Investing in Irish Real Estate
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Introduction

The remarkable resurgence of interest in the Irish real estate market in recent times has been spearheaded by overseas investors and in particular by the hedge funds and private equity groups. Such investors are using the array of available Irish structures ranging from QIAIFs to REITs to SPVs to mitigate or eliminate taxes that would otherwise arise on their real estate investments. Increasingly such investment structures are being used not just to hold Irish real estate but as a platform to hold interests in foreign real estate as well. The growing demand for alternatives to bank finance is also likely to enhance the attractiveness of such structures.

Ireland’s attractiveness for foreign investors is further enhanced by a transparent tax regime which complies fully with OECD guidelines and competition law and is accompanied by a rapidly growing network of international tax treaties and agreements.
Irish real estate can be subject to several taxes, which include at a high level:

- **Stamp Duty** - is a tax on documents which generally applies to a conveyance/transfer of Irish property. In general, the key factor affecting the amount of stamp duty is the value of the property. Stamp duty is payable by the person making the acquisition.

- **Value Added Tax (VAT)** - is a tax charged on the sale of goods or services. VAT is payable by the person making the acquisition.

- **Capital Gains Tax (CGT)** - is a tax charged on the capital gain (profit) made on the disposal of any asset. CGT is payable by the person making the disposal.

- **Capital Acquisitions Tax (CAT)** - may be payable on the receipt of a gift or an inheritance. CAT is payable by the person receiving the gift or inheritance.

- **Income/Corporation tax** - Level of taxation depends on trading status, and is payable by the person/company in receipt of the income.

- **Rates and Charges** - A property tax, known as Rates, applies to most commercial buildings. The Rates vary between local authorities and are payable by the occupier of the premises. Ireland has also recently re-introduced the concept of property taxes for residential property in the form of the Local Property Tax (LPT).

We have commented in more detail on each of these tax heads, including Rates, in appendix 2.
Investing in Irish Real Estate

For non-resident investors the traditional investment structure has been to invest in Irish real estate through a non-resident company thereby reducing the Irish income tax liability to 20% of taxable rental income.

A CGT charge would still apply to any capital gain realised on the disposal of Irish real estate although a CGT relief is available if the property was acquired between 7 December 2011 and 31 December 2014 and held for at least 7 years.

Rent paid to a non-Irish resident landlord is subject to 20% withholding tax which must be deducted by the tenant and remitted to the Irish Revenue. The tax withheld can be claimed by the landlord as a credit against their Irish income tax liability, with any excess credit available for refund. However, the requirement to withhold does not apply where rent is paid to an Irish agent of the non-resident landlord, such as a rent collection agent.

The charge to Irish income tax on rental income and CGT on the disposal of Irish real estate can be eliminated altogether for non-Irish resident investors where Irish real estate is held through an Irish regulated fund. Ireland offers a range of regulated real estate fund structures with differing levels of investment and borrowing restrictions, minimum subscription requirements and authorisation timeframes depending on the proposed portfolio composition and investor type.

All Irish regulated funds whether they are constituted as corporate entities or unit trusts are subject to the same taxation regime provided they are designated as Investment Undertakings under Section 739B of the Taxes Consolidation Act 1997.
It is important to note that the Alternative Investment Fund Managers Directive (“AIFMD”) may apply in respect of such Irish funds and their fund managers. The principal aim of AIFMD is to establish common requirements across the EU Member States for the authorisation and supervision of the managers of investment funds, other than UCITS funds and it contains detailed rules on delegation, transparency, conduct of business, remuneration, leverage and reporting.

**Qualifying Investor Alternative Investment Fund**

The most flexible and optimal vehicle for ‘professional investors’ in Irish real estate is the Irish Qualifying Investor Alternative Investment Fund (QIAIF). The Irish QIAIF is a regulated, specialist investment fund which is recognised internationally as tax efficient for investors thus giving it the ability to raise funds from professional / institutional investors. No restrictions are imposed on the investment objectives and policies of an Irish QIAIF or on the degree of leverage employed by it, subject to satisfying certain disclosure and counterparty requirements. A QIAIF is permitted to invest in real estate in any jurisdiction and as such, the Irish QIAIF offers much flexibility in terms of its investments.

