An Roinn Airgeadais
Department of Finance

Funds Sector 2030:
A Framework for Open, Resilient & Developing Markets

Public Consultation
21 June 2023

Department of Finance
www.gov.ie/finance

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1. Introduction

The development of the international financial services industry has been a major success story for Ireland since its inception in the mid-1980s. Asset management and funds servicing have played a critical role in the expansion of this sector in Ireland. Ireland's reputation for excellence in financial services means that we are well placed to capitalise on this offering so as to ensure continued success that will realise tangible benefits to Ireland and its citizens.

To ensure that Ireland's financial services sector is and remains resilient, future-proofed and a continued example of international best-practice, the Minister for Finance, Michael McGrath T.D. announced a review of the funds sector on 6 April 2023. The Terms of Reference of the Funds Sector 2030 Review ("the Review") can be found in Appendix 1 to this Public Consultation Paper ("the consultation paper"). The Department of Finance ("the Department") will conduct the Review and report to the Minister for Finance in summer 2024.

The Department is conducting a wide-ranging review of the funds sector under the broad and interlinked themes of "Open Markets, Resilient Markets and Developing Markets". Key objectives include developing a framework within which Ireland can maintain its leading position in fund management and fund servicing and ensuring that the sector continues to support economic activity both at the regional and national level in Ireland.

The Review will also seek to ensure that the funds sector in Ireland is resilient and that the regulatory and supervisory frameworks are future-proofed, supportive of macro-prudential stability, investor protection and consistent with international best-practice standards. Broader international developments, such as the advancement of the EU Capital Markets Union (CMU) initiative, also support the view that it is timely to examine Ireland's funds sector and, where possible and appropriate, provide guidance on how best to navigate future changes.

The Review will take account of the relevant commitments contained in the Programme for Government; the relevant recommendations of the Commission on Taxation and Welfare (COTW); and the recommendations of the IMF Financial Stability Assessment Programme (FSAP).

The Department has established a dedicated team to conduct the Review. In publishing this consultation paper, the team aims to gather information from, and perspectives of, a wide range of stakeholders, including members of the public. This engagement is critically important given that the issues being dealt with as part of the Review may have a significant impact on, and consequences for, a wide range of stakeholders, both domestically and internationally.

The deadline for the public consultation is **15 September 2023**. This will be followed by targeted stakeholder engagement in late 2023 and into 2024, utilising the insights from the public consultation. Further consultations may also be necessary at a later stage in the Review.

This consultation covers a wide range of topics reflecting both the Terms of Reference of the Review and the complex and multi-faceted nature of the funds sector.

For the purpose of the consultation paper, the Terms of Reference have been split into the following sections:

- Section 2: Investment funds and asset management landscape

- Section 3: The regulatory and supervisory framework
- Section 4: Assessing the impact of the funds sector
- Section 5: Taxation of investment products
- Section 6: The role of the REIT and IREF regimes in the Irish property market
- Section 7: The role of the Section 110 Regime

How to respond to this consultation paper

If you wish to respond to this consultation paper you may do so either electronically or in writing by **15 September 2023**, as set out below:

Electronically at	By Post to
https://consult.finance.gov.ie/.	Funds Review, Department of Finance, Miesian Plaza, 50-58 Baggot Street Lower, Dublin 2, D02XW14, Ireland.
	If responding by post please complete Annex and submit a printed copy of this Annex along with your response to the consultation.

The Department requests that you provide reasons and explanations for the responses you provide to this consultation paper as this will aid consideration of the issues. Where possible, please also provide material, or references to material, that support or evidence the points you make in your responses.

In Section 8 of this consultation paper, you can share any additional opinions, information or feedback that you may have on matters within the Terms of Reference that are not addressed directly in the specific questions within the consultation paper.

The information requested in the About You section (Annex 2) must be completed by all respondents to the public consultation.

Save for these questions in Annex 2, you may choose to respond to all or some of the questions in the remaining sections of the consultation paper i.e. you may answer as many or as few questions as you wish.

Notices

Responses to this consultation are subject to the provisions of the Freedom of Information Act 2014 (FOI), Access to Information on the Environment Regulations 2007-2018 (AIE) and the Data Protection Act 2018.

We intend to publish the contents of all submissions received in response to our consultation on the Department's website. We will redact personal data prior to publication. In responding to this consultation paper, parties should clearly indicate where their responses contain personal information, commercially sensitive information or confidential information which they would not wish to be released under FOI, AIE or otherwise published.

We would like to draw your attention to the Data Privacy Notice on the Department's website which explains how and when we collect personal data, why we do so and how we treat this information.

It also explains your rights in relation to the collection of personal information and how you can exercise those rights.

Next Steps

The Review Team will analyse responses to this consultation and targeted stakeholder engagement will occur in late 2023 and into 2024. The Review team will consider interim/progress updates to stakeholders. Further consultations may be held at a later stage in the Review.

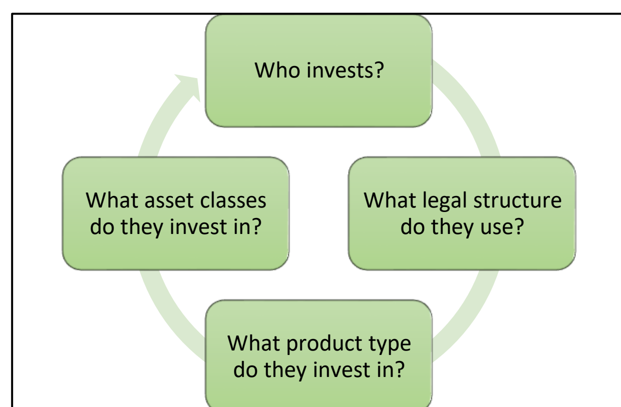
A draft Report will issue to the Minister for Finance in summer 2024.

2. Investment funds and asset management landscape

Introduction

The asset management and funds sector is about investing the savings of different types of customers through a variety of legal structures, frameworks and products into investments, whether they be public or private or different asset classes. The sector is diverse, comprises both regulated and unregulated activity and is characterised by a number of different participants.

The funds and asset management industry has grown in size and scale over recent decades as savings have grown, funds have moved into new areas of activity and investors have become increasingly active. Also contributing to this growth is the fact that asset values have generally risen, defined benefit pension provision has reduced and globalisation has facilitated the sector's international and cross-border footprint.



Over several decades, Ireland's regulatory and statutory regimes have developed to address the needs of the sector. Ireland offers a range of fund structures that can be tailored to suit investors with diverse investment objectives while the regulatory and supervisory focus has evolved in tandem with the sector and in response to regulatory requirements developed at EU level.

Consequently, Ireland has become a centre of excellence for investment funds and a location of choice for specific investment fund types. Due to the depth of expertise and the experience established in the funds eco-system, Ireland is currently the second largest fund domicile in the EU. It is the EU's leading location for Exchange Traded Funds (ETFs) and one of the largest domiciles for Money Market Funds (MMFs). Ireland is also recognised as one of the key global hubs for fund service providers supporting investment funds established in Ireland, the EU or other international jurisdictions.

Ireland also has a significant amount of other non-bank financial intermediation activity such as securitisations (which use "Special Purpose Entities" or SPEs). Financial services associated with the use of SPEs are significant and there are a range of firms involved in servicing them.

Relevant Terms of Reference

- Assess how the funds sector has evolved since policy supports to attract international financial services activity to Ireland began in the late 1980s
- Outline the current landscape of the asset management and funds servicing, having regard to domestic and international debates on the role of the non-bank sector

Historic context

The genesis of Ireland's modern financial services sector was brought about due to a confluence of factors. Ireland joined the European Economic Community (EEC) in 1973. By 1985, it had become a major destination for foreign direct investment (FDI), building on its advantages of the English language, common law, location between the USA and UK, long list of double tax treaties and access to markets enabled by the EEC. In the following year, the Finance Act 1986 put in place the policies to support private sector investment in the Dublin's docklands area. The Finance Act 1987 built upon this premise by allowing for a specific 10 per cent corporation tax rate for companies operating in a special economic zone in the soon to be developed International Financial Services Centre (IFSC). This 10 per cent taxation regime for "designated financial services activities" in the IFSC was replaced ahead of its expiration by a national corporate tax rate of 12.5 per cent, which came into effect in 2003. The success of the 10 per cent corporation tax rate in establishing Ireland as a centre for international financial services was also evidenced in the Shannon region which led to Ireland becoming an important centre for aircraft leasing.

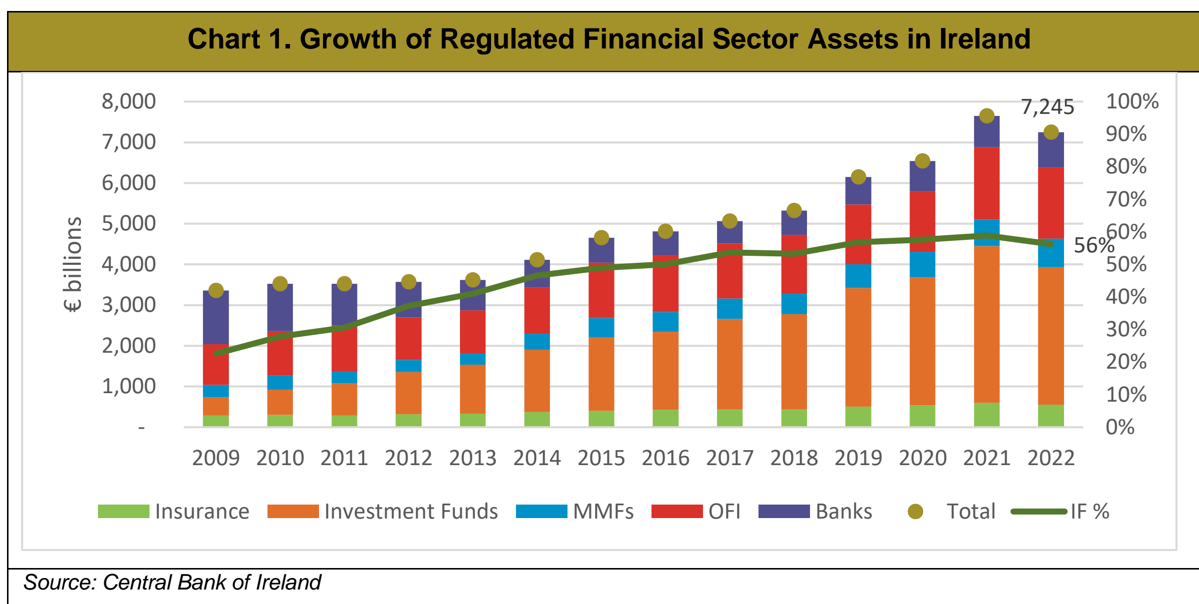
Also key to the early growth of Ireland as a fund domicile was the quick implementation of the 1985 UCITS (undertakings for collective investment in transferable securities) Directive. Prior to 1985, cross-border asset management in Europe was a relatively small industry, focusing mainly on private wealth management, with London, Switzerland and Luxembourg as its key centres. By facilitating collective investments in securities, the 1985 UCITS Directive stimulated the growth of funds and laid the foundations for an integrated market for the production and distribution of fund services. The Directive meant that new investment funds could be registered in, and existing investment funds relocated to, EU Member States that were not the main markets for the distribution of these funds. Luxembourg was the first country to implement the Directive in 1988. Ireland followed in 1989, with the first Irish UCITS launched in the same year.

At a national level, legislation was drafted to expand the range of investment fund structures that could be domiciled in Ireland. This included a new Companies Act and the Unit Trust Act in 1990, later followed by the introduction of an Investment Limited Partnership in 1994 (subsequently amended in 2020), the Investment Funds, Companies and Miscellaneous Provisions Act 2005 which established the Common Contractual Fund and, more recently, the creation of the Irish Collective Asset Vehicle (ICAV) structure in 2015.

Several factors can explain the fast growth of Ireland as a fund domicile since the early 2000s. The creation of the Eurozone accelerated the integration of the funds industry and made the Eurozone a more attractive place for investments. Further changes to regulation also fuelled integration, principally the fourth UCITS Directive (UCITS IV Directive) which introduced a 'passporting' framework that allowed products and services approved in one Member State to be recognised in other Member States without additional approvals being required. Implemented in 2011, the UCITS IV Directive lifted the requirement for fund management companies to be domiciled in the same country where the fund is domiciled. This aided the growth of certain EU Member States, including Ireland, as both domiciles for the administration of fund structures and locations to which the investment decisions can be delegated.

The investment funds sector is now a significant part of a growing financial sector in Ireland, accounting for 56 per cent of assets at the end of 2022, as detailed in Chart 1.

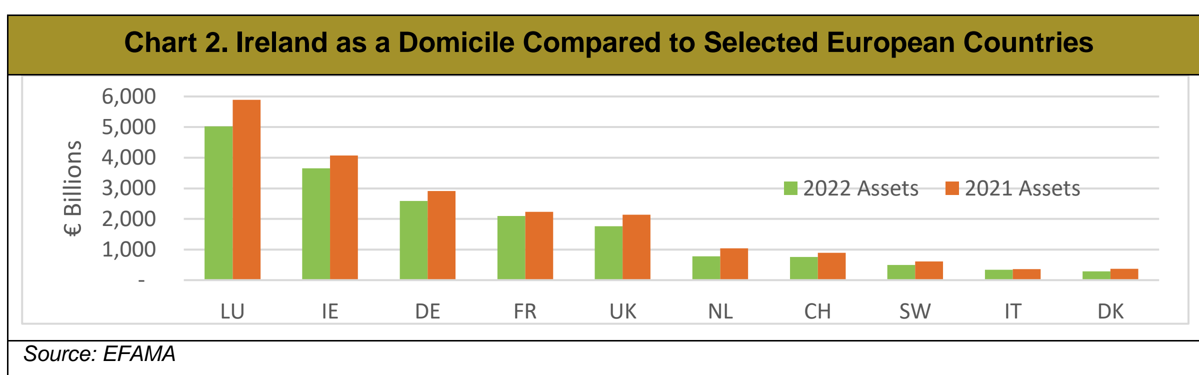
Chart 1. Growth of Regulated Financial Sector Assets in Ireland



Source: Central Bank of Ireland

Ireland's funds sector is large relative to other European countries, being the 2nd largest domicile for regulated funds - UCITS and alternative investment funds (AIFs) - in the EU, as detailed in Chart 2.

Chart 2. Ireland as a Domicile Compared to Selected European Countries



Source: EFAMA

Recent trends

Changes in the structures and activities of fund management companies have recently been evident in Ireland. These include consolidation and moves towards providing a broader range of services such as individual portfolio management, risk management and fund administration services, particularly on a third party basis. There have also been significant regulatory developments including the provision of additional guidance in relation to substance requirements and governance enhancements which have led to the reduction in Self-Managed Investment Company (SMICs) and the increase in third party management companies. There has been notable growth in Irish fund management companies providing discretionary portfolio management and other non-core service services. In 2019, there was approximately €19 billion in assets under management (AUM) for such services. By 2022, this figure had increased to €432 billion. There is also increasing growth and concentration in third party fund managers with AUM reaching nearly €540 billion.[1]

[1] Central Bank of Ireland *Follow up on thematic review of fund management companies' governance, management and effectiveness* (2022)

Future outlook

Changing investor demographics and demands, technological innovation, including from automation and tokenisation, and new types of investment products such as ESG (environmental, social and governance) related products will shape the development of the funds sector, its activities and products, in the years to come.

The sector will continue to grow in size and importance, particularly as an alternative source of financing for the real economy, and the nature of activities undertaken in the sector will also evolve and expand. These inherent characteristics can give rise to new types of risks and opportunities.

The regulatory environment will continue to adapt and develop in response to market developments, particularly in the areas of investor protection, financial stability, sustainable finance, technology, innovation and digital assets. There will also be future changes to the European frameworks under the Capital Markets Union (CMU), including the Retail Investment Strategy, ongoing review of files and in the context of the broader discussion of open strategic autonomy in Europe.

Key elements of the funds and asset management sector

Broadly speaking, there are two main elements to consider when examining investment funds and asset management. The first is the fund product, that is, the investment funds which are established. The text below sets out to examine investment funds under the subheadings of fund categories, fund products and asset classes. The second element of the industry that is particularly important to Ireland relates to the servicing of investment funds.

Funds may be domiciled in Ireland or non-domiciled. Irish-domiciled investment funds are established under the applicable domestic legislation. Non-domiciled funds are established, authorised and regulated/supervised in a jurisdiction other than Ireland. However, the existence of harmonised European frameworks allow Irish-domiciled funds (UCITs and AIFs) to be passported across the EU without restrictions.

I. FUND CATEGORIES

Investment funds are established for the purpose of investing the pooled funds of investors (held as units or shares) in assets in accordance with investment objectives and investment policies published in a prospectus.

The regulated fund sector, made up of Irish resident UCITS and AIFs, has grown significantly in recent years.[2] There are also sub-sets of these funds which are subject to specialist fund regulations. These can include MMFs, European Long-Term Investment Funds (ELTIF), European Sustainable Entrepreneurship Funds (EuSEF) and European Venture Capital funds (EuVECA).

