerging trends, gives rise to optimism that the Irish real estate market will perform well in 2022 and that investor appetite for Irish real estate will quickly return to pre-pandemic levels and beyond.

The Industrial Development (Miscellaneous Provisions) Bill (the Bill) has been announced in the Irish Government Legislation Programme Spring Session 2022.<sup>24</sup> If enacted, the Bill will allow the Industrial Development Agency (IDA) to work with the Ireland Strategic Investment Fund to develop office buildings on IDA-owned land in regional areas for commercial purposes. It is unlikely that the Bill, even if passed this year, will contribute to much transactional growth for 2022.

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20 Bi-monthly report CBRE, Dublin Office Market Report Q4.

21 <https://www.pwc.ie/media-centre/press-releases/2021/irish-consumer-insights-pulse-survey.html>.

22 SCSi PwC Construction Market Monitor 2022 quotes a surveyor: there will be ‘unprecedented inflation in building costs’, referring to inflation more generally as opposed to inflation triggered by the Russia–Ukraine conflict. It also mentions that increased energy costs, labour shortages, increases in material prices and delays on project delivery will impact the sector.

23 Dublin Office Market Q4 and Cushman & Wakefield both suggest that an increase will not be seen until 2023.

24 <https://www.gov.ie/en/press-release/10b60-spring-legislation-programme-published-by-government-chief-whip-jack-chambers/>.

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