The Irish QIAIF is a tax exempt vehicle and is exempt from Irish tax on income and gains regardless of where its investors are resident provided they are not Irish resident. The exemption includes the Irish CGT charge which would otherwise apply on the sale of Irish real estate or shares in a company deriving its value from Irish real estate. In addition, no withholding or exit taxes apply on income distributions or redemption payments made by an Irish QIAIF to non-Irish resident investors. There is no stamp duty on the transfer of QIAIF shares/units but stamp duty on the acquisition or transfer of the real estate would still apply.

As a result, the Irish QIAIF is an exceptionally efficient real estate holding vehicle.

**Irish Collective Asset-management Vehicle**

The Irish government has taken a significant step forward in the creation of a new corporate vehicle for Irish funds with the publication of the General Scheme of the Irish Collective Asset-management Vehicle (ICAV) Bill. This new form of investment fund, provides for a corporate entity that can elect its classification under the US check-the-box taxation rules.
The acquisition of loan portfolios provides an alternative to the direct acquisition of Irish real estate.

Ireland has a favourable tax regime for entities known as Section 110 companies. A Section 110 company is an Irish resident special purpose company which holds and/or manages “qualifying assets” and provides for an onshore investment platform in an environment of increased international focus on tax havens and transparency. A Section 110 company can acquire loans and loan portfolios and can also advance loans. While such entities are taxable at a rate of 25%, the taxable profits tend to be modest because of the use of tax efficient profit extraction mechanisms such as interest payable on profit participating loans.

The Irish Real Estate Investment Trust (REIT) was introduced by the provisions in the Finance Act 2013 with the first REIT listing on the Irish Stock Exchange on 18 July 2013. The launch of two more REITs quickly followed with further REITs expected.

A REIT is not chargeable to tax in respect of income of its property rental business or chargeable gains accruing on the disposal of assets of that property rental business.

While most distributions out of a REIT are subject to withholding tax at 20%, the REIT does not have to distribute capital gains and non-resident investors are not liable to CGT on the disposal of REIT shares.

REITs eliminate the double layer of taxation which typically hinders the holding of property through a company.

We have commented in more detail on each of these structures, in appendix 1.
Investing in Irish Real Estate

Why Ireland?

Ireland’s tax regime is transparent and is approved by the EU and the OECD. The OECD has measured Ireland in the highest tier of conformance possible with regard to standards of openness, compliance and accountability of the taxation regime.

Ireland’s professional service industry (tax, legal, regulatory and administrative environment) is highly experienced and globally recognised in implementing complex structured finance transactions in a cost effective manner.

Ireland has extensive experience in attracting inward investment with a globally recognised pro-active approach to business.

With a choice to adopt IFRS or Irish GAAP for financial reporting and US GAAP in certain circumstances, the Irish statutory regime is sufficiently agile to integrate with the majority of global organisations.

Certainty of tax treatment and tax neutrality is possible with appropriate planning. No tax ruling is required on the set up of a Section 110 company or a QIAIF but typically an Irish tax opinion would be obtained to provide tax certainty for the investor.

Ireland has an extensive double tax treaty network with 72 treaties signed to date and further agreements being negotiated. The majority of these treaties provide for reduced or nil withholding taxes on income and gains accruing to the Irish vehicle.

The Irish Stock Exchange (ISE) has created a listing regime for REITs and has aligned the new requirements with those of the FCA Listing Rules in the UK so as to facilitate REITs that may seek a dual listing in Ireland and the UK.

The QIAIF and Section 110 company can operate on an outsourced basis. There are a number of multinational financial institutions and corporate administrators in Ireland which can look after the day to day running of the Irish entity which means the entity does not need to have Irish employees.

Ireland does not have any controlled foreign corporation (CFC) rules or thin capitalisation requirements.

Ireland does not impose any net wealth taxes.
How can PwC help?

**Tax Services**

Our tax team formulates effective strategies for optimising taxes, implementing innovative tax planning and effectively maintaining compliance. We provide Irish tax opinions on structures being established to provide certainty of tax treatment for investors. In recognition of the international tax issues to be considered in structuring funds, our specialised tax team works extensively with our global international tax teams on an ongoing basis.
Audit Services
Our audit approach is tailored to suit the size and nature of your organisation and draws upon our extensive industry knowledge. In addition to the independent audit, we offer advisory services in the areas of financial reporting, corporate governance, regulatory compliance, independent controls and risk assessment.

