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Taxation update for funds

30 September 2015

John Perry

Director, Financial Services Tax
Grant Thornton



Tax for Funds Agenda

1. Irish funds industry update
2. UK investor reporting
3. US investor reporting
4. tax technology – ONESOURCE Workflow



The story of 2015 in the Irish funds industry

Year End	Net Asset Value (Euro Million)	No. of Funds	No. of Funds (incl. Sub-Funds)
Mar-13	1,305,214	1,166	7,477
June-13	1,278,048	1,162	5,413
Sep-13	1,317,984	1,198	5,538
Dec-13	1,344,340	1,195	5,599
Mar-14	1,401,847	1,192	5,619
June-14	1,497,363	1,193	5,675
Sep-14	1,600,206	1,171	5,684
Dec-14	1,663,895	1,179	5,833
Jan-15	1,768,820	1,181	5,848
Feb-15	1,825,385	1,181	5,865
Mar-15	1,895,935	1,174	5,897
Apr-15	1,865,796	1,170	5,929
June-15	1,857,941	1,180	6,007
July-15	1,895,853	1,180	5,999

Source: Central Bank of Ireland

From January 2014 to July 2015, the number of fund and Net Asset Value (NAV) witness a sustainable growth, and Irish UCITS are distributed in over 70 countries all around the world.



The story of 2015 in the Irish funds industry

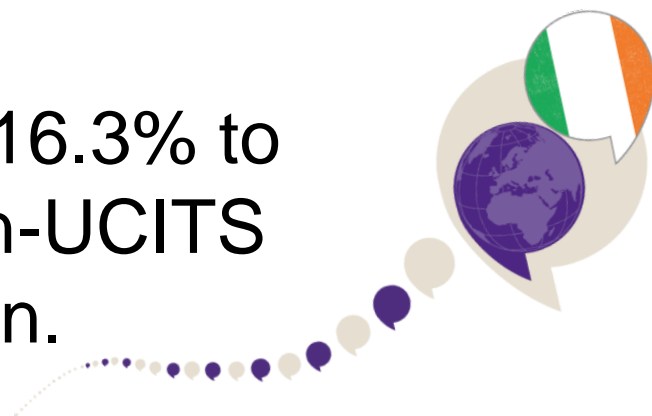
Irish Domiciled Funds
Breakdown in Assets



SOURCE: Central
Bank of Ireland,
March, 2015

Almost 80% of the assets of Irish domiciled funds are held in UCITS, as the data shows on the fan figure, there are €1,461 billion assets comes from UCITS, only €435 billion from non-UCITS.

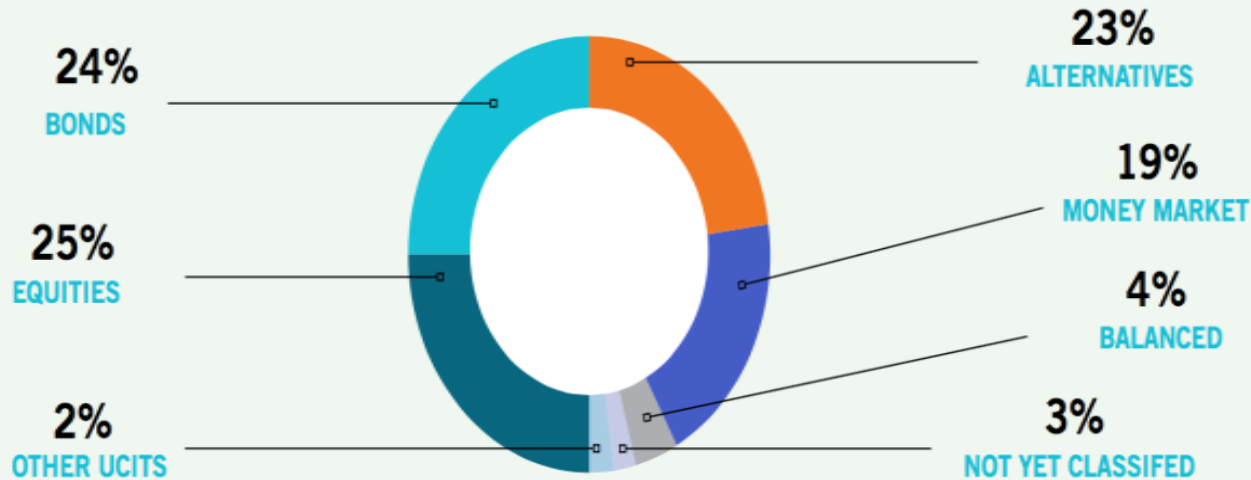
Net assets of UCITS increased by 16.3% to €7,979 billion and net assets of non-UCITS increased by 14.3% to €3,362 billion.