[2] Central Bank of Ireland *Investment Funds Statistics: Q4 2022* (2023)

UNDERTAKINGS FOR THE COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES

UCITS are investment funds that can be established under a European regulatory framework designed for the protection of retail investors. The UCITS Directive has two main areas of focus:

- it establishes rules in relation to the UCITS which provide that the UCITS must redeem investors' shares at their request and, in order to ensure this, restrict the UCITS to investing in certain types of liquid assets;
- it sets out detailed conduct and operational standards (including those relating to investment borrowing and leverage limits) for those companies managing UCITS.

UCITS established in one EU Member State have the benefit of being capable of being sold in another EU Member State. UCITS funds are a highly popular form of investment globally and especially for European retail investors. The UCITS framework has been in operation since 1988.

ALTERNATIVE INVESTMENT FUNDS

AIFs are investment funds established by Alternative Investment Fund Managers (AIFMs). AIFMs have been authorised since 2011. AIFs are intended for investment mainly by professional investors though they may be marketed to retail investors. They are authorised by the Central Bank in one of two categories:

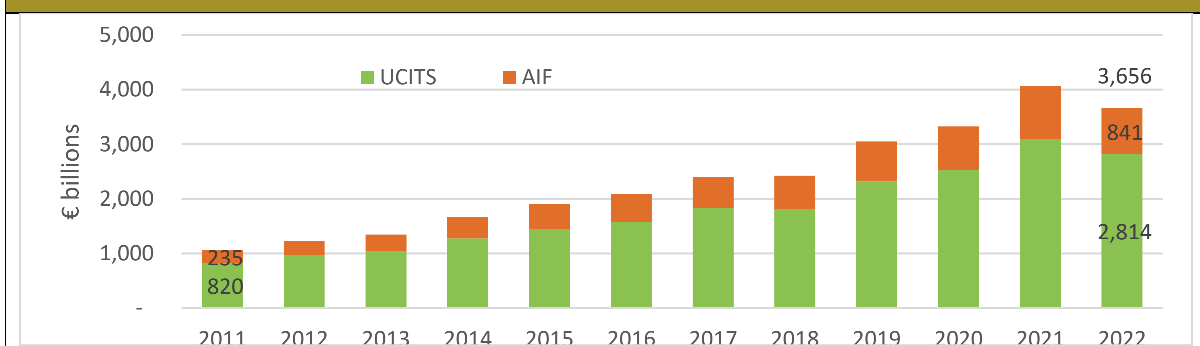
- a Retail Investor AIF (RIAIF) may be marketed to retail investors;
- a Qualifying Investor AIF (QIAIF) may be marketed to Qualifying Investors.

The AIFM Directive (AIFMD) provides for detailed conduct and operational rules in relation to AIFMs. It does not establish rules in relation to AIFs themselves and so AIFs may invest in a wide array of assets (which may or may not be liquid) and may provide for different frequencies at which investors can redeem from the AIF (indeed some AIFs may permit no opportunity for an investor to request a redemption).

Where AIFs are regulated, rules in relation to permissible assets for investment, investment borrowing and leverage limits are provided for by the Central Bank. While AIFs may be established in one EU country and be sold in another, the process is different to that for UCITS.

The assets under management in regulated structures in Ireland have grown strongly, reaching €3.65 trillion at the end of 2022.

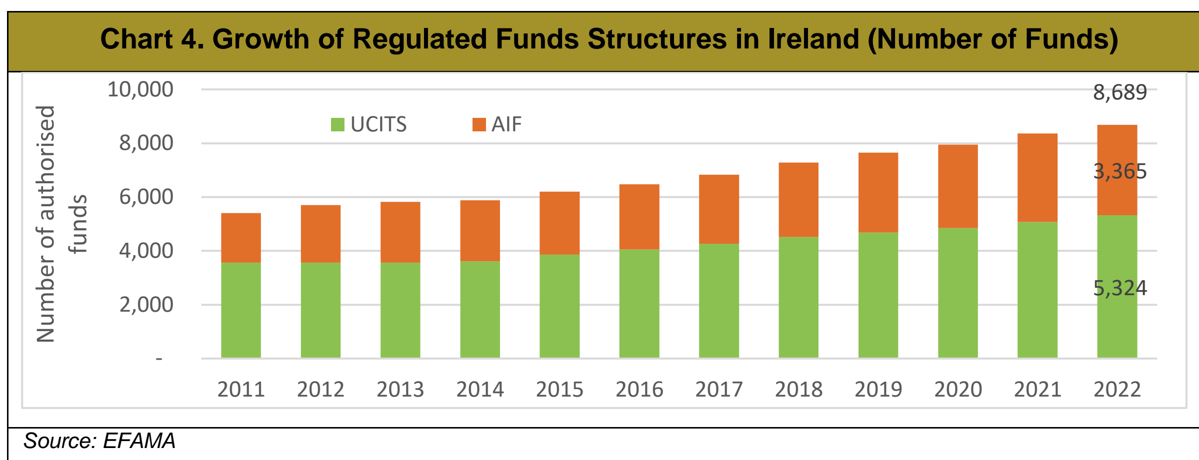
Chart 3. Growth of Regulated Fund Structures in Ireland (AUM)



Source: EFAMA

The number of regulated structures in Ireland had increased to 8,689 by the end of 2022.

Chart 4. Growth of Regulated Funds Structures in Ireland (Number of Funds)

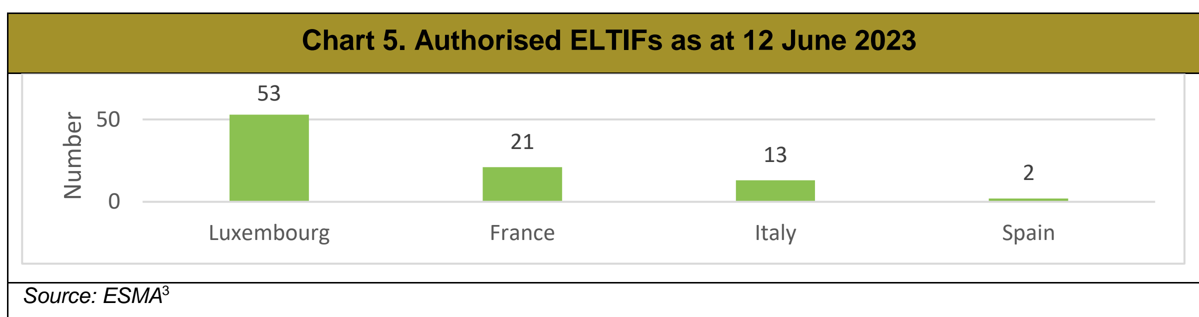


Source: EFAMA

European Long Term Investment Funds (ELTIF)

The ELTIF Regulation establishes a pan-European regime for AIFs which aims to channel the capital they raise towards long-term investments in the real economy. The ELTIF regulatory framework sets out detailed fund rules on eligible assets and investments, diversification and portfolio composition, leverage limits and marketing. However, since the adoption of the Regulation in 2015, the market for ELTIFs has been relatively limited. No ELTIFs have been launched in Ireland, though Luxembourg, France, Italy and Spain have authorised 89 collectively.

Chart 5. Authorised ELTIFs as at 12 June 2023



Source: ESMA[3]

As part of its CMU package presented in November 2021, the Commission proposed a targeted review of the ELTIF Regulation to improve the functioning of the regime. The revised ELTIF Regulation, which is intended to make the ELTIF more flexible in terms of its investment rules and encourage greater participation by retail investors, entered into force in April 2023 and will apply from January 2024.[4]

II. FUND PRODUCTS

Two types of investment funds are particularly prominent in Ireland: Exchange Traded Funds (ETF) and Money Market Funds (MMF).

[3] The register is available at https://www.esma.europa.eu/document/register-authorised-european-long-term-investment-funds-eltifs

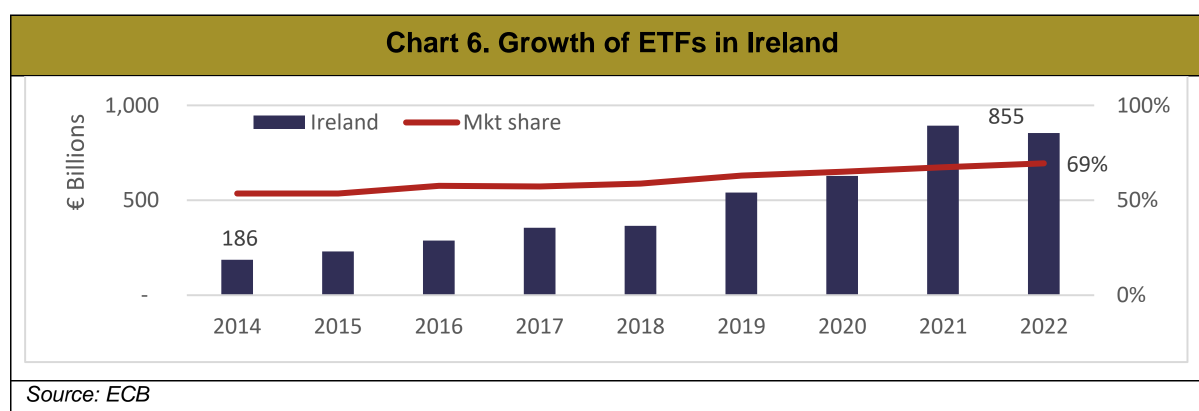
[4] REGULATION (EU) 2023/606 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules

Exchange Traded Funds

An ETF is a collective investment scheme that is actively traded on a stock exchange or other trading venue. It is often described as having "hybrid" features because it is an open-ended investment fund and its shares are also actively traded. A key advantage for a retail investor is that they are usually not overly exposed to a single asset and, therefore, the performance of a single company or market. From a European perspective, an ETF may be established as a UCITS or as an AIF. However, with limited exceptions, ETFs are authorised by the Central Bank of Ireland under the UCITS Directive.

ETFs have experienced exponential growth since they were first established in 1990. The ETF market is significant in size and has grown at a rapid pace over recent years. Since the launch of the first European ETF in 2000, Ireland has become a centre of excellence in supporting the operational aspects of ETFs. This includes the development of a large pool of expertise and experience across a range of essential services from fund administration, legal, tax, accounting, audit and depositary services. As a result, Ireland has become the number one European domicile for ETFs, with many of the largest global ETF promoters choosing to domicile their European products in Ireland. By the end of 2022, over 1,300 ETFs were domiciled in Ireland, amounting to €855 billion AUM (69 per cent of the total ETF AUM in the EU) and accounting for over 20 per cent of the funds domiciled in Ireland.[5]

Chart 6. Growth of ETFs in Ireland



Source: ECB

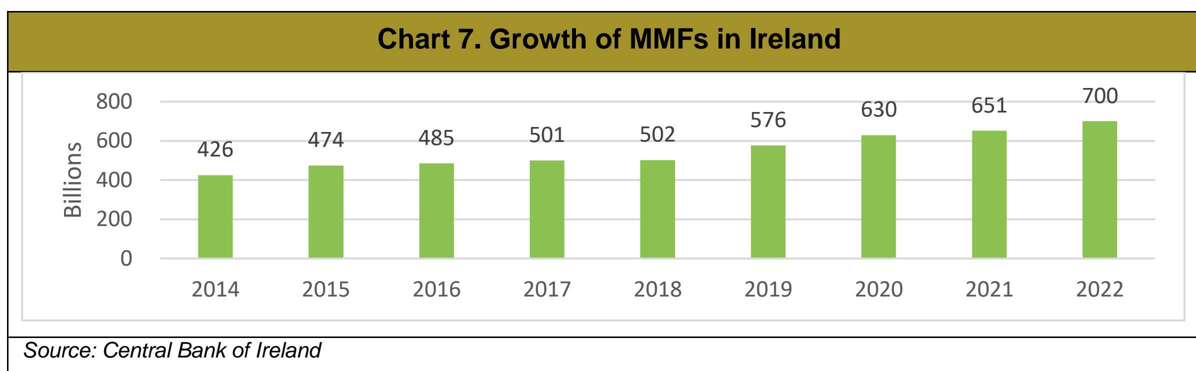
Money Market Funds

MMFs generally invest in short term deposits and debt instruments and they perform an important role for many different types of investors, including as a cash management and liquidity tool. MMFs can be established in Ireland as either UCITS or AIFs, although, in practice the vast majority of MMFs are UCITS funds. MMFs form a large and important sector in the European and global investment fund landscape. Ireland is the premier location in Europe for establishing and servicing MMFs and is domicile to €700 billion of MMFs, roughly 45 per cent of MMFs in the EU. The majority of MMFs domiciled in Ireland are Low Volatility Net Asset Value (LV-NAV) MMFs. Ireland also serves as a large centre for MMFs denominated in USD and GBP.[6]

[5] ECB Statistical Data Warehouse

[6] ESMA *Market Report: EU MMF Market 2023* (2023)

Chart 7. Growth of MMFs in Ireland



Source: Central Bank of Ireland

MMFs were first established in Ireland in the early 1990s. As many promoters of Irish funds had US backgrounds they wished to establish their MMFs as constant or stable net asset value (NAV) MMFs in order to operate in a similar manner to their US MMFs. In the context of the European UCITS regulatory regime, this meant that there were three important issues to consider:

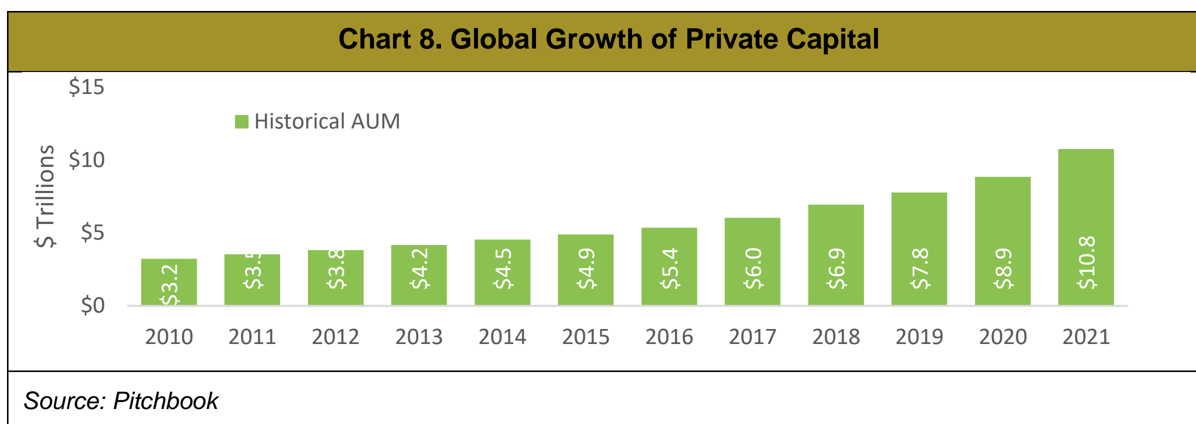
- where assets were traded (in order to comply with the eligible assets rules in the Directive);
- how assets were to be valued; and
- the use of repurchase agreements (repo).

With regard to valuation, the use of amortised cost methodology was permitted in Ireland by the Central Bank, taking into account regulatory practice that had developed in the US including rules in relation to Weighted Average Maturity and Weighted Average Life. In accordance with the UCITS regime, the rules in relation to valuation were required to be set down in the fund rules. The Central Bank provided certain guidance in relation to the valuation rules for MMFs and this guidance continued to be developed over the years. For example, the Central Bank required MMFs to carry out weekly reviews of the amortised cost valuation versus the market valuation – if there were discrepancies in excess of 0.3 per cent the review was required to move to a daily basis with escalation procedures in place with fund managers and fund boards. Rules in relation to the use of repo (reverse repo in this instance) were also developed by the Central Bank where there were important requirements related to collateral – eligibility, re-investment, and a prohibition on re-use.

Following the global financial crisis in 2008, Ireland was supportive of a European-wide regime for MMFs which was initially achieved with the Committee of European Securities Regulator (CESR) Guidelines "A Common Definition of European MMFs". The regulatory regime for MMFs underwent further significant change with the implementation of the EU Money Market Fund Regulation (MMFR) which came into effect in 2018. In line with the MMFR, the Commission is required to undertake a review of the Regulation (due by July 2022 but yet to be published).

III. ASSET CLASSES

Investment funds invest in a wide range of securities (bonds, equities etc.) with a more recent focus on private assets. There has been significant growth globally in the investment being made in alternative asset classes which include hedge funds, private equity, venture capital, property, direct lending/loan origination, infrastructure and Funds of funds. Investment in private assets (alternative-type investments) are typically illiquid and funds investing in these asset types are usually targeted at professional investors rather than retail investors.