Real Estate Services
PwC’s real estate practice assists real estate investment advisers, real estate investment trusts, public and private real estate investors, corporations, and real estate management funds in developing real estate strategies; evaluating acquisitions and dispositions; and appraising and valuing real estate. Its global network of dedicated real estate professionals enables it to assemble the most qualified and appropriate team of specialists in the areas of capital markets, systems analysis and implementation, research, accounting, and tax.
**Appendix 1**

**Real Estate Investment Structures**

**Non-Irish Resident Company**

For non-resident investors the traditional structure has been to invest in Irish real estate through a non-resident company and thereby reduce the Irish income tax liability to 20% of taxable rental income. A CGT charge would still apply to any gain realised on the disposal of Irish real estate although a CGT relief is available if the property was acquired between 7 December 2011 and 31 December 2014 and held for at least 7 years. If an investor holds such a property for 7 years a full CGT exemption is available, while for say 10 years, 70% of any gain realised on disposal will be exempt from Irish CGT.

Rent paid to a non-Irish resident landlord is subject to 20% withholding tax which must be deducted by the tenant and remitted to the Irish Revenue. The tax withheld can be claimed by the landlord as a credit against its Irish income tax liability, with any excess credit available for refund from the Irish Revenue. However, the requirement to withhold does not apply where rent is paid to an Irish agent of the non-resident landlord, such as a rent collection agent. The non-resident landlord is assessable to Irish tax in the name of the Irish agent. However, any remittances of rent by the agent to the non-resident landlord are not subject to withholding tax. This arrangement can improve the cashflow position for the non-resident landlord without prejudicing its Irish tax obligations.

Any charge to Irish CAT is avoided for gifts or inheritances, between non-Irish residents, of shares in a non-Irish incorporated company, owning Irish real estate, where the person transferring the shares is not, and has never been, Irish domiciled.

**Regulated Real Estate Funds**

The charge to Irish income tax on rental income and CGT on the disposal of Irish real estate can be eliminated altogether where Irish real estate is held through an Irish regulated fund. Ireland offers a range of regulated real estate fund structures with differing levels of investment and borrowing restrictions, minimum subscription requirements and authorisation timeframes depending on the proposed portfolio composition and investor type.

**Taxation of Irish Regulated Collective Investment Funds**

All Irish regulated funds whether they are constituted as corporate entities or unit trusts are subject to the same taxation regime so long as they are designated as Investment Undertakings under Section 739B of the Taxes Consolidation Act 1997.

**Irish Direct Tax & Withholding Tax**

Investment Undertakings (“funds”) are not subject to Irish taxation on any income or gains they may realise from their investments. No withholding tax arises on dividend or interest payments made by Irish companies to the Investment Undertaking.
In addition, there are no Irish withholding taxes in respect of distributions or any encashment, redemption, cancellation or transfer of units in the investment undertaking in respect of investors who are non-Irish resident and who have provided the fund with the appropriate relevant declaration of non-Irish residence or equivalent measures or indeed in respect of certain categories of exempt Irish investors (e.g. approved pension schemes, charities, other investment undertakings, etc) who have also made the appropriate declaration to the fund.

When, however, a distribution is made by the fund to taxable Irish resident investors or such an investor disposes of fund units and realises a gain, tax must be deducted by the fund at a rate which is currently 40%. Irish individual investors pay no further tax on distributions made to them.

This is a particularly attractive structure for non-Irish resident investors.

VAT
There are wide ranging VAT exemptions with regard to the provision of certain services to regulated funds (e.g. administration) and to the extent that a fund suffers Irish VAT on certain services it receives (e.g. audit and legal fees), the fund may be entitled to recover some or all of this VAT depending on its recovery rate. The recovery rate of funds is usually based on either

- the extent that securities of the fund are invested outside the EU or
- the extent that the investors in the fund are located outside the EU.

However, where the only activity of the fund is holding Irish property, the recovery rate would depend on the VAT profile of the property. The VAT treatment of Irish property transactions is complex and specific VAT advice should be obtained on a transaction by transaction basis.