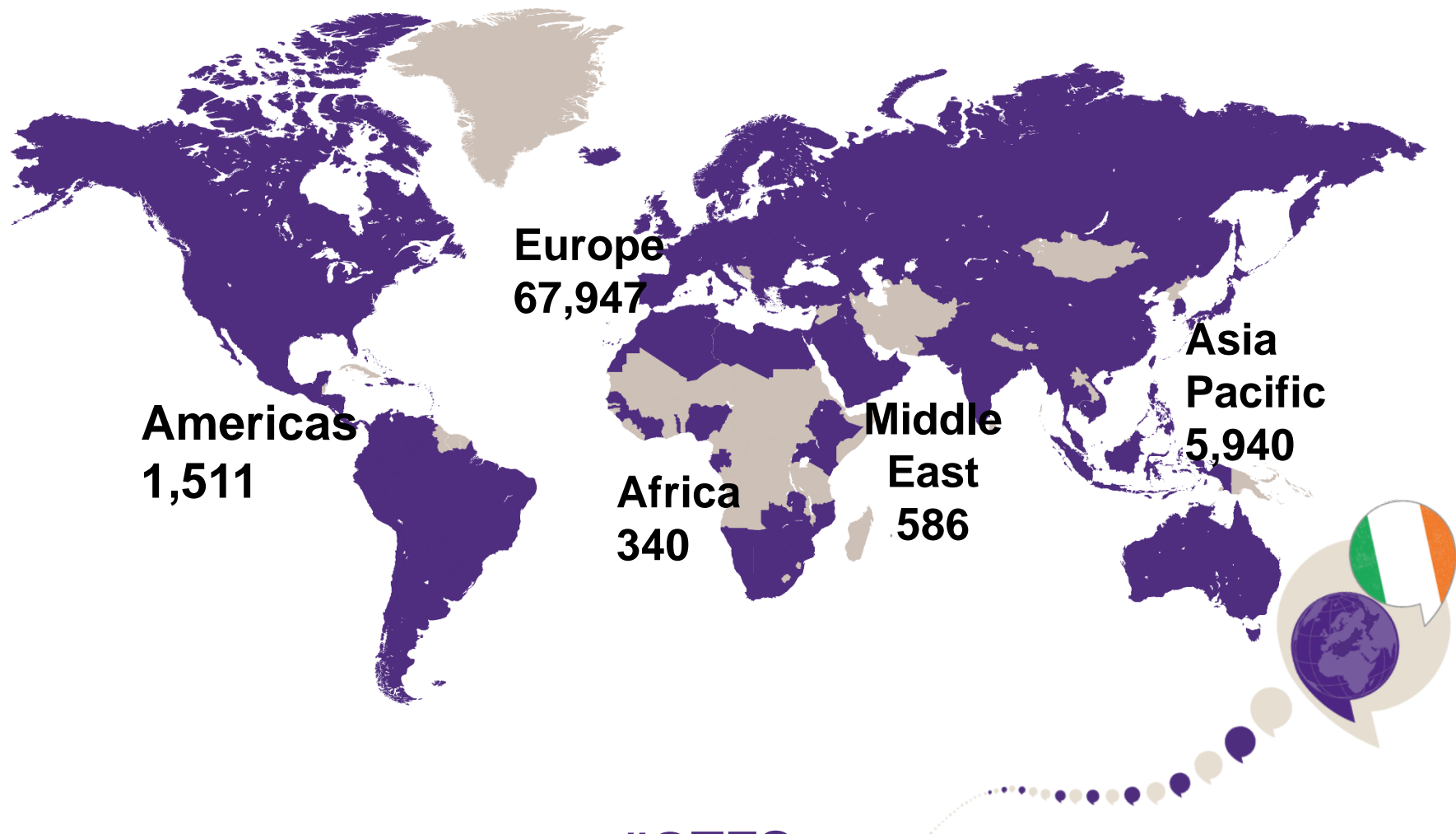
Irish funds industry - key facts and figures

SOURCE: Central
Bank of Ireland,
Quarter 1, 2015

Irish Domiciled Funds
Breakdown by type

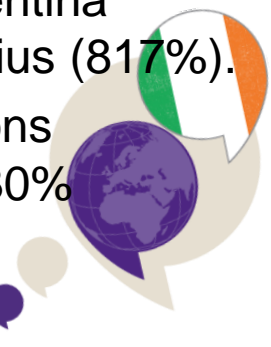


Which regions attract the greatest number of UCITS funds?



Which regions attract the greatest number of UCITS funds?