IV. FUND SERVICING AND ADMINISTRATION

There is a diverse range of fund service providers that operate in the funds sector and support the effective functioning of investment. These include firms that must be appointed to the fund such as the fund manager (responsible for all aspects of the management of the fund) and the depositary (responsible for safeguarding the assets of the fund). In addition, there will be other parties such as the fund administrator (may interact with investors and maintain the records of the funds) or an investment manager (responsible for making the investment decisions) that may be appointed by the fund manager. Finally, there are other service providers operating in the sector including legal advisors, accountancy firms and tax advisors as well as Euronext Dublin which is an important funds listing hub.

Ireland is recognised as a centre of excellence in the provision of accounting, administrative and shareholder services to investment funds. This expertise has been built up since the 1990s. This is a result of a specific legal framework being put in place for the activity, alongside an emphasis on the regulation of fund administration in its own right.

Fund administrators have been authorised by the Central Bank under the Investment Intermediaries Act since 1995. The regulation of fund administrators has resulted in certain benefits, including high standards in a critical function that is integral to the good functioning of a fund and providing independence through a separate legal entity. This has increased the attractiveness of Ireland as a funds domicile and as a location for the administration of both Irish and non-Irish investment funds.

V. SUSTAINABLE INVESTING

The EU has undertaken a number of initiatives in the area of sustainability over the last number of years, with Member States working towards the goal of achieving climate-neutrality by 2050. As part of this ambition, the EU as a whole must increase its efforts in order to reach the target of reducing greenhouse gas emissions by at least 55 per cent by 2030. This shift to a more sustainable, low-carbon and circular economy requires significant investment and the funds sector has an important part to play in mobilising private capital.

The growth of the sustainable finance sector has been accompanied by the development of a new EU framework, several aspects of which impact on the funds sector. The Taxonomy Regulation, introduced in July 2020, classifies environmentally sustainable economic activities, while the

Sustainable Finance Disclosure Regulation (SFDR) that was introduced in March 2021 sets out mandatory disclosure requirements for funds and other financial products.

These frameworks, along with other EU initiatives, seek to enhance transparency and promote high standards of sustainability and ESG (environmental, social and governance) claims made by financial market participants, as well as protecting investors from risks such as greenwashing. This is an evolving area of work with a particular focus on ensuring investors' capital is channelled appropriately to sustainable and ESG-related activities and providing investors with reliable data on their investments.

The SFDR classifies funds into three categories indicating their level of sustainability:

Table 1. SFDR Categorisation

Article 6 – All Funds	Article 8 – All ESG	Article 9 - Sustainable
All managed products	'Light green' funds	'Dark green' funds
No integration of sustainability Can include stocks that are excluded from ESG funds, such as tobacco and coal producers, and should be clearly labelled as non-sustainable	Promotes, among other characteristics, environmental or social characteristics, or a combination but is not a main focus	"Do no significant harm"

Source: Department of Finance analysis

According to Morningstar, assets in Article 8 and Article 9 funds across the EU rose by more than 3 per cent in the first quarter of 2023 to €4.9 trillion, pushing their combined market share higher to 57 per cent as a proportion of EU domiciled UCITS (less MMFs).[7] This trend is expected to continue over time in response to strong investor demand for ESG investments.

The role of non-bank financial intermediation

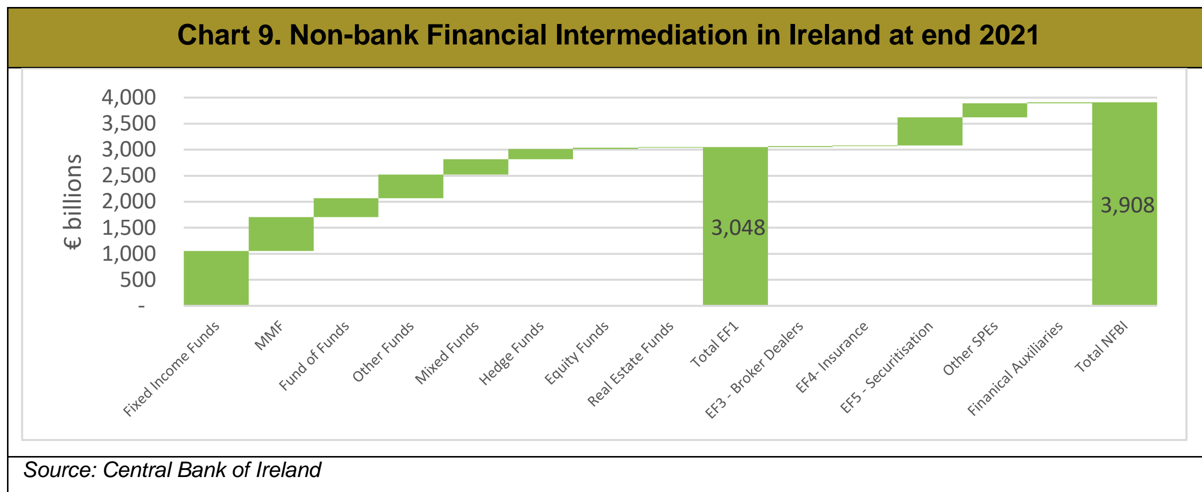
An element of the funds and pensions/insurance sector undertakes bank-like activities ("credit intermediation activities"), playing an increasingly important role in financing the real economy and in managing the savings of households and corporates. The Irish non-bank financial intermediation (NBFI) sector grew from €1.24 trillion at the end of 2010 to €3.9 trillion at the end of 2021.

While the NBFI sector in Ireland is broad and diverse, with a variety of business models, much of the growth can be attributed to the investment funds sector which saw its total assets increase to €3 trillion at the end of 2021.

Special Purpose Entities (SPEs), which are not investment funds, are a significant, yet separate aspect of the financial services industry in Ireland. The AUM in SPEs that form part of the NBFI sector is estimated at a further €808 billion as of the end of 2021.

[7] Morningstar *SFDR Article 8 and Article 9 Funds: Q1 2023 in Review* (2023)

Chart 9. Non-bank Financial Intermediation in Ireland at end 2021



Source: Central Bank of Ireland

As the firms and entity types that make up the NBFI sector are broad and carry out a diverse range of activities, different parts of the sector are subject to varying types of regulatory requirements. For example, certain segments of the sector are subject to monitoring and analysis (via reporting frameworks) but not subject to conduct or prudential regulatory requirements e.g. SPEs. Other parts of the sector, such as investment funds, are subject to detailed and comprehensive regulatory rules. The regulatory framework will also differ depending on whether the entity in question is a product (investment fund) or a firm (fund manager, fund administrator or depositary).

In response to concerns that the NBFI sector could become a source of systemic risk given the overall scale and interconnectedness of the sector (in its widest meaning), there has been growing commentary around mitigating potential financial stability risks with macro-prudential policy in the non-bank financing sector, which includes parts of the funds sector.

Questions

1. What policy supports have been most impactful in attracting the funds sector to Ireland and/or the EU in recent decades?
2. What characteristics set Ireland apart from other jurisdictions when selecting a fund's domicile?
3. What are the most important trends evident in the sector?
4. What are the key risks and challenges for the sector in the medium- to long-term and how can they be managed?
5. What are the key opportunities for the sector in the medium- to long-term and how can they be delivered?
6. How will technological change and innovation influence the sector's future development?
7. How best can Ireland position itself in the future as a location of choice for EU and international firms?
8. How can Ireland best support the growth and development of the market for ESG products and the transition to carbon neutrality?
9. For the NBFI sector, those investment funds providing credit intermediation, what are the key opportunities for the sector in the medium- to long-term and how can they be delivered?

3. The regulatory and supervisory framework

Introduction

Regulation of investment funds and their service providers gives investors the confidence that their money is being invested by managers who are subject to regulatory scrutiny and who must adhere not only to rules in relation to the investments made by the fund but to risk limits and standards of conduct and probity. However, since the global financial crisis, the regulatory framework has evolved and expanded beyond investor protection to cover a range of other issues including financial stability and market integrity.

The Central Bank of Ireland is responsible for the authorisation and supervision of investment funds established in Ireland. The Central Bank's mandate, which is founded on the Central Bank Act 1942, requires the proper and effective regulation of the financial sector in Ireland while ensuring overall financial stability and that investors and consumers are protected. In respect of the regulated funds sector, the regulatory and supervisory framework under which the Central Bank exercises this mandate primarily derives from the EU. The Central Bank's regulatory priorities are risk-based and reflect the evolving nature of the broader environment in which it operates.

The focus of the Central Bank's regulatory intervention in the funds sector is:

- to protect investors (which includes promoting and safeguarding the integrity of funds markets and maintaining confidence in the funds industry among potential investors and the public generally); and
- to identify and mitigate systemic risks that may arise from the activity of the industry.

Regulatory interventions in the market based finance sector range from the monitoring of financial activities to, in certain circumstances, the resolution of distressed firms. Supervision is conducted through rules and guidance (including through rule-making powers provided to National Competent Authorities in EU legislation), gatekeeping, supervision and regulatory actions including the use of enforcement powers.

In an increasingly globalised world market, national and international authorities have to work together to develop effective policies for regulating and supervising financial markets. Since the global financial crisis, there has been an emphasis on the need to develop an increasingly harmonised regulatory approach across the EU. This harmonisation objective has been brought into greater focus by ongoing work on the Capital Markets Union (CMU) project.

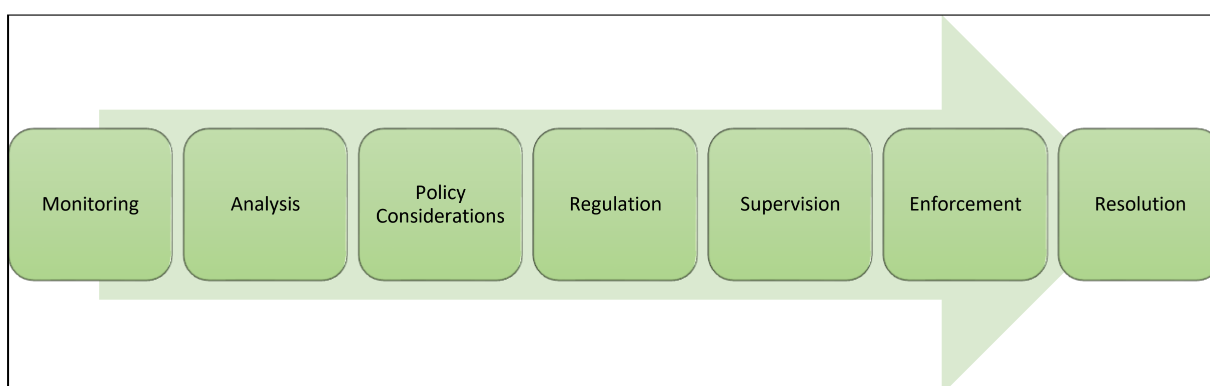
The legislative requirements instituted at an EU level are supplemented by technical standards, guidelines and recommendations from European Supervisory Authorities (ESAs), primarily the European Securities and Markets Authority (ESMA) and National Competent Authorities such as the Central Bank. International agencies such as the Financial Stability Board, the IMF, the OECD and the International Organization of Securities Commissions (IOSCO) also have a role in assessing financial resilience and developing policy principles to enhance financial stability.

Relevant Terms of Reference

- Outline the regulatory and supervisory framework for the sector and as part of that examination, considering the financial resilience of the sector both in the context of its size relative to the domestic economy and also in the context of Government's policy goal to have Ireland as a location of choice for EU and international financial firms
- Undertake relevant peer comparisons, most notably from other EU jurisdictions
- Take account of EU policy, in particular examining alignment with the EU Capital Markets Union (CMU) policy and other relevant international policies, and assess trends and how best Ireland can be positioned to fully benefit in the future

Key aspects of the regulatory and supervisory framework

THE SPECTRUM OF REGULATORY ENGAGEMENT



FUND LEGAL STRUCTURES

There are six separate structures that an Irish investment fund can take - outlined in the table below. Of these, five can only be used if the investment fund is regulated by the Central Bank. One structure, the Limited Partnership, is unregulated and is neither authorised nor supervised by the Central Bank.

The first four legal structures, established under Irish Company, Partnership or Trust law, have evolved to reflect the legal features required by an investment fund. As such, the requirements and rules relating to the structure vary according to the legislation under which it was conceived. With the exception of the Limited Partnership, the legislation related to the remaining legal structures is the responsibility of the Minister for Finance.[8]

With the exception of the Investment Company, the Central Bank is the Registrar for the regulated structures (1 to 5 in Table 2) and is required under legislation to maintain and update the register as required.

[8] Limited Partnerships are the responsibility of the Minister for Enterprise, Trade and Employment.

Table 2. Investment Funds (Regulated and Unregulated) - Irish Legal Structures			
	Legal Structure	**Legislation**	**Registrar**
1	Unit Trust	Unit Trusts Act 1990	Central Bank of Ireland
2	Investment Company	Companies Act 2014	Companies Registration Office
3	Common Contractual Fund (CCF)	Investment Funds, Companies and Miscellaneous Provisions Act 2005[9]	Central Bank of Ireland
4	Investment Limited Partnership (ILP)	Investment Limited Partnership Act 1994 (as amended)	Central Bank of Ireland
5	Irish collective asset-management vehicle (ICAV)	Irish Collective Asset-management Vehicles Act 2015	Central Bank of Ireland
6	Limited Partnership	Limited Partnership Act 1907	Companies Registration Office
Source: Department of Finance			

The table below details the number of regulated investments authorised from 2015 to 2022.

Table 3. Regulated Investment Funds by Legal Structures Authorised in Ireland								
	2015	2016	2017	2018	2019	2020	2021	2022
ICAV	248	320	354	615	428	390	511	424
Investment Companies	540	353	361	385	311	254	276	248
Unit Trusts	146	75	89	70	31	47	40	39
CCFs	13	26	26	48	32	28	9	18
ILPs	2	1					8	17
Total	**949**	**775**	**830**	**1118**	**802**	**719**	**844**	**746**
ICAV %	26%	41%	43%	55%	53%	54%	61%	57%
Source: Central Bank of Ireland								

Unit Trusts were one of the original forms for establishing an investment fund in Ireland. They are established by a trust deed with a trustee appointed as the legal owner of the assets and a management company to act for the trust. They do not have their own legal identity and investors are unit-holders as they hold a unit in the trust representing their entitlement to a portion of the fund's assets.

The Investment Company, previously one of the most common fund vehicles in Ireland, is subject to company law. It has a separate legal personality and may enter into legal agreements in its own name. An Investment Company is managed and controlled by a Board of Directors and issues shares to investors. It is not required to appoint an external manager but generally, certain functions are delegated to third party service providers.

[9] A CCF may be established as a UCITS and is subject to the provisions of the UCITS Regulations, the Central Bank UCITS Regulations and the Investment Funds, Companies and Miscellaneous Provisions Act 2005. A CCF may also be constituted as an AIF under the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

A CCF is established under contract through a deed of constitution. Investors are co-owners of the fund's assets. This allows investors to pool their resources under common management for investment purposes. A management company must be appointed and investors cannot be individuals in accordance with the relevant tax legal provisions.

The ILP was first established in 1994. It is only available for AIFs as a structure for professional investors. An ILP is created by a partnership agreement between the general partner and investors who participate as limited partners with the general partner acting for the fund. Unlike other fund types, it does not typically issue units or shares but, for regulatory purposes, partnership interests are equated to units or shares.

The Irish Collective Asset-management Vehicles (ICAV) Act 2015 Act was a bespoke piece of legislation that established a legal structure specifically for investment funds. One of the primary advantages of the ICAV structure is that it has been specifically designed to be distinguishable from a typical trading company and does not have to comply with the parts of the Companies Acts that are not relevant to investment funds. ICAVs can be used by both UCITs and AIFs. It has a distinct legal personality under an instrument of incorporation. The ICAV is managed by its Board of Directors with investors issued shares in the fund. It is not required to appoint an external manager but generally certain functions are delegated to third party service providers. Existing Irish investment companies or certain foreign funds can also convert to an ICAV. A significant proportion of all new funds have been set up as ICAVs since the structure was established in 2015.

Unregulated Vehicles

In addition to these vehicles, a number of investment funds use a Limited Partnership structure provided for by the Limited Partnership Act 1907 which falls under the responsibility of the Minister for Enterprise, Trade and Employment. The Limited Partnership is not a regulated fund structure and is neither authorised nor registered with the Central Bank. Where a Limited Partnership is categorised as an AIF, it must have a manager (AIFM) who must either be authorised or registered. However, this does not bring the Limited Partnership, as a vehicle, within the regulatory purview

FUND SERVICE PROVIDERS

Funds service providers is the collective term used to describe the parties providing services to an investment fund.

Table 4. Irish Fund Service Providers		
1	Fund administrators	Fund Administrators provide services, including transfer agency, net asset valuations (NAVs) and fund accounting in respect of Irish authorised funds both UCITS and AIFs. Fund Administrators can also provide these services to non-Irish authorised funds. Fund administration firms are authorised under Section 10 of the Investment Intermediaries Act.
2	Fund depositaries	Depositaries provide trustee and custodial services in respect of Irish authorised funds. In addition, Irish-authorised Depositaries may also provide services to non-Irish authorised funds. Depositaries are cleared to act for Irish-authorised investment funds by the Central Bank and then an approval is granted on each appointment to an investment fund.