Compliance requirements
A fund may have an obligation to register for VAT with the Irish Tax Authorities if it is making taxable supplies (e.g. grants a taxable lease) or is in receipt of taxable services from abroad (see below). Where a fund registers for VAT it must file bi-monthly VAT returns. These tax returns should be accompanied by the payment of appropriate tax (if applicable) for the period in question.

Certain services received from outside Ireland (e.g. the service of non-Irish lawyers or accountants) will require a fund to register and self account for VAT in Ireland. However, depending on the fund’s VAT recovery rate, the fund may be able to recover some or all of this Irish VAT.

Qualifying Investor Alternative Investment Fund (QIAIF)
The most flexible and optimal vehicle for professional investors to invest in Irish real estate is the Irish Qualifying Investor Alternative Investment Fund (QIAIF). The Irish QIAIF is a regulated, specialist investment fund which is recognised internationally as tax efficient for investors thus giving it the ability to raise funds from professional/institutional investors.

It requires a minimum subscription per investor of €100,000 (or foreign currency equivalent) and only certain investors qualify (institutional investors satisfying minimum financial resources requirements). No restrictions are imposed on the investment objectives and policies of an Irish QIAIF or on the degree of leverage employed by it, subject to satisfying certain disclosure and counterparty requirements. As a result, the Irish QIAIF has much flexibility in terms of its investments and gearing. A QIAIF is permitted to invest in real estate in any jurisdiction.
The Irish QIAIF is a tax exempt vehicle and is exempt from Irish tax on income and gains regardless of where its investors are resident provided they are not Irish resident. The exemption includes the Irish CGT charge which would otherwise apply on the sale of Irish real estate or shares in a company deriving its value from Irish real estate. In addition, no withholding or exit taxes apply on income distributions or redemption payments made by an Irish QIAIF to non-Irish resident investors. As a result, the Irish QIAIF is an exceptionally efficient real estate holding vehicle. There is no stamp duty on the transfer of QIAIF shares/units but stamp duty on the transfer of the property would still apply.

The QIAIF is entitled to avail of the benefits of a number of Ireland’s double tax treaties. It is necessary to consider this on a country by country basis as some treaty partners will not grant treaty access to QIAIF’s because of their tax exempt status.

Legal Format

A QIAIF can have several forms including a Corporate entity, Unit Trust or Limited Partnership. It can take the structure of an individual fund or an umbrella fund. The underlying sub fund enables the provision of many flexible solutions including asset portfolio creation, targeting of specific investors, holding assets for specific joint ventures and segregation of liability between sub-funds.

Sub-funds can be acquired by, or structured for sale to, specific buyers. From a due diligence perspective a sub-fund is a clean, ready-made and regulated structure for a prospective buyer’s underlying investors.

Regulatory Framework

QIAIFs are regulated by the Central Bank of Ireland (‘CBI’). Regulatory requirements oblige the fund to have a minimum of two Irish resident directors.

The following activities must be delegated to entities that are authorised by the CBI:

- Administration services such as calculation of net asset value and accounting services.
- A Trustee has a dual role to oversee the manner in which the QIAIF is managed and to safe-keep assets in accordance with the requirements of the CBI.
- Investment Manager to make investment decisions.

Loan Originating QIAIFs

The Central Bank of Ireland has recently issued authorisation which allows Irish Alternative Investment Funds to originate loans to corporate borrowers.

This is a positive development for investors, corporate borrowers and asset managers who have been seeking alternative lending structures to mitigate the impact of the funding gap in Europe arising from the de-leveraging of the banks.

Loan originating QIAIFs (which are regulated Irish alternative investment funds) are subject to additional regulation which coupled with the existing AIF regulation is aimed at ensuring that a stable financial environment with adequate investor protection will exist.

The leverage limit on loan originating QIAIFs is set at a ratio of 1:1 whilst the QIAIF shall set out in its prospectus a risk diversification strategy which will limit exposure to any one issuer or group to 25% of the net assets.

The other key areas addressed in the additional regulation relate to credit assessment, liquidity, and disclosure. Loan originating QIAIFs are also subject to a stress testing programme which must be complied with periodically.
Irish Collective Asset-management Vehicle

The Irish government has continued its proactive approach to asset management with the creation of a new corporate vehicle for Irish funds with the enactment of the Irish Collective Asset-management Vehicle (ICAV) Act. This new form of investment fund, provides for a corporate entity that can elect its classification under the US check-the-box taxation rules and thus be treated as a transparent entity for US tax purposes.

