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TECHNICAL SALES BRIEFING

INTERNATIONAL INVESTMENT BONDS AND VAT EXEMPT DFM SERVICE FOR IRELAND

- This Technical Sales Briefing has been designed to explain the background to the publication of the Irish Revenue eBrief No. 63/16, including the differences in the two tax codes and the effect of this guidance on both conventional international investment bonds and bonds such as Utmost PanEurope dac's Delegation bond
- It has been widely accepted that fully delegated (traditional) DFM management services provided to Irish bonds, sold outside of Ireland, are VAT exempt if they meet with certain conditions. However, various product developments, and extensions to the types of discretionary services provided, initially raised questions as to whether these new variants still qualify for the exemption
- The Irish Revenue previously released Revenue eBrief No. 63/16 setting out guidance on the VAT exemption in relation to discretionary management services
- The guidance in 2016 clarifies that Delegation and similar products, and what we refer to as advisory discretionary management, would also meet the requirements for VAT exemption. It also potentially extends the VAT exemption to investment advice given in relation to Irish products.

Utmost International Isle of Man Limited and Utmost PanEurope dac market their products under the Utmost Wealth Solutions brand. The following information is based on our interpretation of current law and taxation practice in Ireland and the UK as at 1 June 2020. This could change in the future.

BACKGROUND

Value Added Tax (VAT) is currently charged in Ireland on the sale of goods and services at the standard rate of 23%. However, there are reduced rates and exemptions available for certain products and services including, but not limited to, certain financial, medical or educational services. The financial services that qualify for exemption from VAT are listed in Schedule 1, part 2 of the VAT Act 1972 (as amended - Consolidation Act 2010) and includes 6 (1) (g) **'managing an undertaking of a kind specified in subparagraph (2)'**

The undertakings specified in Subparagraph (2) include the following types:

"(a) a collective investment undertaking as defined in section 172A of the Taxes Consolidation Act 1997;

(b) a special investment scheme within the meaning of section 737 of the Taxes Consolidation Act 1997;

(c) an undertaking that is administered by the holder of an authorisation granted under the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984), or by a person who is deemed, by Article 6 of those Regulations, to be such a holder, the criteria in relation to which are the criteria specified in relation to an arrangement to which section 9 (2) of the Unit Trusts Act 1990 applies."

With reference to (b) above, the EU VAT Directive Council Directive 2006/112/EC Chapter 3 (Exemptions for other activities) article 135 states that **"Member States shall exempt the following transactions"** which then include **"the management of special investment funds ('SIFs') as defined by member states".** Under this Directive the Irish Revenue chose to include qualifying collective investment undertakings administered by authorised life companies as SIFs, including 'special investment policies' - which were then defined in Section 723 of the Taxes Consolidation Act 1997.

MORE CLARIFICATION IN 2009

In October 2009 the Irish Revenue released a further Tax Briefing (Issue 80) which attempted to remove further uncertainty as to whether Self-Directed Life Assurance Bonds (SDBs), fall under the exemptions given in Subparagraph (2). Here 'Self-Directed' Bonds is the term used by the Irish Revenue for bonds where the policyholder has the choice in the assets they wish to link to the value of the policy, i.e. the type of policies commonly used in the UK market. However, as per the corresponding UK tax legislation in this area, the Irish Revenue's rules make sure such policies could not hold assets that are deemed personalised. These rules are referred to as the Personal Portfolio Life Policies ('PPLP') rules. The 2009 briefing went on to state that:

"Some of these funds [SDB's] have the characteristics of what are regarded as Personal Portfolio Policies (also known as wrappers) as outlined in **Section 730BA** of the Taxes Consolidation Act 1997, as amended. Revenue can confirm that the **VAT exemption applies only to the management of SDBs, which would not be treated as Personal Portfolio Policies for the purposes of that section**. In general, therefore, in order for the management of an SDB to qualify for VAT exemption it must meet the following criteria [our emphasis added]

- The manager must have **full delegated authority**, and
- The assets included in the product must be available for investment in by the general public."

The Notes for Guidance Taxes Consolidation Act 1997 (Finance Act 2015 edition) part 26 cover the definition of a PPLP as **'a type of life policy which allows investors to place personal investments within a life assurance policy**'. It continues:

"With traditional life insurance investment products the insurance company uses its professional expertise and discretion to invest funds on behalf of policyholders collectively. However, there is no element of a collective investment in these wrapper products. Essentially, such a life policy is a contrived vehicle to allow the investor to gain access to the 'gross roll-up' tax regime"

"…a **personal portfolio life policy is defined, in broad terms, as a policy which allows the policyholder to select, or to influence the selection of, the assets which determine the policy benefits**. However, a policy will **not be regarded as being a personal portfolio policy where the only property which may be selected is property consisting of units in a unit trust and similar undertakings**; property allocated by the assurance company to an internal fund so as to fund policy benefits; cash; or a combination of these." [our emphasis added].