3	Fund managers – UCITS management companies and AIFMs	A UCITS Management Company is a company whose regular business is collective portfolio management of UCITS funds and is authorised under the Irish UCITS Regulation[10] to engage in the management of UCITS and other collective investment schemes in the form of either Unit Trusts, Common Contractual Funds or Investment Companies or any combination thereof. AIFM means legal persons whose regular business is managing one or more AIF schemes. An AIFM is authorised under the Irish AIFM Regulations[11] to engage in Portfolio Management and Risk Management services of AIFs.
Source: Central Bank of Ireland		

Regulatory Focus

Irish-authorised investment funds and fund service providers are supervised by the Central Bank through a combination of proactive and reactive supervision, thematic reviews and inspections in accordance with PRISM™- Probability Risk and Impact SysteM™. PRISM is the Central Bank's risk-based framework for the supervision of regulated firms and provides supervisors with guidance on the level of required engagement with a particular firm and a means to document their actions and judgements.

AUTHORISATIONS / GATEKEEPING

The Central Bank is responsible for a range of authorisation / gatekeeping activity associated with the funds sector. This includes product authorisation (of authorised investment funds); approval of any post authorisation amendments to authorised fund documentation; and authorisation of fund service providers operating in the sector (such as fund managers, fund administrators and fund depositaries).

INVESTOR PROTECTION

Under the Central Bank Act 1942, the Central Bank is charged with the regulation of financial firms and ensuring that the best interests of consumers are protected in a way that is consistent with the orderly and proper functioning of financial markets.

The Irish consumer protection framework, comprised of a range of EU and domestic legislation aligned with the OECD Principles, is designed to ensure individual firms are stable and resilient to shocks. More specifically, the EU and domestic retail conduct frameworks, together with various Central Bank codes and regulations, as well as firm guidance and supervisory expectations, provide the foundations for the Irish consumer protection framework.

FINANCIAL STABILITY/RESILIENCE

A topic of increasing importance in international regulatory fora is that of the potential systemic risk posed by the funds sector. The Financial Stability Board (FSB), the European Systemic Risk Board (ESRB), the European Central Bank (ECB) and others have highlighted systemic risks in the funds sector in recent years.

[10] S.I. No. 352/2011 - European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

[11] S.I. No. 257/2013 - European Communities (Alternative Investment Fund Managers Directive) Regulations 2013

The collective action of elements of the funds sector can generate systemic risk by amplifying the effects of a shock to the rest of the financial system and the real economy. The key vulnerabilities are leverage and liquidity mismatch within the funds sector, as well as its interconnectedness to other parts of the financial system and real economy. This was evident in the difficulties experienced in the short-term funding market at the outset of COVID-19 in March 2020[12] and the UK gilt market stress in 2022.

The funds sector, as measured by total assets, is the largest single component of Ireland's international financial sector. This means that it is important that the funds sector based in Ireland is resilient and that it does not, through collective action, spread or amplify shocks elsewhere. This is important for the smooth functioning of the rest of the financial system as well as the protection of fund investors (and investors more broadly).

Reducing the potential systemic risk from the funds sector is a key priority for the Central Bank. The Central Bank is active internationally in the relevant regulatory fora and, last year, announced new domestic macro prudential measures for Irish property funds. These measures were introduced due to the relatively high levels of leverage in these funds, as well as their significant role in the Irish commercial real estate (CRE) sector. Beyond the focus on property funds, a forthcoming Central Bank Discussion Paper will examine a number of issues with regard to the development and operationalisation of a macro prudential framework for investment funds.

FITNESS & PROBITY

The Central Bank's Fitness and Probity (F&P) regime applies to funds and funds service providers. The regime's purpose is to ensure that individuals performing senior roles (referred to in the legislation as Controlled Functions (CFs) and Pre-Approval Controlled Functions (PCFs)) are competent and capable, honest, ethical and of integrity and also financially sound. Before a person can be appointed to a PCF role, an individual questionnaire must be completed and submitted to the Central Bank for approval. The Central Bank has published the Fitness and Probity Standards 2014, and guidance documents to assist firms, CFs and PCFs to comply with their F&P obligations.

ANTI-MONEY LAUNDERING

The Central Bank's strategy is to appropriately supervise and monitor financial institutions for compliance with Anti-Money Laundering / Counter Terrorism Financing (AML/CFT) requirements commensurate with their money laundering / terrorist financing risks. The Central Bank's supervisory approach applies a risk-based approach based on the residual risk profile of each individual firm / fund, with a focus on those with increased risk due to their scale and AUM. The funds sector is categorised into three distinct sub-sectors:

- Fund Administrators
- Funds / Fund Management Companies
- Depositaries

The AML/CFT frameworks and consequent actions undertaken to ensure compliance with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) are typically

[12] However, 'as a result of the robust adoption of the MMF Regulation, EU Money Market Funds entered the liquidity crisis with very high levels of liquidity and no EU MMF suspended redemptions or used liquidity fees on redemptions or redemption gates.

delegated by the Fund/Fund Management Companies to the Fund Administrators. The National Money Laundering and Terrorist Financing Risk Assessment has designated the funds sector as a Medium High risk.[13]

While the Central Bank has a comprehensive AML/CFT supervisory framework, unregulated vehicles can pose a heightened risk from an AML/CFT perspective if there is a lack of transparency or data regarding the ultimate owners in the structure. Additional measures may be necessary to better understand and address potential risks posed by non-residents and cross-border activities in the unregulated sector to inform further policy development and supervisory work in this area.

REPORTING

Data is critical to the Central Bank's effective supervision of the funds sector and the accuracy of reporting and data submissions by funds and fund services providers is of paramount importance. Approximately 80 per cent of all data received by the Central Bank relates to investment funds. Investment funds are subject to statutory reporting requirements as well as reporting requirements imposed under conditions of authorisation such as the requirements set out in the AIF Rulebook (for example AIF Monthly Returns, Survey of Collective Investment Undertakings, a Funds' Annual Survey of Liabilities).

Certain investment funds, depending on their authorisation status, are subject to additional reporting requirements. In addition to the above, investment funds are also required to report information relating to liquidity flows and the profile of each individual sub-fund. As part of the Central Bank's supervisory mandate, additional data and reporting requests may arise.

FEES AND LEVIES

Central Bank levies are paid annually and calculated based on the cost of regulatory activities. In 2021, investment funds authorised by the Central Bank paid a minimum levy of €7,165. Umbrella funds pay a contribution per sub-fund of €475 up to a maximum of twenty sub-funds, resulting in a maximum contribution for umbrella funds of €16,665. An investment fund service provider that has been authorised by the Central Bank pays a levy contribution corresponding to its impact category ranging from a minimum of €20,951 up to €1,648,902.

Capital Markets Union

The European Council Conclusions from April 2022 set a useful backdrop to the future strategic direction of financial services in the EU. They noted that:

> *the EU needs to continue pursuing an appropriate balance between both objectives, striving to achieve its economic and financial autonomy, while maintaining its openness, global cooperation with like-minded partners and competitiveness, and reap the potential benefits thereof. Achieving these objectives is important for safeguarding the EU's legitimate economic interests, as well as the economic and financial stability of the EU and beyond;*

The Conclusions reflect the EU's concerns about potential vulnerabilities where it relies on third countries for the supply chain of critical goods and services. The increasing influence of geopolitics

[13] Department of Finance and Department of Justice and Equality *National Risk Assessment Ireland: Money Laundering and Anti-Terrorist Financing* (2019)

and efforts to build the resilience of Europe's internal markets are important issues for Ireland, given our position as a small open economy and as the home to a large funds sector that itself is a significant part of the globally interconnected financial system.

Enhancing the robustness of the EU's financial sector will support broader financial stability. It is important that potential vulnerabilities are addressed while underpinning and respecting the EU Single Market as well as maintaining Europe's openness to outside capital, expertise and innovation. Delivery of the EU's strategy will require:

- Securing a stronger international role of the euro including through a stronger and deeper Economic and Monetary Union;
- Ensuring the resilience of the financial sector so as to serve the real economy including through the completion of the Banking Union and the deepening of the Capital Markets Union (CMU), while reducing excessive reliance on third-country financial institutions and infrastructures where it could be expected to create financial stability risks; and
- Protecting the EU economic and financial system against the effects of the extra-territorial application of third country sanctions and other harmful practices, in addition to maintaining a well-functioning own EU sanctions regime.

The CMU initiative was launched in 2015. It is designed to build a single capital market in Europe and mobilise European savings and investments to benefit consumers, investors and companies. It aims to provide greater business financing, support economic growth, offer new opportunities for savers and create a more inclusive and resilient economy while reinforcing Europe's global competitiveness and autonomy. In 2020 the EU Commission adopted a second CMU Action Plan which proposed 16 legislative and non-legislative actions. A number of these proposals, including those detailed below, could significantly impact the funds and asset management sector.

Table 5. Capital Markets Union Legislative Proposals

	Action	Purpose	Status
1	Revised European Long-Term Investment Funds (ELTIF) Regulation	To make ELTIFs more appealing to investors as a fund available for long-term investments in the real economy	Formally adopted on 7 March 2023
2	Establishing a European Single Access Point (ESAP)	To create a single point of access to public information about EU companies and EU investment products	Provisional agreement reached between the Council and European Parliament on 23 May 2023.
3	Amending the Alternative Investment Fund Managers Directive (AIFMD) and Directive relating to Undertakings for Collective Investment in Transferable Securities (UCITS)	To improve the effectiveness and functioning of the AIFMD, to ensure overall financial stability and investor protection and to further AIF market integration	Trilogue negotiations between the European Commission, Council of the EU and European Parliament are ongoing.
4	Reviewing the Markets in Financial Instruments Regulation (MiFIR)	To ensure greater transparency by facilitating market data consolidation (i.e. an EU-wide consolidated tape for financial markets instruments)	Trilogue negotiations between the European Commission, Council of the EU and European Parliament are ongoing.
5	Listing Act Package	To simplify and improve listing rules for companies, in particular for SMEs, wanting to raise funds on public markets without	Commission proposal published in December 2022.

		jeopardising investor protection and market integrity	
6	Developing a Retail Investment Strategy	To promote more transparency, simplicity, fairness and cost-efficiency for retail investment products across the internal market	Retail investment package published by the Commission on 24 May 2023.
7	Harmonising targeted aspects of the corporate insolvency framework and procedures	To address the differences in national insolvency regimes which pose a significant obstacle to the single market for capital in the EU	Commission proposal published in December 2022.
8	Open Finance framework	To allow data to be shared and re-used by financial institutions for the creation of new service	Commission consultation completed in August 2022.
Source: Department of Finance			

Questions

10. How important is an effective regulatory framework for Ireland to maintain its status as a leading funds domicile?
11. Taking account of the European and international aspect of the Irish framework and key EU files such as Capital Markets Union (CMU) and the Retail Investment Strategy, what improvements could be made to the legislative, regulatory and supervisory framework?
12. What elements of EU policy, including CMU policy, are most relevant to the growth and development of the funds and asset management sector in Ireland and why?
13. What peer jurisdictions, most notably from other EU jurisdictions are most relevant? Outline the reasons why.
14. How does the funds framework in Ireland compare to those other jurisdictions?
15. Are there any updates or changes needed to the current legislation governing the legal structures used to establish investment funds?
16. How do the Irish legal structures compare to the vehicles available in other jurisdictions?
17. Are there investment or financing vehicles that are currently unregulated but that should be regulated in the future? If your answer is yes, please explain how these entities should be regulated and the rationale for doing so.
18. Unregulated vehicles are not subject to the same restrictions, requirements and reporting obligations as regulated ones. Does this pose a risk to investors or to the wider financial system?

4. Assessing the impact of the funds sector

Introduction

The 'Ireland for Finance' strategy, updated in 2022, recognised the valuable contribution that the international financial services sector makes to the economy.[14] There is an appreciation, albeit an incomplete understanding, of the impact that the investment fund sector specifically has had on the real economy, including in Ireland. An Indecon report examining the direct and indirect economic impact of the funds sector in Ireland estimated that the sector generated €9.82 billion in revenue in 2020.[15] The funds and asset management sector also has an important role to play in supporting investment in the economy and savings plans for individuals, both in Ireland and across the EU.

Relevant Terms of Reference

- Assess how the funds sector directly and indirectly contributes to the economy, with particular reference to employment, revenues and regional development
- Assess the role the sector can play in deepening Ireland's capital markets and in particular supporting domestic SME's access to finance
- Assess how the sector assists in meeting wider Government policy objectives in areas such as pensions, long-term savings and investment in domestic enterprises and infrastructure

Economic Impact of the Sector

The Indecon report, commissioned by the Irish Funds Industry Association ("Irish Funds"), estimated that 17,273 full-time equivalent (FTE) persons were directly employed in investment funds and asset management related enterprises in Ireland. The sector employs a wide range of highly skilled individuals who provide services to enable the establishment, sale, administration and oversight of funds (both Irish and non-Irish domiciled). Additionally, the report found that the industry made substantial contributions to the Exchequer, with direct tax returns of over €914 million estimated in 2020.

The Indecon report also highlighted the continued regionalisation of the Irish investment funds and asset management sector, with almost half of the counties now home to at least one office location within the industry. The increased regional spread was evidenced by the fact that employment outside of Dublin accounted for 38.3 per cent of employment in the sector in 2020, up from 27.9 per cent in 2018.

[14] Department of Finance Ireland for finance strategy
[15] Indecon *Indecon Assessment of Economic Impact of the Funds & Asset Management Industry on the Irish Economy* (2021)

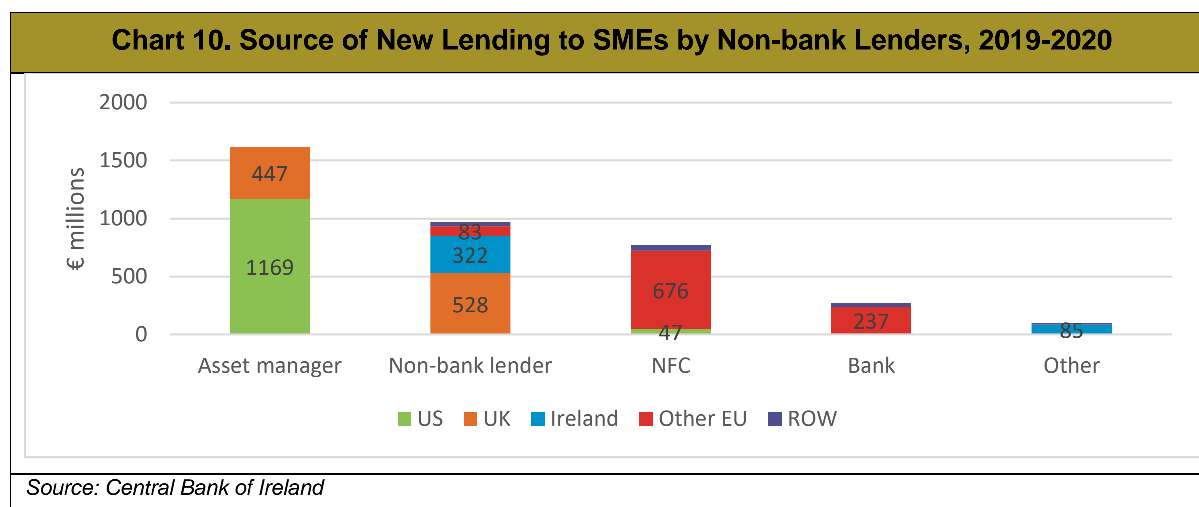
SUPPORTING INVESTMENT

The funds and asset management sector is part of the financial ecosystem which supports funding for domestic enterprises, including SMEs, both in terms of debt and equity. Asset managers can help private companies to grow and support the growth and development of public companies.

The Central Bank of Ireland's Market Based Finance Monitor estimated that AUM of Irish-domiciled NBFIs totalled €5.2 trillion in late 2021.[16] The authors estimated that just €33 billion were Irish real-economy investments, predominantly at commercial real estate investment funds and equity funds. A 2021 study which used the Central Bank's Central Credit Register found that the NBFI share of SME lending in 2019 and 2020 ranged from 40 per cent of credit to the real estate sector to under 10 per cent of credit to sectors such as hotels and restaurants and agriculture.[17] On aggregate, an estimated 28 per cent of lending to Irish SMEs in 2020 was from NBFIs. The study also identified the business models of lenders, estimating that the vast majority of NBFI lending to Irish SMEs was provided by property lenders, leasing companies and asset finance companies.

The sector is expected to play a big role in the financing of a transition to more sustainable business model.