Transparent treatment may be preferable in many instances as the character of the underlying income is retained and losses can flow up to the US investor and be used to offset other income of that investor.

The ICAV enhances the attractiveness of Irish funds to investment managers seeking to market into the U.S. and should enable redomiciliation of existing Cayman structures on-shore while maintaining the tax benefits of flow-through structures for U.S. taxable investors.

A US taxable investor would generally invest through a flow-through structure and would include, on a current basis, its share of the fund’s income in their income for US federal (and state and local) income tax purposes. US taxable investors may utilise foreign tax credits to offset taxes on the portfolio investments of the master fund against their US domestic tax liability. They may also benefit from preferential CGT treatment for their income.

8 Year Rule

Ireland has legislation to counteract Irish investors indefinitely rolling up their share of the underlying income and gains of an Investment Undertaking for more than 8 years.

On the 8th anniversary of making an investment in an Irish fund, a taxable Irish investor is treated as if they had made a redemption or disposal (at market value) of their investment and consequently is taxed on any deemed gain. This 8 year rule does not apply to non-Irish resident investors.

Stamp Duty

No stamp duty is payable in Ireland on the issue, transfer, repurchase or redemption of units in a fund. Where Irish securities or Irish land is transferred, Irish stamp duty will apply and will be payable by the purchaser.

Where any subscription for, or redemption of, units is satisfied by the in specie transfer of securities, real estate or other types of assets, consideration should be given to whether Irish stamp duty may arise on the transfer of such assets.

SPVs and Loan Portfolio Acquisitions

The acquisition of loan portfolios provides an alternative to the direct acquisition of Irish real estate.

Ireland has a favourable tax regime for entities known as Section 110 companies. A Section 110 company is an Irish resident special purpose vehicle (“SPV”) which holds and/or manages “qualifying assets” and provides for an onshore investment platform in an environment of increased international focus on tax havens and transparency. The Section 110 regime effectively allows for corporation tax neutral treatment provided certain conditions are met.

A Section 110 company can hold loans and loan portfolios. It can also hold shares in a company or companies that hold real estate but a Section 110 company cannot hold real estate directly because this is not a “qualifying asset”.

Investing in Irish Real Estate
Taxation of Section 110 company
While subject to the higher 25% Irish corporation tax rate, the taxable profits of a Section 110 SPV are computed in accordance with trading principles and can include a deduction for profit participating debt. For Irish Section 110 companies, there is legislation providing for a tax deduction for profit participating interest payments provided certain conditions are satisfied. This means that, after deduction of costs relating to the business as well as interest on profit participating debt, minimal profits are generally left behind in the SPV resulting in nominal Irish corporation tax payable.

Ireland has become an increasingly popular location for the acquisition and servicing of loan portfolios secured on Irish and non-Irish real estate.

The Section 110 company qualifies for the benefits of Ireland’s double tax treaty network which should reduce or eliminate withholding taxes on income flows and capital gains in treaty jurisdictions.

The Section 110 regime is widely used by international banks, asset managers and investment funds in the context of securitisations, investment platforms, Collaterised Debt Obligations (CDOs) and capital markets bond issuances.

In summary, it is clear that the Section 110 regime will continue to provide banks, asset managers and investment funds with a tax efficient platform through which it can structure a wider range of investments. The use of Section 110 companies in conjunction with QIAIFs can also be a very tax efficient structure.

Irish Real Estate Investment Trusts (REITs)
The Irish Real Estate Investment Trust (REIT) was introduced in the Finance Act 2013 and came into force on 27 March 2013, with the first REIT listing on the Irish Stock Exchange on 18 July 2013. A REIT is a company that owns, rents, manages and trades real estate whose shares are listed on a recognised stock exchange.

REITs give all investors the opportunity to invest in large-scale, diversified portfolios of investment grade properties across a range of sectors and locations, through the purchase and sale of liquid securities. They eliminate the double layer of taxation which typically hinders the holding of property through a company, and are exempt from corporation tax on qualifying profits from rental property.

