

## Update on Ireland/Germany Double Tax Agreement

January 2012



Ireland and Germany signed a Protocol on 25 May 2010 amending the existing Ireland/Germany Double Tax Agreement (“DTA”) with effect from 1 January 2011. A revised DTA was also signed by Ireland and Germany on 30 March 2011 together with a Protocol to the new DTA and a Joint Declaration. These are yet to take effect, but the following provisions will be of particular interest to the Irish regulated funds industry:

- A UCITS which is established in one contracting state will be treated, for DTA purposes, as an individual who is a resident of that contracting state and as the beneficial owner of the income it receives to the extent that the beneficial interests in the UCITS are owned by “equivalent beneficiaries”. An “equivalent beneficiary” means a resident of the contracting state in which the UCITS is established, or any other state with which the contracting state in which the income arises has a DTA which provides (or domestic law provides) for a rate of tax with respect to that item of income that is at least as low as the rate claimed by the UCITS under the Ireland/Germany DTA. Where 95% or more of the beneficial interests in the UCITS are owned by “equivalent beneficiaries”, the UCITS will be treated as an individual who is a resident of the contracting state in which it is established and as the beneficial owner of all of the income it receives.
- A Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits under the revised Ireland/Germany DTA.
- Under the existing Ireland/Germany DTA, the rate of dividend withholding tax shall not exceed 15% and, in practice, is typically reduced to 10% on dividends paid by a German resident company to an Irish resident person. However, under the new Ireland/Germany DTA, the rate of dividend withholding tax is reduced to 5% where the beneficiary is a company (other a partnership of a German Real Estate Investment Trust Company) which directly holds at least 10% of the capital of the company paying the dividend. In all other circumstances, the rate of dividend withholding tax shall not exceed 15%.

As the availability of treaty benefits to Irish regulated investment funds continues to be a matter of debate, the clarity brought by these amendments is a welcome development. It is likely however that the changes will place additional administrative burden on administrators in demonstrating the necessary investor profile required to establish entitlement to reduced rates and exemptions under the Ireland/Germany DTA.

## About the Authors



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Mark Browne is a Partner in the Financial Services Department of Mason Hayes & Curran specialising in investment funds. Mark has over 10 years' experience in the funds industry and advises on all aspects of the structuring, establishment and on-going operation of investment funds in Ireland, as well as in regard to issues affecting service providers, including depositories and investment managers.

Mark has a keen focus on the alternative asset management sector and practiced as an Attorney-at-Law specialising in hedge funds in the funds practice of a leading firm in the Cayman Islands for four years. He advises on the redomiciliation of offshore funds to Ireland and the restructuring of hedge funds as UCITS.



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Robert is a Tax Partner in the taxation department of Mason Hayes & Curran. Prior to joining Mason Hayes & Curran, Robert worked at another major tax practice in Dublin where he completed both the Chartered Accountants' and Irish Taxation Institute's examinations.

Robert has advised a wide range of clients in leasing, funds and structuring investments. Robert has significant experience in advising clients on cross border transactions and structuring inward investment into Ireland. Robert regularly advises on the use of Irish regulated funds and Irish special purpose securitisation companies for structuring international business in and through Ireland.

## About Mason Hayes & Curran

Mason Hayes & Curran is a full service, business law firm with 60 partners and over 290 employees specialising in Irish law. With offices in Dublin, London and New York the firm delivers sophisticated legal services to an extensive Irish and international client base. Our investment funds lawyers have a wealth of experience in the investment funds industry and have been involved in the development of policy and regulation in Ireland. We advise on the establishment and ongoing operation of Irish domiciled investment funds and our dedicated team of investment funds lawyers can also draw upon the expertise of specialist lawyers from our tax, corporate, banking, litigation, intellectual property, data protection, regulatory and compliance practices whenever required. For further information with regard to the topics covered in this Update, or Irish investment funds law generally, please see the contacts listed below:

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