Chart 10. Source of New Lending to SMEs by Non-bank Lenders, 2019-2020



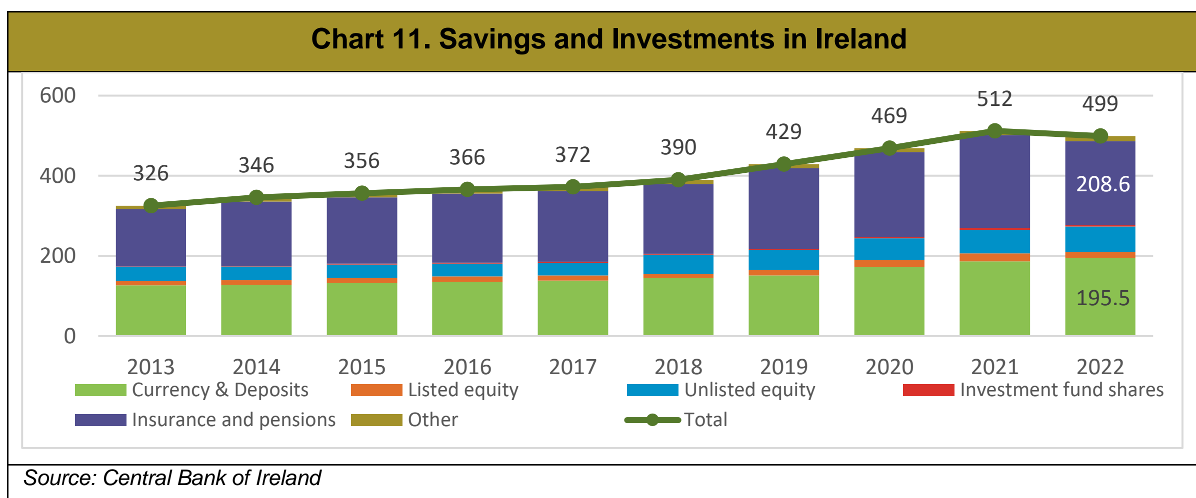
Source: Central Bank of Ireland

SUPPORTING SAVINGS

The funds and asset management sector plays an important role in the financial system as it facilitates the accumulation of savings by individuals and institutions by channelling this private funding into the economy. A very small proportion of savings by Irish residents is classified as being held in investment funds - €62 billion - compared to €196 billion in deposits and €209 billion in insurance and pension products.

[16] Central Bank of Ireland *Market Based Finance Monitor 2021* (2021)
[17] Heffernan, T. et al. *The role of non-bank lenders in financing Irish SMEs* (2021)

Chart 11. Savings and Investments in Ireland



Source: Central Bank of Ireland

Questions

19. Where relevant, detail how your organisation, or the wider sector, contributes to the economy with particular reference to employment, revenues and regional development.
20. What role can the sector play in deepening Ireland's capital markets and, in particular, supporting retail investors access to investment opportunities and domestic SME's access to finance? What measures can be taken or supported (if underway) to meet this objective?
21. What role can the sector play in meeting wider Government policy objectives in areas such as investment in domestic enterprises and infrastructure? What measures can be taken or supported (if underway) to meet these objectives?
22. What role can the sector play in meeting wider Government policy objectives in areas such as pensions and long-term savings? What measures can be taken or supported (if underway) to meet these objectives?
23. What role does the sector play in supporting investment in the economy and the savings needs of investors in the EU, and outside the EU, where relevant?

5. Taxation of investment products

Introduction

Given the complexity arising from the number of investment products available in both the Irish and international markets and the different structures used to invest in them, there are concerns that the differing tax regimes may cause investors to choose one type of investment over another, more suitable, product. The tax rate and treatment can vary depending on:

- the type of investment product;
- who the investor is and their tax residence or domicile position;[18]
- the percentage holding or level of influence of the investor;
- the source jurisdiction; and
- in some cases, depending on whether certain administrative or filing obligations have been complied with.

The investment market has expanded exponentially over recent years with a wide array of investment products and platforms now available to investors. Individual products are continually developed so there is no set list of products and their treatment for taxpayers to review. These investments are also more accessible to a broader cohort of taxpayers (both retail investors and professional investors) with varying levels of access to professional advice. While the Revenue Commissioners publishes guidance for taxpayers, practitioners and investors, it is not possible to provide comprehensive guidance for all products.

In its 2022 Report, the Commission on Taxation and Welfare (COTW) expressed the view that, as a general principle:

- different forms of investment and savings income should be subject to the same level of tax on horizontal equity grounds; and
- the level of income of a taxpayer should determine the marginal rate payable, rather than the type of investment product used.

This is consistent with the findings of the Commission on Taxation 2009 which recommended that there should be parity of treatment for different forms of savings and investment income.

The COTW's recommendation for an examination of the taxation regime for funds, life assurance policies and other related investment products, with the goal of simplification and harmonisation where possible; and to do so with a net revenue-raising or neutral mandate will be considered within the context this Review.

Relevant Terms of Reference

- An examination of the taxation regime for funds, life assurance policies and other related investment products, with the goal of simplification and harmonisation where possible; and to do so with a net revenue-raising or neutral mandate

[18] Some foreign investments are treated as Schedule D Case IV income, in which case the remittance basis is not available. Other foreign income is taxed under Case III, with the remittance basis available to non-domiciled individuals.

Illustrative rates of tax on savings and investments

The current treatment of financial products is confusing and may potentially distort the neutrality of the tax system in this area. Examples include the different treatment of products liable to Deposit Interest Retention Tax (DIRT) vs Life Assurance Exit Tax (LAET)[19]; the treatment of direct equity investment vis-a-vis an Exchange Traded Fund (ETF) or other vehicle; and where offshore funds are considered to be distributing or non-distributing.

In some cases, taxes represent final liability taxes deducted by a financial institution at source whereas others must be included in a self-assessed tax return and, where the amount is included in a self-assessed return, in some cases it will be a final liability and in others reliefs or credits will be available for offset against the liability.

Other incongruities and inconsistencies between the regimes have emerged:

- Capital Gains Tax (CGT) losses can be offset against CGT gains, whereas when a loss arises on the disposal of a unit in an Irish fund or a material interest in an offshore fund, no CGT or other loss relief is available.
- There is no CGT charge for disposals on a death whereas exit tax applies for payments on the death of a unit holder in a fund. The exit tax payable on the death of an individual is allowed as a credit against Capital Acquisitions Tax (CAT) payable by the beneficiary.

Concerns have also been raised in terms of how the application of an exit tax interacts with general tax exemptions and the complexity that comes from different exemptions applying to the taxation of life policies, fund investments and the taxation of deposit accounts.

In 2018, the Department of Finance published a paper entitled “The Taxation of DIRT and LAET: a review on the comparisons and tax treatment of DIRT and LAET” which considered products subject to DIRT or LAET under three headings (i) fees/costs to the client; (ii) taxation treatment and exemptions; and (iii) risk and return.[20]

The paper concluded that these products are different in their conception, fees, level of risk and security of capital. These differences, in addition to the different profits to which the tax rates apply (e.g. gross roll-up versus annual charges), are relevant to any proposal to simplify and harmonise the taxation of these products.

The tables below illustrate the different categories of investment and the headline rate(s) that can apply to Irish investors in those investments.

[19] Department of Finance *Capital & Savings Taxes: Tax Strategy Group – 20/10* (2020)
[20] Department of Finance *The taxation of DIRT & LAET - A review on the comparisons and tax treatment of DIRT and LAET* (2018)

Table 6. Rates of Tax on Different Forms of Savings and Investments (Source of Income)			
	Tax charge / scope	**Tax rate**	**Notes**
Distributions (including dividends)	• Dividend withholding tax (DWT) • Companies liable to Corporation Tax (CT) • Income tax (IT) • Universal Social Charge (USC)[21] • Pay Related Social Insurance (PRSI)[22]	25% Exempt (Franked Investment Income) 20% / 40% 0.5%/ 2% / 4.5% / 8%[23] 4%	DWT is a payment on account and is offset against the final tax liability.
Rental income	• Individuals liable to IT, USC and PRSI • Companies liable to CT • REITs	Marginal rates (as above) 25% Exempt	
Deposit interest[24] [25]	• Individuals liable to Deposit Interest Retention Tax (DIRT) • PRSI may apply[26] • Companies liable to CT	33%[27] 4% 25%[28]	Final liability tax
Deposit interest arising from foreign deposits	(i) IT, calculated at the DIRT rate, applies to individuals who have deposit interest arising in an EU Member State • PRSI may apply (ii) IT, calculated at the DIRT rate, applies to interest from a non-EU source if the taxpayer is a standard rate taxpayer • PRSI may apply (iii) IT, calculated at an individual's higher rate, applies to: • Deposit interest arising in an EU Member State if the individual has not made a timely return • Deposit interest arising in a non-EU Member State if the individual: - has not made a timely return; or - is a higher rate taxpayer (for IT purposes)	33% 4% 33% 4% 40%	

Source: Revenue Commissioners

[21] USC at a reduced rate is payable by individuals over the age of 70 whose aggregate income does not exceed €60,000
[22] PRSI, in respect of all sources of income, is not payable by individuals over the age of 66.
[23] A marginal USC rate of 11 per cent may apply to rental income where taxpayer's relevant income exceeds €100,000 but 8 per cent is the maximum rate that applies to other sources of income.
[24] State Savings Fixed Term Products, Instalment Savings and Prize Bonds winnings are not subject to DIRT and are exempt from IT, PRSI and Capital Gains Tax. An Post Deposit Accounts are subject to DIRT.
[25] DIRT is not operated on certain accounts held by individuals where, for example, the money in the account is compensation received under Magdalen Restorative Justice Ex-Gratia Scheme.
[26] PRSI may apply to deposit interest in certain circumstances.
[27] Individuals over 65 and those who are permanently incapacitated may be entitled to a refund of this tax in certain circumstances.
[28] DIRT does not apply to interest on deposit accounts opened by companies (chargeable to CT in respect of the interest) provided that the deposit taker has been provided with the tax reference number of the company. Companies are generally liable to CT at the rate of 25 per cent on their investment income though a 12.5 per cent CT rate may apply for a select cohort of trading companies.

Table 7. Rates of Tax on Life Assurance Products			
	Tax charge / scope	**Tax rate**	**Notes**
Life assurance policy	**New Basis Business (written on or after 1 January 2001)** Life Assurance Exit Tax (LAET) applies as follows: • Individuals [29] • Companies • Personal Portfolio Life Policy	 41% 25% (increased to 41% if appropriate declaration has not been made) 60% (increased to 80% if details not correctly included in a timely tax return)	Gross roll-up regime at life policy level. LAET applies to chargeable events, including a deemed disposal every 8 years. It is operated by the life company, or by the Courts Service where applicable, and is a final liability tax. As such, individual investors are not required to file a tax return (Form 11) in relation to income from these policies.
	Old Basis Business (written on or before 31 December 2000) The investment return from the life assurance policy is apportioned between policy holders and shareholders: • Shareholders' share of profit taxed at standard rate of CT • Policy holders' share of profits taxed at standard rate of Income Tax	Income less expenditure[30] taxed at: 12.5% 20%	Annual charge. This is a final liability tax for policyholders who are not required to file a tax return in relation to these profits.
	IT on Certain Foreign Life Assurance Policies • Companies • Individuals • Personal Portfolio Life Policy (for individuals)	 25% 41% 60% (increased to 80% if details not correctly included in a timely tax return)	Applies to payments from the policy and on a 8 year deemed disposal Tax is paid through self-assessment. Loss relief cannot be used to shelter the amount of tax arising.
Source: Revenue Commissioners			

Table 8. Rates of Tax on Fund Structures			
	Tax charge / scope	**Tax rate**	**Notes**
Irish domiciled funds	Investment Undertakings Tax (IUT) • Individuals • Companies	 41% 25% (increased to 41% if appropriate declaration has not been made)	Gross roll-up regime at fund level. IUT applies to chargeable events, including in some cases

[29] LAET is refundable in limited circumstances, such as where the policyholder is permanently incapacitated.

[30] Note that the amount of Expenditure that is deductible may be reduced through the application of the Notional Case I computation.

	• Personal Portfolio Investment Undertaking (PPIU) (for individuals)	60% (increased to 80% if details, when required, not correctly included in a timely tax return)	a deemed disposal every 8 years.[31] IUT is a final liability tax for individuals. IUT may be refundable for companies.
Offshore funds	Tax on '**Equivalent' offshore funds in the EU/EEA/OECD**[32] • Individuals • Companies • PPIU	41% 25% 60%/ 80% where payment/gain on disposal is not recorded correctly in the persons return	Treated broadly the same as an Irish fund (including deemed disposal after 8 years). IT or CT applies to both income and any gain on disposal of a material interest in the fund. The tax arising at 41% / 60% for individuals cannot be reduced.
	Tax on '**Non-equivalent' offshore funds in the EU/EEA/OECD** • Individuals • Companies	IT, USC and PRSI at marginal rates and CGT at 33% CT at 0%, 12.5% or 25% on income and 33% on gains	These are treated as normal income and gains (outside scope of special offshore funds rules) and included in the Form 11 / CT1 as normal.
	Tax on offshore funds in **other territories** (non EU/EEA/OECD) - **Distributing fund**[33] • Individuals • Companies	IT, USC and PRSI at marginal rates and CGT @ 40% CT at 25% on income and 40% on gains.	Income payments are taxed in accordance with general principles of taxation. Payments in respect of disposals subject to CGT.
	Tax on offshore funds in **other territories** (non EU/EEA/OECD) – **Non - Distributing fund** • Individuals • Companies	IT, USC and PRSI at marginal rates CT at 25% on income and gains	Income payments are taxed in accordance with general principles of taxation. Payments in respect of disposals charged to IT but calculated according to CGT rules.

[31] In most cases IUT is operated by the investment undertaking, or Courts Service where applicable, but there are circumstances, such as where the investment undertaking is an Exchange Traded Fund, where the taxpayer is required to file a tax return and declare the tax due.

[32] An 'equivalent' fund is one which is similar in all material respects to an Irish regulated fund and is taxed under the gross roll-up regime. The fund must be located within the EU, EEA or an OECD member state with which Ireland has a double tax agreement.

[33] A distributing fund is a fund that distributes its profits to its unit holders from year to year. The default position is that unless a fund applies to, and is certified by, the Revenue Commissioners as a distributing fund, it is a non-distributing fund. The list of distributing funds approved is published on the Revenue Commissioners website.

Investment Limited Partnerships	Income, gains or losses are allocated to partners in proportion to that partner's capital interest in the partnership. The partnership is generally treated as tax transparent.	CT @ 0%, 12.5% or 25% IT, USC and PRSI at marginal rates and CGT @ 33%
Common Contractual Funds	Income, gains or losses are allocated to investors in proportion to that investors' capital interest in the fund. The fund is generally treated as tax transparent.	CT @ 0%, 12.5% or 25% IT, USC and PRSI at marginal rates and CGT @ 33%

Source: Revenue Commissioners

Tax regimes for savings and investment products

The evolution of the tax regimes for savings and investment products is explored below.

DEPOSITS WITH IRISH FINANCIAL INSTITUTIONS (DEPOSIT INTEREST INCOME)

Tax policy in relation to deposit interest has largely focused on the rate. As illustrated below, the DIRT rate has changed numerous times since 2008 with changes generally introduced to increase revenues or to incentivise consumption or savings depending on economic conditions at the time.

Table 9. Comparison of DIRT and Exit Tax Rates – January 2002 to date

Period Rate applied / Date Chargeable Event arose	DIRT Rate (%)	Exit Tax Rate (%) [34]
1 January 2002 to 31 December 2008[35]	20	23
1 January 2009 to 7 April 2009	23	26
8 April 2009 to 31 December 2010	25	28
1 January 2011 to 31 December 2011	27	30
1 January 2012 to 31 December 2012	30	33
1 January 2013 to 31 December 2013	33	36
1 January 2014 to 31 December 2016	41	41
1 January 2017 to 31 December 2017	39	41
1 January 2018 to 31 December 2018	37	41
1 January 2019 to 31 December 2019	35	41
Since 1 January 2020	33	41

Source: Revenue Commissioners

DIRT is collected at source by the financial institution when the interest is paid or credited to the deposit account of an Irish resident. It is a final liability tax in that it satisfies an individual's liability to income tax in respect of the deposit interest. Deposit interest is excluded from the Universal Social Charge (USC) charge although Pay-Related Social Insurance (PRSI) may apply.

The COTW recommended that tax on deposit interest should be charged at an individual's marginal rate of Income Tax (IT) and USC. Such a move would require administration changes to facilitate collection of the right amount of tax as the marginal rate of IT, USC and PRSI will vary

[34] Exit Tax refers to Life Assurance Exit Tax (LAET) and Investment Undertaking Tax (IUT). This table does not include the higher rates of tax that can apply to personal portfolio products or where information is incorrectly returned to the Revenue Commissioners.

[35] A higher DIRT rate applied to interest earned on a deposit where the interest could not be calculated annually or more frequently and the interest could not be determined until it was paid. This higher DIRT rate was abolished and the standard DIRT rate applies to any interest paid or credited on these deposits on or after the 1 January 2014.

from person to person and from year to year, and may even change month to month, depending on total income and personal circumstances.