Irish REIT Regime - Qualification as a REIT
A company does not become a REIT until it has given notice to Irish Revenue and complies with a series of conditions. Some of these conditions are applicable day one, others at the end of the first accounting period while the remainder can be satisfied within a period of three years of becoming a REIT. The legislation allows a REIT to have 100% subsidiaries and permits the group to qualify for REIT treatment once all conditions are met. References to REITs below, apply equally to group REITs, where applicable.

Day 1 Conditions
The REIT (or where it is a Group REIT, the principal company) must be resident in Ireland and not resident elsewhere.

The REIT (or where it is a Group REIT, the principal company) must be a company incorporated in Ireland under the Companies Acts.
End of First Accounting Period Conditions
At least 75% of the aggregate income of the REIT must derive from carrying on property rental business; and the REIT must maintain a property financing costs ratio of at least 1.25:1 (i.e. the ratio of the aggregate of the property income and the financing costs to the financing costs cannot exceed 1.25); and at least 75% of the aggregate market value of the assets of the REIT must relate to assets of the property rental business of the REIT; and the aggregate of the debt in the REIT must not exceed 50% of the aggregate market value of the assets of the business of the REIT; and subject to having sufficient distributable reserves, the REIT must distribute to its shareholders at least 85% of the property income of each accounting period (on or before the tax return filing date, which is normally circa 9 months from the end of the particular accounting period). However, in the case where a REIT makes a gain on disposal of property, the REIT does not have to pay CGT or distribute the income on the basis that the gain is reinvested by the REIT within 24 months from on the date of disposal.

Within 3 years of REIT Commencement Conditions
- The REIT must not be a close company; and
- The REIT shares must be listed on the main market of a recognised stock exchange in an EU Member State; and
- The REIT must conduct property rental business consisting of at least 3 properties, the market value of none of which is more than 40% of the total market value of the properties constituting the property rental business.

Taxation of a REIT
A corporation tax charge will arise where a property asset is developed at a cost exceeding 30% of its market value and sold within a three year period.

A tax charge will arise if the REIT pays a dividend to shareholders with 10% or more of the share capital, distribution or voting rights in the REIT, other than “qualifying investors”, unless reasonable steps were put in place to prevent the making of the distribution to such a person.

Stamp duty applies on the acquisition of shares in the REIT.

Irish Withholding Tax
Dividend Withholding Tax at the standard rate of income tax (20%) applies to dividend payments and other distributions made by an Irish REIT. There will be certain exempt investors, e.g. Pension funds, regulated funds, etc.

Foreign resident shareholders, depending on their country of residence, may be able to reclaim DWT under a relevant double taxation treaty. The reduced treaty rate must be claimed as a refund.

Irish resident shareholders in a REIT will be subject to income tax at normal rates on income distributions with a credit for Dividend Withholding Tax. Irish resident corporate investors will be liable to corporate tax on such distributions.

Irish resident investors will be liable to CGT on the disposal of the REIT shares.

Non resident investors will not be liable to Irish CGT on the disposal of REIT shares. However, these investors may be liable to such taxes in their home jurisdictions.
Tax on converting to a REIT

A company that converts to a REIT will be deemed for CGT purposes to have sold its assets at market value, on the day of conversion, immediately before becoming a REIT and reacquired them on becoming a REIT thus creating a CGT liability on any gains at that point.

Stamp duty, will apply in respect of the acquisition of Irish property and to the transfer of shares in a REIT.

Additionally where an asset which was used for the property rental business of a REIT, ceases to be so used, it will be treated, for CGT purposes, as having been disposed of by the REIT and reacquired by it at market value.

Capital gains do not have to be distributed and non resident investors can dispose of REIT shares free of Irish CGT.

Benefits of REITs

Tax transparency - REIT legislation removes the double layer of taxation, allowing the investor to get broadly the same after-tax return from a REIT investment as if a direct investment was made. Taxes are paid only at the individual shareholder level.

Withholding tax – Non resident investors will be able to avail of Ireland’s extensive tax treaty network in order to reduce/eliminate tax withheld on dividend payments.

Regular returns – A REIT must distribute by way of a property income dividend to its shareholders at least 85% of the property income of each accounting period thus providing a consistent and steady stream of income to investors.