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THE DIFFERENCE BETWEEN A PPLP AND A PPB

On first glance these Irish tax rules appear very similar to the UK Personal Portfolio Bond (PPB) rules as given in s516 of chapter 9 part 4 of the UK Income Tax (Trading and Other Income) Act 2005 (ITTOIA). Under the UK rules a policy will be a PPB if both of the conditions A and B are met. These conditions can be broadly written as:

- **Condition A**: the policyholder, or any connected party, can select the assets under the bond;
- **Condition B**: the terms of the policy allows for the selection of assets outside of the permissible range (as referenced in s517 and detailed in s520).

Both the Irish and UK legislation then list people who would be considered 'connected parties' and, again, both sets of rules are very similar here. However, the Irish PPLP regulations (Taxes Consolidation Act 1997 as amended in 2015) go further than the UK PPB rules by defining that the policyholder is still able to "select" where, despite the terms of the policy preventing the policyholder (or any connected person) from selecting the property to which the value of the bond is linked, they appoint an investment adviser. The guidance states the following:

"(b) the policyholder is unable under the terms of the policy to select any of the property so as to determine the benefits under the policy, **but any of the persons referred to in that paragraph has or had the option of requiring the assurance company to appoint an investment advisor (no matter how such a person is described)** in relation to the selection of the property which is to determine the benefits under the policy." [our emphasis added]

The broad use of the term 'investment adviser', and deliberate lack of definition here, had led to some uncertainty in the industry regarding some product lines.

Some products in the market, such as Utmost PanEurope dac's Delegation bond, do not allow the policyholder, or any connected party, to actually influence the selection of the assets and thus they do not fall foul of the UK's PPB rules. However, they do still require that the policyholder instruct the life company as to which discretionary manager should be appointed to their bond.

The argument here is that, when read with the 2009 briefing, these policies were potentially PPLPs as per the Irish definition and thus, as a result, did not qualify for the VAT exemption.

FULLY DELEGATED

The term 'fully delegated', as given in the 2009 briefing, had also caused concern in relation to the 'advisory discretionary management' type structures. These types of discretionary management require the policyholder to veto any instruction prior to the asset being traded by the Discretionary Fund Manager (DFM). Questions had been raised as to whether this type of service was 'fully delegated' and thus still considered within the VAT exemption.

CLARITY OBTAINED IN 2016

Early 2015 tax advisory firm KPMG made a submission to the Irish Revenue on behalf of certain members of the Association of International Life Offices (AILO). The submission was designed to try and gain clarity in this area.

Consequently, the Irish Revenue issued new guidance in 2016, under Revenue eBriefs no 63/16:

[5-75] VAT treatment of management services supplied in relation to Self-Directed Life Assurance Bonds and equivalent products.

and

[5-74] VAT Revenue's position on the "management of special investment funds" following the decision of the CJEU in GfBk (Case C-275/11).

The guidance in 5-75 sets out these requirements as follows:

- The product must not be treated as a Personal Portfolio Policy in Ireland under Section 730BA of the TCA 1997 when sold to Irish resident investors. Where the product is sold to overseas investors, it must not be regarded as **equivalent to a personal portfolio policy under corresponding legislation** covering personalised portfolio bonds or similar life products in the jurisdiction into which the policies are sold
- The assets included in the product must be equally available to all investors within an investor class (i.e. not personalised)
- The service supplied must constitute "management" of the SDB or equivalent product in accordance with paragraph 6 (4) of Schedule 1 the Value Added Tax Consolidation Act 2010, as amended.

These further updates in 2016 also remove the strict requirement for the services to be "fully delegated" for the exemption to apply. The Revenue Operation Manual and Tax Duty Manual provided some commentary following the Court of Justice of th European Union decision in GfBk (Case C-275/11). These updates make it clear that management of a specialist investment fund can be potentially considered more widely, with the importance given to the previous 3 conditions only.

This guidance makes it clear that, where a policy has been sold outside of Ireland, and where equivalent **tax legislation exists, when looking at the conditions it is the tax legislation of the policyholder's jurisdiction** that should be used to determine whether the policy is personalised or not. This means that, even if a bond met the Irish Revenue's definition of a PPLP, discretionary management services provided to a bond held by a UK resident where the bond is not a **PPB** under HMRC's definition are still exempt from VAT.

This guidance helped clarify that products such as Utmost PanEurope dac's Delegation and Private Wealth Portfolio (PWP), which are not considered Personalised Portfolio Bonds under UK law, would still meet the VAT exemption the same as conventional type bonds where a DFM is appointed.

The guidance in 5-74 also provides further clarification on the types of services that can be considered 'management of a SIF' for the purpose of the VAT exemption. These detailed conditions are explained further in the briefing which can be read at the following link: **http://www.revenue.ie/en/practitioner/ebrief/2016/no-632016.html**

This helps clarify the types of services which would be VAT exempt and would include 'advisory' type discretionary services, where the client has still some influence (veto) as to the assets selected by the DFM.

It is also our understanding that where investment advice is given on this could also meet the exemption due to the update provided in 2016. Much will depend here on whether the service can be said to meet the three earlier conditions.

CONCLUSION

As with most areas of tax, uncertainty is never helpful and, often, the only way to obtain clarity is to approach the tax authorities. The outcome of the eBriefs was positive for the industry and helps give confidence to advisers when considering the VAT position of DFM related services.

TECHNICAL SERVICES
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A WEALTH *of* DIFFERENCE

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