While unincorporated businesses are charged DIRT on their interest income, DIRT does not apply to interest on deposit accounts opened by companies provided that the deposit taker has been provided with the tax reference number of the company. Companies are generally liable to Corporation Tax (CT), at the rate of 25 per cent, on their investment income (although interest may be regarded as a trading receipt in certain limited circumstances). Companies may use current year trading losses to reduce the tax due on passive interest income arising in the same year.

IRISH DOMICILED FUNDS

The growth and development of the funds industry has in many ways impacted the tax system and how it has evolved. As discussed in Chapter 3, Irish domiciled funds can be established as:

- Investment Companies, under Part 24 Companies Act 2014
- Unit Trusts, under the Unit Trust Act 1990
- Irish Collective Asset-management Vehicles (ICAVs) under the Irish Collective Asset-management Vehicles Act 2015
- Investment Limited Partnerships (ILPs), under the Investment Limited Partnership Act 1994 (as amended)
- Common Contractual Funds (CCFs), being
    - a UCITS that is not established under trust or statute, or
    - established pursuant to the Investment Funds, Companies and Miscellaneous Provisions Act 2005

The profits and gains of these vehicles are taxed either on a tax transparent basis or on gross roll-up basis.

Taxed on a tax transparent basis	Taxed under the gross roll-up basis
• Common Contractual Funds (CCFs) • ILPs granted authorisation on or after 13 February 2013[36]	• Investment Companies • Unit Trusts • Irish Collective Asset-management Vehicle (ICAVs) • ILPs granted authorisation prior to 13 February 2013

Under the gross roll-up regime, the profits and gains arising to the fund are exempt from tax until the happening of a chargeable event which, generally speaking, are events where value passes from the fund to the investor such as a distribution or a redemption with profit. Upon the happening of a chargeable event Investment Undertaking Tax (IUT) arises. Where the investor is an Irish individual the rate of IUT is 41 per cent while it is 25 per cent where the investor is an Irish company. There are certain investors such as non-residents, pension funds, charities etc. who, on the making of an appropriate declaration, are exempt from IUT.

Where IUT is applicable in relation to a chargeable event, in most cases, a gain, calculated as the amount of the chargeable event, is deemed to arise to the fund with IUT operated on that gain.

[36] Granted authorisation under section 8 of the Investment Limited Partnerships Act 1994.

Where that happens and the unit holder is an individual, the payment of the IUT by the fund is a final liability tax in that the individual does not have to include the amount of the chargeable event in a tax return made to the Revenue Commissioners. Where the units in the fund are held in a clearing system, such as would be the case with an ETF, it is not possible for the fund to operate the IUT system and the investor will have to include the income or profit in their tax return and pay the associated tax to the Revenue Commissioners.

IUT is non-refundable where the investor is an individual. Companies may be eligible to a refund of IUT if they have, for example, losses which can offset the amount of their taxable profits. However, companies may also be subject to the close company surcharge on any amounts received from funds. IUT may be operated on payments to entities which are tax exempt if they are not specifically exempted from IUT, and in such cases is non-refundable.

In 2001, a new chargeable event known as the 8-year deemed disposal was introduced in certain circumstances. This was to prevent the avoidance of tax by way of indefinite deferral of a chargeable event. Any tax payable on this deemed disposal is available as a credit against any tax ultimately due on the actual disposal of the units.

In 2007 additional anti-avoidance rules were introduced, known as the personal portfolio investment undertaking (PPIU). The PPIU rules apply where the selection of property within the fund was or can be influenced by the investor or a connected person. The rate of IUT that applies where the fund is a PPIU is 60 per cent compared to the normal rate of 41 per cent. In 2016 anti-avoidance rules in the form of the Irish Real Estate Fund regime were introduced, which is considered in a separate chapter.

The fact that no IT, CT, subscription tax, redemption tax, etc. is applied at fund level in Ireland is favourable. Some other countries which may impose some form of charge on the fund vehicle. Furthermore, as provided under EU law, the provision of fund management, distribution and global custody services to an Irish regulated fund is exempt from Irish VAT.[37] Finally, a stamp duty exemption applies on the issue, redemption, transfer or repurchase of units of an investment undertaking (though stamp duty may apply where the fund is involved in a transaction involving Irish immoveable property).

LIFE POLICIES

Life policies can be taxed under the “Old Basis” or “New Basis”.

The “New Basis” regime applies to policies commenced by the life business on or after 1 January 2001. Under this regime the shareholder profits are taxed as trading profits while the policyholder profits are subject to Life Assurance Exit Tax (LAET) on a gross roll-up regime similar to that described in relation to Irish domiciled funds. There are certain investors such as non-residents, pension funds, charities etc. who, on the making of an appropriate declaration, are exempt from LAET. An 8 year deemed disposal was introduced for life policies in in 2001 and anti-avoidance rules dealing with personal portfolio life policies were introduced in 2007.

[37] Other services, such as legal and accounting services, can result in an Irish VAT liability, but may be offset, depending on the fund’s VAT recovery position.

Under the "Old Basis" regime, for policies written on or before 31 December 2000, life companies are taxed on the "Income less Expenditure" (I-E) basis. The amount of Expenditure that is deductible may be reduced through the application of the Notional Case I computation. The profits calculated under I-E are split between shareholder and policyholder business, with the shareholder business taxed at 12.5 per cent and the policyholder business taxed at 20 per cent.

OFFSHORE FUNDS

Investment income and gains, such as dividends from a foreign company or a profit on the sale of shares in a foreign company, are generally taxed as they arise. That is, dividends are taxed under IT when they are declared and final and the gain is taxed under CGT when it arises.

Under the current offshore funds regime, introduced in 1990, foreign life assurance policies and offshore funds certified by the Revenue Commissioners as distributor funds would remain liable to CGT while all other offshore funds would be liable to the top rate of IT on exit. The normal rate of CGT was reduced from 40 per cent to 20 per cent in 1998, but the higher 40 per cent CGT rate was retained for disposals of offshore distributor funds and life policies. The 40 per cent rate is still in force today for funds in certain territories.

In 2001, the offshore funds regime was split into two separate regimes:

- that applying to funds located within the EU, EEA or an OECD member state with which Ireland has a double tax agreement; and
- that which applies to funds in other territories (non EU/EEA/OECD).

From 2001 to 2007 all offshore funds in the EU/EEA/OECD were taxed in the same manner as Irish domiciled funds (issues such as distributing status were not relevant). However, given the broad range of structures that could be treated as an offshore fund, a disparity arose between the treatment of unregulated investments in Ireland and similar structures that were treated as offshore funds. This created opportunities for investors to create offshore structures that fell within the favourable offshore funds regime. As a consequence, these funds were split into what are known as "equivalent funds" and "non-equivalent funds" (i.e. whether or not the offshore fund was similar in all material respects to Irish domiciled funds) in 2007, with the income and gains from each subject to different rules.

Reporting Requirements

Ireland has signed up to a number of information exchange agreements, such as the Foreign Account Tax Compliance Act (FATCA) [38] with the United States, the OECD Common Reporting Standard (CRS) [39] and the EU Directives on Administrative Co-operation (DACs) [40]. Under these standards, banks, life companies, funds, credit unions and the Post Office are required to report certain information in relation to non-resident account holders. Separately, Ireland has a number

[38] Section 891E TCA 1997 implemented the Intergovernmental Agreement which the Minister for Finance signed on behalf of the Government with the United States on 21 December 2012. See also S.I. No. 292 of 2014 , S.I. No. 501 of 2015 and S.I. No. 19 of 2018

[39] Section 891F TCA 1997 which implemented the OECD's Common Reporting Standard. See also S.I. No. 583 of 2015.

[40] Section 891G TCA 1997 transposes the aspects of Directive on Administrative Cooperation that oblige financial institutions to report certain financial account information in respect of residents of other EU Member States. See also S.I. No. 609 of 2015.

of domestic reporting obligations[41] which apply to financial accounts, investments in funds and investments in life policies.

Questions

24. For an Irish investor, as set out above, tax legislation separately classes investments as:

    a) Irish bank accounts
    b) EU/EEA bank accounts
    c) Other bank accounts
    d) Dividends from companies
    e) Capital gains on the sale of shares in companies
    f) Irish life products (new basis)
    g) Irish life products (old basis)
    h) Foreign life products
    i) Irish funds
    j) EU/EEA/OECD equivalent funds
    k) EU/EEA/OECD non-equivalent funds
    l) Other distributing funds
    m) Other non-distributing funds
    n) Personal Portfolio Investment products

    Taking account of the different nature of the investment products, is this an appropriate way to class investments for the purposes of taxing the returns on those investments? Does the differing tax treatment of different investments drive investor behaviour, and if so how? Do you propose an alternative method / methods of classifying investment products?

25. The return on certain investments is taxed through the operation of a withholding tax at source, while others must be self-assessed by the investor. In either case, the tax may be a final liability tax, or it may be an amount against which reliefs and credits are allowed.

    a) Is it desirable that, where possible, taxes are:
        i. deducted at source; and
        ii. final liability taxes? Or
    b) Is it desirable that:
        i. taxes are self-assessed; and
        ii. taxed at a marginal rate with reliefs and credits available against investment returns, meaning taxpayers would have to file a tax return each year.

    Do the answers to a) and b) differ for different types of investment product or different types of taxpayer?

26. If any investment returns continue to be taxed on a final liability basis what link, if any, should there be between the rate of DIRT and the rate of tax applied to other investment products? Should consideration be given to reintroducing a "non-standard" rate to any products?

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[41] Section 891 TCA 1997, and S.I. No. 136 of 2008, S.I. No. 254 of 2009 and S.I. No. 56 of 2015, provide for the reporting of interest paid by any person who in the ordinary course of the operations of a trade or business (including in particular any person carrying on a trade or business of banking) that is paid or credited without deduction of Income Tax.
Section 891B and S.I. No. 641 of 2011, require annual automatic reporting of certain policyholder details by assurance companies.
Section 891C TCA 1997, and S.I. No. 245 of 2013, require annual automatic reporting of certain details of investments by funds.

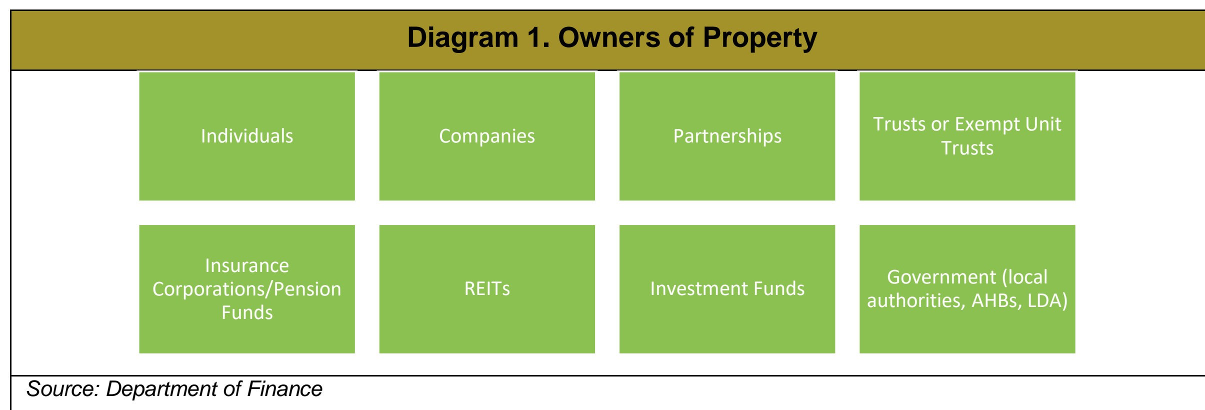
27. Are there places where the taxation of investment income and gains need to be simplified or modernised? For example, in relation to the taxation of ETFs, the old basis of taxation for life products, or harmonising the exemptions from IUT and LAET.
28. Given the differences in the data reported to the Revenue Commissioners under international reporting standards when compared to domestic reporting obligations, should additional reporting be introduced to, for example, facilitate the pre-population of tax returns where tax liabilities are to be self-assessed?
29. Where investments in investment undertakings, life policies or offshore funds give rise to a loss, no relief is available against other income. Where an individual has a gain on one such product and a loss on others, that loss may not be offset against the gain on a similar product. Is it desirable that loss relief, or a limited form of loss relief, be introduced for investments in these products? Note that reliefs cannot be given where the tax is a final liability tax deducted at source.
30. Are there differences within the regimes (e.g. in relation to who can make a declaration under LAET compared to those who may make a declaration under IUT) which should be addressed?
31. How should derivative products which mirror the performance of regulated investment products be taxed? Should they be taxed at the same rate as the investment product they mirror or should they be taxed under first principles?
32. Are any additional anti-avoidance rules required for any of the measures suggested in answer to previous questions?

6. The role of the REIT and IREF regimes in the Irish property market

Introduction

Investment in the Irish property market can take many forms, either through direct ownership of land and buildings or indirectly via Irish and foreign company structures, partnerships, trusts, pension funds, Exempt Unit Trusts[42], Real Estate Investment Trusts (REITs) and investment funds.

Diagram 1. Owners of Property



Source: Department of Finance

The property market in Ireland is funded primarily by institutional investment, domestic and foreign, often using investment funds. The scale of investment required to fund the property market, both debt and equity, is not available domestically and, as a result, international capital is required. Private capital coming from well-established investors, such as pension funds, is a normal facet of the property market in many European countries.

Pension funds have always played a role in the property sector in Ireland. However, institutional investment in Irish property through the use of various collective investment structures grew considerably following the financial crisis. In a 2019 Financial Stability Note the Central Bank estimated that €17.7 billion of the investable commercial real estate (CRE) market in Ireland was owned by Irish authorised investment funds, €4.1 billion by insurance corporations, €3.8 billion by REITs and €3.1 billion by pension funds.[43]

With regard to residential property, the Department of Finance has estimated that €13.5 billion of development funding per annum, comprising both debt and equity, will be required to develop the 'Housing for All' target of an average of 33,000 homes per year. Of this €13.5 billion, an estimated €11.4 billion will be required from private capital sources. While a portion of this will be provided by Ireland's domestic banks, the majority will be required from international sources, including through investment funds.

However, responses to the COTW's public consultation highlighted concerns over Irish Real Estate Funds (IREFs) and Real Estate Investment Trusts (REITs) and their role in the Irish property

[42] Exempt Unit Trusts ("EUTs") are unauthorised unit trusts within the meaning of the Unit Trust Act 1990. Unit holders in EUTs are strictly confined to persons exempt from CGT (except by reason of residence). Through this combination of being exempt from CGT and not being an "authorised" unit trust, unit holders in EUTs can only be certain pension funds and certain charities.

[43] Central Bank of Ireland *Who invests in the Irish commercial real estate market: an overview of non-bank institutional n overview of non-bank institutional* (2019). A more recent Central Bank Financial Stability Note valued Irish property holdings by Irish property funds at €23.3 billion Central Bank of Ireland *Property funds and the Irish commercial real estate market* (2021)

market. The COTW recommendation to examine the REIT and IREF tax regimes with regard to institutional investment in the Irish property market has been incorporated into the Terms of Reference of this Review.

Relevant Terms of Reference

- An examination of the regimes for Real Estate Investment Trusts (REITs) the Irish Real Estate Funds (IREFs) and their role in the property sector, including how they support housing policy objectives

Irish Real Estate Funds

The Irish Real Estate Fund (IREF) is a tax regime which was introduced in the Finance Act 2016 to address concerns over the use of collective investment vehicles by certain non-resident investors to minimise their exposure to Irish tax on Irish property transactions.

IREFs are Irish funds, or sub-funds where the fund is an umbrella scheme, where at least 25 per cent of the value of the assets held by the fund is derived from Irish real estate assets (subject to certain exclusions). While loans which derive their value from Irish land are normally treated as IREF assets, such loans are not treated as IREF assets where they form part of the loan origination business of the fund. IREFs are taxed under the gross roll-up regime.

Irish regulated funds that are treated as IREFs must withhold tax (WHT) at 20 per cent from certain distributions to non-resident investors. The intention of this regime is to ensure that profits arising to an Irish fund from Irish property remains within the charge to Irish tax. WHT is not deducted from payments to exempt investors (evidenced by way of a valid declaration), such as Irish regulated funds, life assurance companies, pension funds and their EU/EEA-based equivalents, charities, credit unions and section 110 companies.

A number of anti-avoidance measures were brought forward in the Finance Act 2019 with the goal of ensuring that the IREF WHT was not being avoided, including a debt cap; an income-to-interest ratio to limit excessive leveraging; and a “wholly and exclusively” test to limit excessive expenses. Finance Act 2019 also introduced the requirement to file an IREF WHT return on an annual basis, regardless of the occurrence of a taxable event.

ROLE OF IREFS IN THE IRISH PROPERTY SECTOR

Based on IREF WHT annual tax return data, there were 222 IREFs holding €24.6 billion of Irish property in 2021.[44]

Table 10. IREF Taxation, 2020-2021		
	For Accounting Period 1 January – 31 December 2020	**For Accounting Period 1 January – 31 December 2021**
No of IREF WHT returns received	204	222
IREF Taxable amount (€m)	621	311
Source: Revenue Commissioners		

Table 11. IREF Taxation, 2020-2021		
	2020	**2021**
IREF withholding tax (€m)	65.8	36.8
Income tax (€m)	16.5	12.1
Source: Revenue Commissioners		

The largest component of the property holdings was commercial property worth €10.2 billion while residential property holdings were €6.3 billion.