Liquidity - a REIT investment is the price of a single share which unlike direct real estate holdings, can be sold relatively quickly to raise cash or take advantage of other investment opportunities, and therefore REITs can significantly limit personal risk.

Corporate Governance - REITs provide operating transparency. Listed REITs are registered and regulated and adhere to high standards of corporate governance, financial reporting and information disclosure.

Experienced managers - REITs allow the investor the opportunity to have their properties managed by a professional real estate team that knows the industry, understands the business and can take advantage of opportunities thanks to its ability to raise funds from the capital markets.

Diversification - REITs invest in a range of properties, they offer an investor a diversified portfolio of real estate properties all from within one REIT. The individual investor is able to take advantage of this and benefit from large scale real estate development projects.

Investment Protection – REITs have limits to the amount they can borrow, therefore reducing the risk of excessive leverage and helping to protect equity holders.

Capital Gains Tax (CGT)

Chargeable gains arising on the sale of Irish property or shares in an Irish property company by an individual investor (whether or not Irish resident) are liable to CGT at 33%. Gains arising to a corporate entity are subject to the same level of taxation but are assessed as Corporation Tax on chargeable gains.
Ireland levies CGT on gains arising on the disposal of Irish land irrespective of the tax residence of the person making the disposal. The CGT charge also applies to the sale of shares in a real estate owning company where the shares derive more than 50% of their value from Irish land.

A ‘CGT holiday’ exempts from CGT any gain realised on the sale of real estate purchased between 7 December 2011 and 31 December 2014 and held for at least 7 years. If the property is held for longer than 7 years the same proportion of the gain as 7 years bears to the period of ownership of the property shall not be taxable. For example, if the property was owned for 10 years, then 70% of the gain would not be taxable.

**Stamp Duty**

Stamp Duty is an Irish transfer tax payable by the purchaser of Irish situate property whether an individual or corporate regardless of tax residency. On the acquisition of residential property, stamp duty at a 1% rate applies to the first €1m with the excess taxed at 2%. Non residential property is subject to a rate of 2% and shares of a company incorporated in Ireland are subject to a rate of 1%.

**Stamp Duty on leases**

Stamp duty can arise both in respect of the rent and in respect of any premium payable under a lease. The rate of stamp duty payable on the rent depends on the term of the lease;

- Where the lease is indefinite or for a term not exceeding 35 years, the rate of duty is 1% of the average annual rent.
- Where the lease is for a term exceeding 35 years but not exceeding 100 years, the rate of duty is 6% of the average annual rent.
- Where the lease term exceeds 100 years the rate of duty is 12% of the average annual rent.

No stamp duty is payable in respect of a lease of residential property for an indefinite term or for a term of less than 35 years, provided the annual rent does not exceed €30,000.

Where a premium is payable in respect of a lease, the rate of duty applicable is the same as that which applies in respect of the transfer of property.

**Rental income**

Irish source rental income is taxable in Ireland regardless of the tax residence of the recipient. Normal expenses associated with renting property are generally allowable for tax purposes. However, the tax deductible interest expense for residential rented property is restricted to 75% of the interest cost incurred.
Income of Irish resident companies is subject to corporation tax at rates of 12.5% and 25%. Where the rental income is treated as trading income, the 12.5% tax rate is likely to apply otherwise the rental income is taxed at the passive rate of 25%. If the Irish resident company is a closely controlled company then it might also be liable to the retained income surcharge in respect of non distributed rental income. This can push the effective tax rate on rental income up to 40%.

In contrast, non-Irish resident companies are subject to Irish income tax at the standard rate of income tax (currently at 20%) on Irish rental income and the close company surcharge on undistributed rental income does not apply.

Where the investment is by way of a regulated fund there will be no tax on income or gains at the level of the fund. In addition there will be no withholding taxes on distributions or disposals by non-Irish resident unit holders.

Where an Irish resident individual directly holds rental property or earns income from a fund, they will be subject to income tax at marginal rates (20% or 40% depending on the level of income less various personal credits) on their rental income. They may also be liable for pay related social insurance (PRSI) and the universal social charge.

Where the owner of the property is non Irish resident and the rental income earned is being transferred outside of Ireland, the tenant will be required to withhold tax at 20% on the payment of rent to the landlord and pay to the Irish Revenue Commissioners. The non-resident landlord is entitled to file a tax return with the Irish Revenue and seek a refund of any excess withholding tax over the actual liability. A tax registered non resident landlord can also obtain permission from the Irish Revenue to receive the rent without deduction of tax. Also exemptions for pay related social insurance (PRSI) and the universal social charge may apply in the case of non-Irish resident individuals.

Accounting depreciation is not an allowable deduction for Irish tax purposes. However, capital allowances (tax depreciation) may be available as a deduction on a straight line basis over an 8 year period at a rate of 12.5% on items of plant and equipment. Industrial buildings capital allowances, usually at a rate of 4%, are also available in respect of a specified range of commercial buildings. Other rent related deductions may also be available.

**Value Added Tax (VAT)**

Under the VAT on property rules which were introduced on 1 July 2008, the sale of a property will be subject to VAT at 13.5% where it is considered ‘new’ for VAT purposes. A completed property is considered ‘new’ for a maximum of 5 years from completion. However, on a second or subsequent sale of a property, the supply will not be subject to VAT if it has been occupied for at least 2 years, even if the second or subsequent supply is within the 5 year period. (This rule does not apply to residential property which is always subject to VAT when sold by the developer or person connected with the developer.)

Once a property is no longer new the supply of that property is exempt from VAT. However the vendor and the purchaser may jointly exercise an option to tax the sale. The joint option would typically be exercised to avoid a clawback of VAT for the vendor where the vendor had previously recovered VAT on development/acquisition of the property.

Transfer of Business relief may apply to the
supply of a commercial property provided certain conditions are met. Where Transfer of Business relief applies, there is deemed to be no supply for VAT purposes. However, obligations under the Capital Goods Scheme would generally arise for the purchaser.

A Capital Goods Scheme was introduced on 1 July 2008 and is intended to ensure that the level of VAT recovery taken in relation to immovable property reflects the use to which that property is put over the ‘VAT life’ of that property. Properties in general have a VAT life of 20 years. The VAT incurred on the acquisition/development of a property may be deductible depending on the use to which the property is put. During the 20 year period, an annual look back must be performed to compare the use of the property over that year with the original use of the property. Where there is a change in the use of the property from taxable to exempt (or vice versa), an adjustment of a proportion of the VAT originally deducted (or restricted) will be required.

VAT on Leases
Lettings granted after 1 July 2008 are exempt from VAT. However, a Landlord can opt to tax a letting (other than residential lettings and certain connected lettings) whereby the rent becomes subject to VAT at 23%. A landlord would generally opt to tax a letting in order to avoid a clawback of VAT previously recovered on acquisition/development of the property and to preserve his entitlement to recover VAT incurred on ongoing costs. If the tenant is engaged in fully taxable activities, he would be entitled to recover the VAT charged on rents. However, if the tenant is engaged in exempt/partially exempt activities (e.g. the tenant is a financial institution) the VAT charged on the rents would be a cost to the tenant and the tenant may resist the exercise by the landlord of the option to tax.

Lettings of residential properties on or after 1 July 2008 are exempt from VAT. Unlike commercial lettings, an option to tax a residential letting is not available and a landlord will suffer restrictions on the recovery of VAT incurred on acquisition or on ongoing costs incurred in respect of a residential property.

As a result of the old VAT rules which applied before 1 July 2008, there are certain leases (granted prior to 1 July 2008) which, if surrendered, may give rise to a VAT liability for the landlord. However, a landlord would be entitled to recover the VAT arising if he has the intention to use the property for a taxable purpose (e.g. the landlord intends to exercise the landlord’s option to tax over future lease).

Rates and Charges
A property tax, known as Rates, applies to most commercial buildings. The Rates vary between local authorities and are payable by the occupier of the premises on the date the Rates become payable.

Ireland introduced Local Property Tax (LPT) with effect from 1 July 2013. The tax is
payable by owners of residential property (or tenants where leases are in excess of 20 years) on a self assessment basis. The LPT is based on the value of the property.

Capital Acquisitions Tax (CAT)

Irish CAT applies at 33% to gifts and inheritances of Irish real estate although various exemptions apply, such as transfers between spouses.
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