Table 12. Composition of IREF Property Assets				
€'billion	**2021**	**%**	**2020**	**%**
Residential	6.3	26%	4.0	20%
Retail	3.2	13%	3.5	17%
Commercial	10.2	41%	9.1	45%
Mixed Use	0.6	2%	0.4	2%
Development Land	1.3	5%	0.9	4%
Other	3.1	13%	2.4	12%
Total	24.6	100%	20.3	100%
Residential Dublin only	*5.5*	*22%*	*3.5*	*17%*
Source: Revenue Commissioners				

Using a different dataset the Central Bank estimated that Irish domiciled funds held approximately €22.1 billion of Irish property or about 35 per cent of the Irish 'investable' CRE as of mid-2022.[45]

[44] Revenue Commissioners *Corporation Tax: 2022 Payments and 2021 Returns* (2023)
[45] Central Bank of Ireland *The Central Bank's Macroprudential Policy Framework for Irish Property Funds* (2022)
This refers to Irish domiciled alternative investment funds (AIFs) authorised under domestic funds legislation and investing in Irish property assets. Other domestic institutional investors in the Irish CRE market, such as publically listed REITs, pension funds and unit-linked property funds, as well as foreign domiciled property funds investing in Irish property assets are not included.

Real Estate Investment Trusts

The Irish REIT tax regime was introduced in 2013 to facilitate investment in the property market in the wake of the financial and property crashes. The REIT framework is designed to encourage stable long-term engagement in the rental market rather than short-term gains.

REIT structures, which are common internationally, are publicly listed companies whose income is derived from the rental of commercial and residential property. A key requirement of the REIT tax regime is that the REIT must distribute 85 per cent of its rental profits annually by way of a dividend, for taxation in the hands of the investors. This measure is designed to prevent an indefinite tax-free roll-up of property rental profits within the REIT.

Distributions from a REIT are subject to Dividend Withholding Tax (DWT) at 25 per cent, which is available as a credit against tax liabilities. An Irish-resident "excluded person", such as a pension scheme or charity investing in the REIT, may receive distributions gross, subject to completion of the appropriate declaration form.

As with IREFs, the Finance Act 2019 further amended the taxation of REITs by extending the obligation to deduct DWT to include distributions out of the proceeds of capital disposals. A provision providing a relief from CGT on ceasing to be a REIT was limited to apply only after a minimum term of 15 years of REIT status. Other amendments were made to prevent the use of inflated costs to reduce distributable profits.

ROLE OF REITS IN THE IRISH PROPERTY SECTOR

Four REITs were established in Ireland since the introduction of the regime in 2013. In 2019 they held €3.8 billion in property assets and collectively raised an estimated €1.8 billion in equity investment. However, only one REIT, I-Res, remains operating today.

Table 13. REITs in Ireland since Inception

Name	Date Listed	Date Delisted	Property Assets (€ million)	Date of last REIT accounts
I-RES	April 2014	-	1,499	December 2022
Green	June 2013	November 2019	1,534	June 2019
Hibernia	December 2013	June 2022	1,427	March 2021
Yew Grove	June 2018	February 2022	142	December 2021

Source: Department of Finance

Questions

IREFS

33. Are there aspects of the way in which property funds are taxed, or defined, that could be aligned with other existing standards, for example, the recent changes in the Central Bank of Ireland's macro prudential measures for property funds?
34. IREFs invest in property of all descriptions, as developers, financiers and landlords. Do IREFs, and the regime as it is currently designed, support investment in housing policy objectives?
35. How does the IREF regime compare to property fund regimes in other comparable EU jurisdictions?
36. Are there aspects of the IREF regime that are not operating as intended or that are acting as an impediment to investment?

37. We invite comment in relation to the tax treatment of IREFs, in particular in relation to the following:
    - The tax rate applicable to both resident and non-resident investors
    - The tax exemptions that apply to certain categories of investors
    - The tax rate applicable at the level of the fund
    - The overall tax treatment of IREFS – should an alternative mechanism be considered?

REITS

38. REITs invest in property as landlords and as developers of property to hold for rent. Do REITs, and the regime as it is currently designed, support investment in housing policy objectives?
39. While REITs are a structure used in many jurisdictions for collective investment in property, Ireland now has only one remaining REIT. Are there aspects of the REIT regime that are not operating as intended or that are acting as an impediment to investment?
40. How does Ireland's REIT regime compare to REIT regimes in other jurisdictions?
41. We invite comment on the tax position in relation to REITs, in particular in relation to the following:
    - The standard REIT structure, common internationally, of exemption for qualifying property profits within the REIT subject to a range of conditions including a requirement that a high proportion of the profits (85 per cent in Ireland) be distributed annually for taxation at the level of the shareholder
    - The tax exemptions that apply to certain categories of investors
    - The tax rate applicable at the level of the REIT

REITS AND IREFS

42. Should the IREF and REIT regime continue to exist in tandem?
43. Is there an appetite for retail investors to invest in property, if so, what is the best type of vehicle to accommodate such investment?

7. The role of the Section 110 regime

Introduction

Introduced in the early 1990s, a "section 110" company is designed to act as a tax-neutral regime to improve Ireland's offering as a location for securitisation transactions. Securitisation allows banks to raise capital and to share risk and, by providing a repackaging and resale market for corporate debt, it lowers the cost of debt financing. The types of securitisation transactions commonly undertaken include Asset Backed Securitisation (ABS), Collateral Loan Obligation transactions (CLOs), Commercial Mortgage Backed Securitisation transactions (CMBS) and Residential Mortgage Back Securitisation transactions (RMBS).

The main provisions governing these companies are set out in section 110 of the Taxes Consolidation Act (TCA) 1997. In order to fall within the rules of section 110, a company must be a "qualifying company" as defined in section 110 (1) TCA 1997 and there are a number of strict conditions to be met.[46] A company must notify the Revenue Commissioners of its intention to be treated as a section 110 vehicle for tax purposes.

A section 110 company can only hold or manage "qualifying assets" which include:[47]

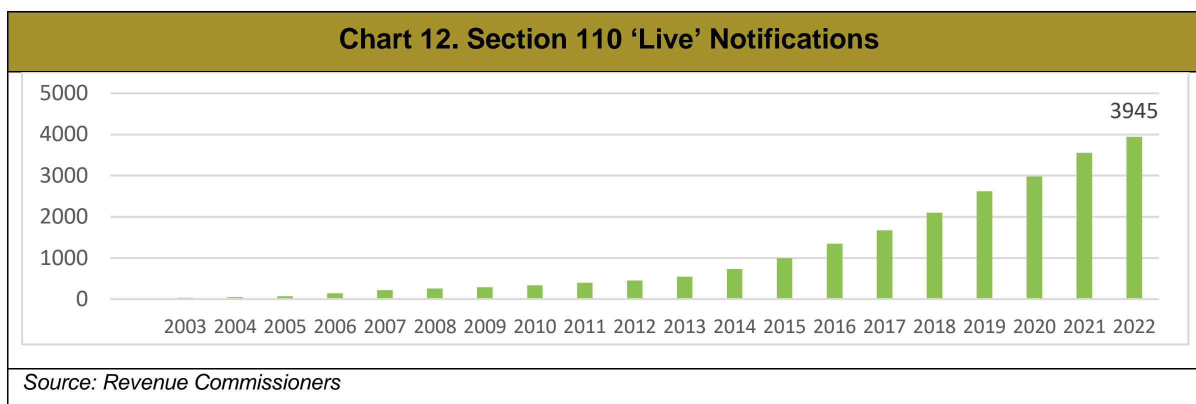
Commodities; or
Plant and machinery; or
A financial asset, which could include: a) shares, bonds and other securities, b) futures, options, swaps, derivatives and similar instruments, c) invoices and all types of receivables, d) obligations evidencing debt (including loans and deposits), e) leases and loan and lease portfolios f) hire purchase contracts, g) acceptance credits and all other documents of title relating to the movement of goods, h) bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments, i) carbon offsets, and j) contracts for insurance and contracts for reinsurance;

Section 110 companies are routinely established in Ireland for the purpose of facilitating a number of transaction types with different commercial, regulatory or investment objectives. While section 110 companies cannot directly hold property assets such as land and buildings, they can hold loans and other financial assets that derive their value from Irish land and buildings, such as mortgages on Irish houses.

The Revenue Commissioners estimates that there were 3,945 live section 110 vehicles at the end of 2022. There were 1,722 companies who filed a tax return with the Revenue Commissioners and paid tax as a section 110 company in 2021.[48] This includes entities registered in Ireland and registered outside Ireland.

[46] Revenue Commissioners *Tax and Duty Manual: Section 110: Entitlement to Treatment* (2022)
[47] The definition of "qualifying assets" was initially much smaller in scope but has been amended and expanded on numerous occasions since the inception of the Section 110 regime as new types of securitisation transactions were proposed.
[48] Many dormant SPVs, previously notified as a Section 110 company did not file a tax return and are awaiting liquidation.

Chart 12. Section 110 'Live' Notifications



Source: Revenue Commissioners

Like IREFs and REITs, concerns about the role of section 110 companies in the Irish property market were highlighted in responses to the COTW public consultation. As a consequence, the COTW recommended that the Government undertake a wide review of section 110 tax regimes, to include their role in facilitating institutional investment in the Irish property market. This recommendation will be considered within the context the current Review.

Relevant Terms of Reference

- The use and scope of the Section 110 regime, both in the context of the property sector and more generally so as to ensure that the regime is fit for purpose and meeting agreed policy objectives.

Regulatory framework and reporting requirements

In Ireland, Special Purpose Entities (SPEs), including section 110 companies, are not authorised by the Central Bank of Ireland and are not subject to prudential regulation. However, companies undertaking securitisation transactions must comply with the Securitisation Regulation ((EU) 2017/2402). This Regulation introduced a common rulebook for all securitisations and established the concept of a simple, transparent and standardised (STS) securitisation into EU law.

The Central Bank collates data on the Irish-registered SPEs, set out in the table below.[49]

Table 14. Irish-registered SPEs (Q4 2022)

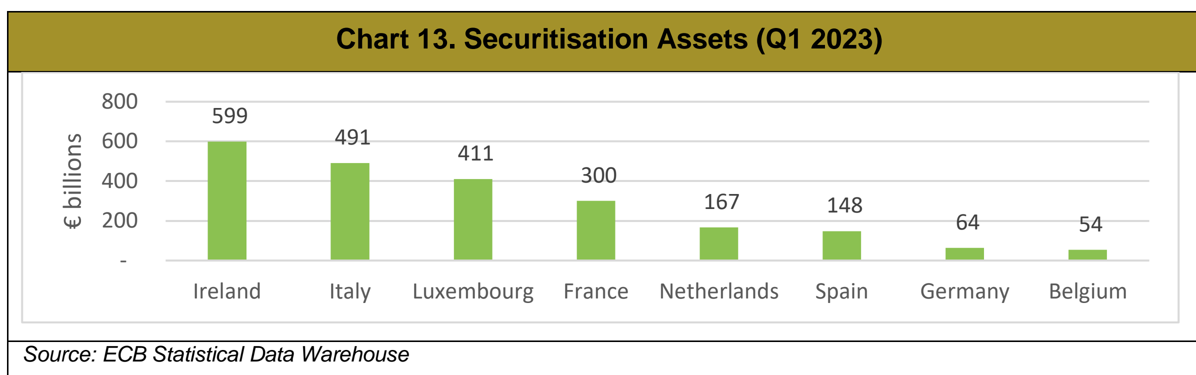
	Assets € billion	Number
Irish-registered securitisation SPEs, or Financial Vehicle Corporations (FVCs)	604	1,621
Other SPEs	421	1,672
Irish-based SPEs	**1,025**	**3,293**

Source: Central Bank of Ireland

Ireland, as a major channel for global market based financial flows, has the largest securitisation SPE sector in the euro area by assets under management (AUM), detailed in the chart below, and is one of the main global hubs for other SPEs.

[49] Central Bank of Ireland *Special Purpose Entities Statistics Q4 2022* (2023)

Chart 13. Securitisation Assets (Q1 2023)



Source: ECB Statistical Data Warehouse

For statistical purposes, securitisation SPEs are governed by regulation ECB/2013/40 (often referred to as Financial Vehicle Corporations, or "FVCs") which requires that quarterly balance sheet data is reported to their National Central Bank. The Central Bank imposes additional data requirements, such as details on the characteristics and structure of the entity. These reporting requirements also extend to other SPEs availing of the section 110 regime. As a result, all Irish securitisation SPEs, whether section 110 companies or not, are captured in the Central Bank data.

However, the Central Bank does not collate data on non-Irish registered SPEs, so any section 110 entities registered outside Ireland would not be captured. Such entities do have to file annual corporation tax returns with the Revenue Commissioners and are incorporated in their data. The Revenue Commissioners are empowered to share information in relation to section 110 companies or FVCs with the Central Bank under the Central Bank (Supervision and Enforcement) Act 2013.

Taxation

A section 110 company is taxed on all of its income included in its financial statements relating to its business activity. Deductions are allowed for expenses incurred wholly and exclusively for the purposes of the business. However, the key difference between a section 110 company and a standard Irish tax resident company is that it is permissible for a section 110 company to get a tax deduction for interest which is dependent on the results of the company (i.e. interest on profit participating notes). This is necessary in order for the section 110 company to be a tax neutral vehicle and it effectively allows the noteholder to invest through one structured vehicle without giving rise to an additional layer of tax as compared to a direct investment in the underlying assets. The note holders in receipt of the profit participating interest are taxed in accordance with the rules in their home jurisdiction.

The nature of the securitisation industry has evolved significantly since the initial introduction of the section 110 regime in the Finance Act 1991 and the implementation of the regime in its current form in the Finance Act 2003. Some of these changes were due to commercial changes in the securitisation industry. Others have been necessary due to international tax changes or to address avoidance behaviour or the specific misuse of the regime.

A number of anti-avoidance measures were included in the Finance Act 2011 to counter schemes that had been identified which led to double non-taxation. An amendment was also made to prevent arrangements which had as their main purpose, or one of their main purposes, the avoidance of tax. An amendment was introduced in the Finance Act 2016 to prevent 'profit participating notes' being used to sweep profits from Irish property or distressed property debt

profits out of the company and the country in a way that ensures little or no Irish tax liability would arise. While section 110 companies may still purchase loans secured over Irish property, the super profits made by the section 110 company on their Irish mortgages will be taxable. As with the introduction of the IREF regime, the policy sought to protect the Irish tax base regarding Irish property transactions, while simultaneously maintaining the section 110 regime, and all the benefits associated with it, for the wider use in capital market transactions. [50] The amendment provided that where Irish mortgages are held by section 110 companies, any profit participating element of the coupon on profit participating notes will not be tax deductible unless the profit participating note is paid to:

- an individual within the charge to income tax or a company within the charge to corporation tax;
- an Irish or EEA pension fund;
- an EEA citizen or company who will pay tax on receipt of the interest, without any deduction for profit participating interest, provided that the payment of the coupon to the EEA citizen or company is not for tax avoidance purposes; or
- an IREF.

As a result of these changes, section 110 has become a very complex regime with significant anti-avoidance measures to limit the abuse of the regime.

Questions

44. What policy objectives should section 110 be supporting?
45. What changes are needed, if any, to ensure the section 110 regime meets those policy objectives?

[50] As the amendment was targeted at specific transactions that were avoiding a charge to Irish tax on super profits made on the disposal of loan notes, the following were specifically excluded: defined Collateral Loan Obligation transactions, defined Commercial Mortgage Backed Securities/Residential Mortgage Backed Securities transactions and defined loan origination businesses

8. General Questions

Not all matters relating to Review have been addressed in this public consultation.

However, in the course of its work in the coming months, the Department will be addressing all matters outlined in the Terms of Reference.

A final set of questions is included below to facilitate you to share any additional thoughts, information or feedback that you may have on matters not covered in any of the sections of this consultation paper.

Questions

46. In addition to the matters covered in this public consultation, are there other issues relevant to the Terms of Reference, which you wish to bring to the attention of the Department? Yes / No
47. If you have answered “yes”, please provide a brief summary of those issues, providing any information or references to material that you consider relevant to the Terms of Reference and the Department’s work.
48. This consultation is necessarily wide-ranging. As we would not be able to take forward all proposals immediately, what do you think the top 3 priority proposals should be for government implementation and why?

Annex 1: List of Questions

No.	Question
1.	What policy supports have been most impactful in attracting the funds sector to Ireland and/or the EU in recent decades?
2.	What characteristics set Ireland apart from other jurisdictions when selecting a fund's domicile?
3.	What are the most important trends evident in the sector?
4.	What are the key risks and challenges for the sector in the medium- to long-term and how can they be managed?
5.	What are the key opportunities for the sector in the medium- to long-term and how can they be delivered?
6.	How will technological change and innovation influence the sector's future development?
7.	How best can Ireland position itself in the future as a location of choice for EU and international firms?
8.	How can Ireland best support the growth and development of the market for ESG products and the transition to carbon neutrality?
9.	For the NBFI sector, those investment funds providing credit intermediation, what are the key opportunities for the sector in the medium- to long-term and how can they be delivered?
10.	How important is an effective regulatory framework for Ireland to maintain its status as a leading funds domicile?
11.	Taking account of the European and international aspect of the Irish framework and key EU files such as Capital Markets Union (CMU) and the Retail Investment Strategy, what improvements could be made to the legislative, regulatory and supervisory framework?
12.	What elements of EU policy, including CMU policy, are most relevant to the growth and development of the funds and asset management sector in Ireland and why?
13.	What peer jurisdictions, most notably from other EU jurisdictions, are most relevant? Outline the reasons why.
14.	How does the funds framework in Ireland compare to those other jurisdictions?
15.	Are there any updates or changes needed to the current legislation governing the legal structures used to establish investment funds?
16.	How do the Irish legal structures compare to the vehicles available in other jurisdictions?
17.	Are there investment or financing vehicles that are currently unregulated but that should be regulated in the future? If your answer is yes, please explain how these entities should be regulated and the rationale for doing so.
18.	Unregulated vehicles are not subject to the same restrictions, requirements and reporting obligations as regulated ones. Does this pose a risk to investors or to the wider financial system?
19.	Where relevant, detail how your organisation, or the wider sector, contributes to the economy with particular reference to employment, revenues and regional development.
20.	What role can the sector play in deepening Ireland's capital markets and, in particular, supporting retail investors access to investment opportunities and domestic SME's access to finance? What measures can be taken or supported (if underway) to meet this objective?
21.	What role can the sector play in meeting wider Government policy objectives in areas such as investment in domestic enterprises and infrastructure? What measures can be taken or supported (if underway) to meet these objectives?
22.	What role can the sector play in meeting wider Government policy objectives in areas such as pensions and long-term savings? What measures can be taken or supported (if underway) to meet these objectives?
23.	What role does the sector play in supporting investment in the economy and the savings needs of investors in the EU, and outside the EU, where relevant?

24.	For an Irish investor, as set out above, tax legislation separately classes investments as: a) Irish bank accounts b) EU/EEA bank accounts c) Other bank accounts d) Dividends from companies e) Capital gains on the sale of shares in companies f) Irish life products (new basis) g) Irish life products (old basis) h) Foreign life products i) Irish funds j) EU/EEA/OECD equivalent funds k) EU/EEA/OECD non-equivalent funds l) Other distributing funds m) Other non-distributing funds n) Personal Portfolio Investment products Taking account of the different nature of the investment products, is this an appropriate way to class investments for the purposes of taxing the returns on those investments? Does the differing tax treatment of different investments drive investor behaviour, and if so how? Do you propose an alternative method / methods of classifying investment products?
25.	The return on certain investments is taxed through the operation of a withholding tax at source, while others must be self-assessed by the investor. In either case, the tax may be a final liability tax, or it may be an amount against which reliefs and credits are allowed. a) Is it desirable that, where possible, taxes are: i. deducted at source; and ii. final liability taxes? Or b) Is it desirable that: i. taxes are self-assessed; and ii. taxed at a marginal rate with reliefs and credits available against investment returns, meaning taxpayers would have to file a tax return each year. Do the answers to a) and b) differ for different types of investment product or different types of taxpayer?
26.	If any investment returns continue to be taxed on a final liability basis what link, if any, should there be between the rate of DIRT and the rate of tax applied to other investment products? Should consideration be given to reintroducing a “non-standard” rate to any products?
27.	Are there places where the taxation of investment income and gains need to be simplified or modernised? For example in relation to the taxation of ETFs, the old basis of taxation for life products, or harmonising the exemptions from IUT and LAET.
28.	Given the differences in the data reported to the Revenue Commissioners under international reporting standards when compared to domestic reporting obligations, should additional reporting be introduced to, for example, facilitate the pre-population of tax returns where tax liabilities are to be self-assessed?
29.	Where investments in investment undertakings, life policies or offshore funds give rise to a loss, no relief is available against other income. Where an individual has a gain on one such product and a loss on others, that loss may not be offset against the gain on a similar product. Is it desirable that loss relief, or a limited form of loss relief, be introduced for investments in these products? Note that reliefs cannot be given where the tax is a final liability tax deducted at source.
30.	Are there differences within the regimes (e.g. in relation to who can make a declaration under LAET compared to those who may make a declaration under IUT) which should be addressed?
31.	How should derivative products which mirror the performance of regulated investment products be taxed? Should they be taxed at the same rate as the investment product they mirror or should they be taxed under first principles?
32.	Are any additional anti-avoidance rules required for any of the measures suggested in answer to previous questions?

33.	Are there aspects of the way in which property funds are taxed, or defined, that could be aligned with other existing standards, for example, the recent changes in the Central Bank of Ireland's macro prudential measures for property funds?
34.	IREFs invest in property of all descriptions, as developers, financiers and landlords. Do IREFs, and the regime as it is currently designed, support investment in housing policy objectives?
35.	How does the IREF regime compare to property fund regimes in other comparable EU jurisdictions?
36.	Are there aspects of the IREF regime that are not operating as intended or that are acting as an impediment to investment?
37.	We invite comment in relation to the tax position of IREFs, in particular in relation to the following: • The tax rate applicable to both resident and non-resident investors • The tax exemptions that apply to certain categories of investors • The tax rate applicable at the level of the fund • The overall tax treatment of IREFS – should an alternative mechanism be considered
38.	REITs invest in property as landlords and as developers of property to hold for rent. Do REITs, and the regime as it is currently designed, support investment in housing policy objectives?
39.	While REITs are a structure used in many jurisdictions for collective investment in property, Ireland now has only one remaining REIT. Are there aspects of the REIT regime that are not operating as intended or that are acting as an impediment to investment?
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41.	We invite comment on the tax position in relation to REITs, in particular in relation to the following: • The standard REIT structure, common internationally, of exemption for qualifying property profits within the REIT subject to a range of conditions including a requirement that a high proportion of the profits (85 per cent in Ireland) be distributed annually for taxation at the level of the shareholder • The tax exemptions that apply to certain categories of investors • The tax rate applicable at the level of the REIT
42.	Should the IREF and REIT regime continue to exist in tandem?
43.	Is there an appetite for retail investors to invest in property, if so, what is the best type of vehicle to accommodate such investment?
44.	What policy objectives should section 110 be supporting?
45	What changes are needed, if any, to ensure the section 110 regime meets those policy objectives?
46.	In addition to the matters covered in this public consultation, are there other issues relevant to the Terms of Reference, which you wish to bring to the attention of the Department? Yes / No
47.	If you have answered "yes", please provide a brief summary of those issues, providing any information or references to material that you consider relevant to the Terms of Reference and the Department's work.
48.	This consultation is necessarily wide-ranging. As we would not be able to take forward all proposals immediately, what do you think the top 3 priority proposals should be for government implementation and why?

Annex 2: About You

1. What is your name?

Name (Required)

2. What is your email address?

Email (Required)

3. I am responding as:

	An individual contributing in a personal capacity
	A representative of an organisation / representative group

4. If you are responding on behalf of an organisation, please enter your organisation name here:

Organisation

Appendix 1: Review Terms of Reference

The *Programme for Government – Our Shared Future* contains the following commitment:

> *"…we will implement the Ireland for Finance – Financial Services Strategy to continue to deliver a competitive and resilient financial services sector."* (PfG, page 25)

In October 2022 a new International Financial Services Strategy was launched which restated the Government's vision that Ireland should remain internationally competitive and be a top-tier location of choice for specialist international financial services. Furthermore, the importance of the IFS sector for the Irish economy was noted along with a recognition that Ireland is now a very significant global financial centre in certain aspects within the EU financial system.

In particular, Ireland is a global centre for asset management and funds servicing and this funds sector also plays a role in relation to Government policy in areas such as delivering on objectives within the *"Housing for All"* strategy. The funds sector also plays an increasing role in helping citizens to make provision for their investments, savings, pensions and retirement as well as provide financing for SMEs and the decarbonisation of the economy.

Taking account of developments at national level as well as at EU and international level, the legislative and regulatory framework for funds continues to try and keep pace with market developments and continues to grow in scale and complexity – especially so in the asset management and funds servicing sector. Of particular note is the ever-increasing focus on the financial resilience of the sector both from a domestic and international perspective.

In this context, the Minister for Finance considers that it is timely to conduct a holistic review of the asset management and funds servicing sector (regulated & unregulated) in Ireland and to consider international comparisons. It is envisaged that the output of this review would inform and refresh our policy and legislative framework for the years ahead. The review will take account of the following:

- The recent work of the Commission on Taxation and Welfare;
- The IMF Financial System Assessment of Ireland 2022;
- The recently updated Government strategy for the international financial services sector, where policy goals and targets have been set out for the coming years.
- That the funds sector, and the IFS sector more widely, has been a driver of employment and economic activity, across the country;
- The relationship and interlinkages with the EU's Capital Markets Union (CMU) policy;
- The evolving regulatory regime (including the regulatory toolkit) for the funds sector at EU level and more generally internationally;
- The fact that Ireland is now a very large international financial services centre and in particular a significant jurisdiction for funds;
- That funds in this jurisdiction are both regulated and unregulated; and
- That Ireland's international reputation as a well-regulated, predictable, transparent and 'best-practice' environment has been a key factor in the growth of the IFS sector.

Taking account of this national and international context, the Minister for Finance has tasked his Department with conducting a review and as part of this review preparing a '*Funds Sector 2030'* Report that will:

- Assess how the funds sector has evolved since policy supports to attract international financial services activity to Ireland began in the late 1980s.
- Assess how the funds sector directly and indirectly contributes to the economy, with particular reference to employment, revenues and regional development.
- Outline the current landscape of the asset management and funds servicing, having regard to domestic and international debates on the role of the non-bank sector;
- Undertake relevant peer comparisons, most notably from other EU jurisdictions;

- Take account of EU policy, in particular examining alignment with the EU Capital Markets Union (CMU) policy and other relevant international policies, and assess trends and how best Ireland can be positioned to fully benefit in the future;
- Assess the role the sector can play in deepening Ireland's capital markets and in particular supporting domestic SME's access to finance;
- Outline the regulatory and supervisory framework for the sector and as part of that examination, considering the financial resilience of the sector both in the context of its size relative to the domestic economy and also in the context of Government's policy goal to have Ireland as a location of choice for EU and international financial firms;
- Have regard to the Commission on Taxation and Welfare recommendations 6.6 & 6.7 which called for:
    - an examination of the taxation regime for funds, life assurance policies and other related investment products, with the goal of simplification and harmonisation where possible; and to do so with a net revenue-raising or neutral mandate;
    - an examination of the regimes for Real Estate Investment Trusts (REITs) the Irish Real Estate Funds (IREFs) and their role in the property sector, including how they support housing policy objectives; and
    - the use and scope of the Section 110 regime, both in the context of the property sector and more generally so as to ensure that the regime is fit for purpose and meeting agreed policy objectives;
- Assess how the sector assists in meeting wider Government policy objectives in areas such as pensions, long-term savings and investment in domestic enterprises and infrastructure; and
- Make recommendations on the above areas so as to promote Open Markets, Resilient Markets and Developing Markets in Ireland in the years ahead.

The Department of Finance will undertake this work by means of a multi-disciplinary team, made up of its own staff and staff from other relevant state bodies, including Revenue, the Central Bank of Ireland and where appropriate experts from outside the State sector.

In preparing its report, the Review Team will also engage extensively with stakeholders and as part of this process will seek external views, including by means of a public consultation.

The Review Team will present its draft report to the Minister by Summer 2024.

Appendix 2: Key EU and Irish Legislation for Funds

UCITS DIRECTIVE				
UCITS I DIRECTIVE 85/611/EEC	UCITS III "PRODUCT" DIRECTIVE 2001/108/EC	UCITS IV DIRECTIVE 2009/65/EC	UCITS DELEGATED DIRECTIVE 2010/43/EU	ESMA'S QUESTIONS AND ANSWERS ON THE UCITS DIRECTIVE
UCITS III "MANAGEMENT" DIRECTIVE 2001/107/EC	UCITS ELIGIBLE ASSETS DIRECTIVE (EAD) 2007/16/EC	UCITS V DIRECTIVE 2014/91/EU	UCITS DELEGATED REGULATION ON DEPOSITARIES 2016/438	ESMA'S GUIDELINES ON THE UCITS DIRECTIVE

AIFM DIRECTIVE			
AIFM DIRECTIVE 2011/61/EU	AIFM DIRECTIVE DELEGATED REGULATION ON SUPERVISORY REPORTING 2015/514	EUROPEAN COMMISSION'S QUESTIONS AND ANSWERS ON THE AIFM DIRECTIVE	ESMA'S GUIDELINES ON THE AIFM DIRECTIVE
AIFM DIRECTIVE DELEGATED REGULATION 231/2013	AIFM DIRECTIVE DELEGATED REGULATION ON AIFM TYPES 694/2014	ESMA'S QUESTIONS AND ANSWERS ON THE AIFM DIRECTIVE	

CROSS-BORDER DISTRIBUTION RELATED REGULATION		
CROSS-BORDER DISTRIBUTION OF FUNDS REGULATION 2019/1156	CROSS-BORDER DISTRIBUTION OF FUNDS DIRECTIVE 2019/1160	ESMA'S GUIDELINES ON FUND MARKETING COMMUNICATIONS

EUROPEAN VENTURE CAPITAL FUND REGULATION			
EUROPEAN VENTURE CAPITAL FUND (EUVECA)REGULATION 345/2013	EUVECA IMPLEMENTING REGULATION ON CROSS-BORDER NOTIFICATIONS 593/2014	EUVECA DELEGATED "CONFLICTS OF INTEREST" REGULATION 2019/820	ESMA'S QUESTIONS AND ANSWERS ON THE EUVECA REGULATION

EUROPEAN SOCIAL ENTREPRENEURSHIP FUND REGULATION			
EUROPEAN SOCIAL ENTREPRENEURSHIP FUND (EUSEF)REGULATION 346/2013	EUSEF IMPLEMENTING REGULATION ON CROSS-BORDER NOTIFICATIONS 594/2014	EUSEF DELEGATED REGULATION 2019/819	ESMA'S QUESTIONS AND ANSWERS ON THE EUSEF REGULATION

EUROPEAN LONG-TERM INVESTMENT FUND REGULATION	
EUROPEAN LONG-TERM INVESTMENT FUND (ELTIF)REGULATION 2015/760	ELTIF DELEGATED REGULATION 2018/480

PRIIPS REGULATION				
PRIIPS REGULATION 1286/2014	PRIIPS "DELEGATED" LEVEL 2 REGULATION 2017/653	PRIIPS "DELEGATED" PRODUCT INTERVENTION REGULATION 2016/1904	EUROPEAN COMMISSION GUIDELINES ON THE PRIIPS KEY INFORMATION DOCUMENT	EUROPEAN SUPERVISORY AUTHORITY'S JOINT COMMITTEE QUESTION AND ANSWERS ON THE PRIIPS KEY INFORMATION DOCUMENT

MIFID FRAMEWORK			
MIFID II DIRECTIVE 2014/65/EU	MIFIR 2014/600/EU	MIFID DELEGATED REGULATION 2017/576 ON "EXECUTION"	MIFID DELEGATED REGULATION 2017/565 ON "ORGANISATION AND OPERATIONS"

OTHER LEGISLATION		
MONEY MARKET FUND REGULATION (MMFR) 2017/1131	SECURITIES FINANCING TRANSACTIONS REGULATION (SFTR) 2015/2365	EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR) 648/2012

SUSTAINABLE FINANCE LEGISLATION	OTHER EU "REGULATION"
SUSTAINABLE FINANCE DISCLOSURE REGULATION ("SFDR") 2019/2088	ESMA'S OPINION ON UCITS SHARE CLASSES (JANUARY 2017)
SUSTAINABLE FINANCE TAXONOMY REGULATION ("TAXONOMY REGULATION") 2020/852	ESMA'S GUIDELINES ON PERFORMANCE FEES IN UCITS AND CERTAIN TYPES OF AIFS (APRIL 2020)

IRISH INVESTMENT FUND LEGISLATION AND REGULATION		
IRISH IMPLEMENTATION OF EU LEGISLATION (UCITS, MMFR, PRIIPS)	CENTRAL BANK UCITS REGULATIONS 2019	CENTRAL BANK GUIDANCE INCLUDING UCITS QA
LEGISLATION APPLICABLE TO AIFS INCLUDING AIMFD IMPLEMENTATION	CENTRAL BANK AIF RULEBOOK	CENTRAL BANK GUIDANCE INCLUDING AIFMD QA
REGULATION (EU) 2023/606 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules		

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