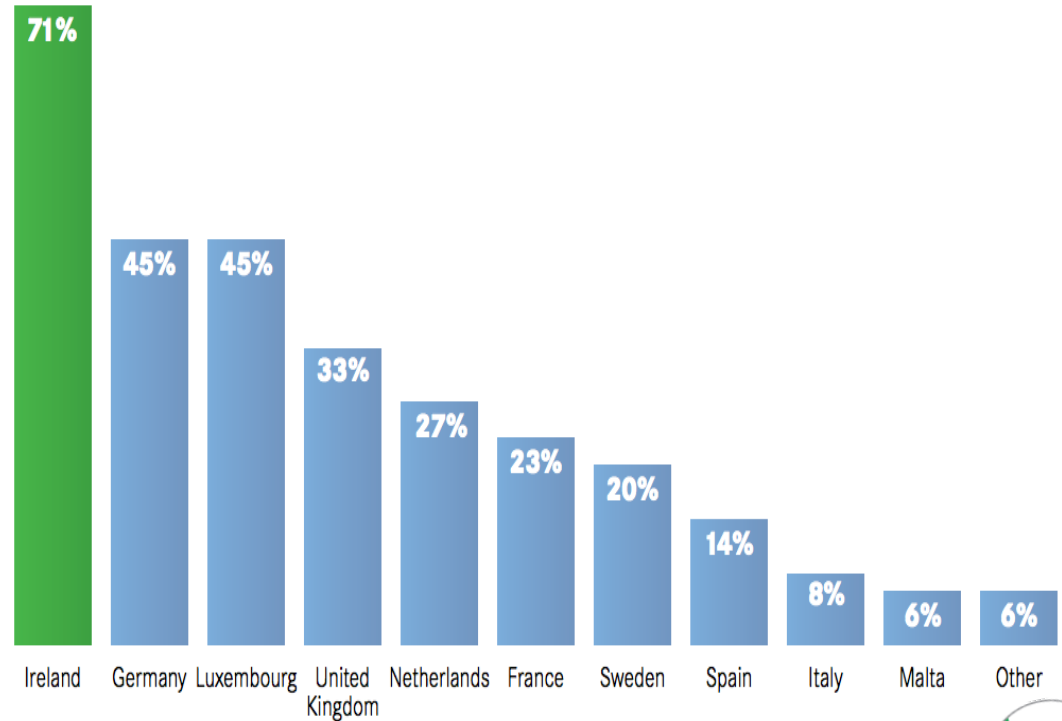
- Europe all of the top ten countries have had over 20% growth since 2009, two markets had over 50% growth namely Switzerland and Finland. Looking at the other European markets outside of the top ten, some countries have had sizeable increases; Denmark (180%), Greece (70%), Slovakia (80%), Hungary (91%), Cyprus (177%), Malta (73%) and Bulgaria (183%). Only two countries in Europe have seen decreases; Czech Republic (-20%) and Guernsey (-9%).
- Outside of Europe the countries with the largest growth include; Argentina (2700%), United Arab Emirates (267%), Lebanon (331%) and Mauritius (817%).
- It is worth noting that all of these markets had less than 50 registrations in 2009. Looking at the larger markets those with growth more than 30% include: Peru (30%), Macau (35%) and South Africa (61%). Some of the larger markets have experienced decreases such as Hong Kong (-19%) and Bahrain (-52%).



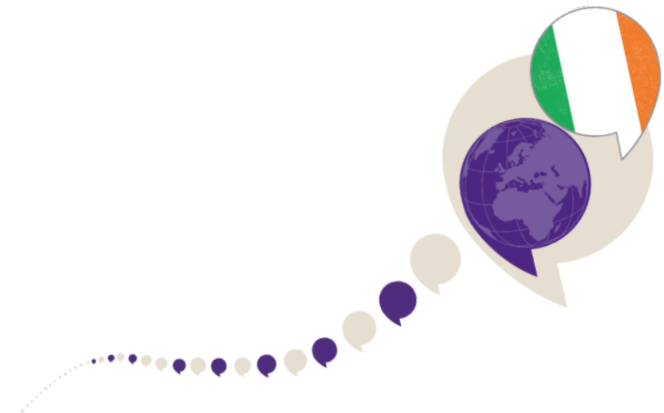
Ireland voted favourite fund domicile

71% of global investment managers surveyed chose Ireland as a Top 3 European domicile.

This is over 25% more than its closest rivals.



(Source: Economist Intelligence Unit Survey on Choosing a European Fund Domicile, 2014)



Portfolio level taxes

Countries should be monitored for withholding tax exposures on an ongoing basis, including;

- Austria
- Australia
- Bangladesh
- Canada
- Chile
- Colombia
- Czech Republic
- Dominican Republic
- Ecuador
- France
- Germany
- Iceland
- India
- Indonesia
- Italy
- Kazakhstan
- Mexico
- New Zealand
- Panama
- Pakistan
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Romania
- South Korea
- Spain
- Taiwan
- Turkey
- Ukraine
- Uruguay
- Venezuela



EU withholding tax reclaims

	Claim	Litigation (National)	Complaint to Commission	Infringement Proceedings	Refund	Change in law
Germany	✓					
Netherlands	✓	✓				✓
France	✓	✓	✓	✓	✓	✓
Spain	✓	✓	✓	✓	✓	✓
Sweden	✓	✓	✓	✓	✓	✓
Estonia	✓	✓			✓	✓
Norway	✓	✓	✓	✓	✓	✓
Italy	✓		✓	✓		✓
Poland	✓		✓		✓	✓
Belgium	✓	✓	✓	✓	✓	✓
Denmark	✓	✓	✓	✓		
Austria	✓	✓				
Finland	✓	✓			✓	✓

Irish fund tax update

- directors expenses
- payments via ROS
- Section 110 audits
- VAT reviews



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UK tax update

30 September 2015

Anne Stopford

Head of Investments Funds Tax
Grant Thornton UK LLP



Agenda

- HMRC UK investment management strategy
- Tax Transparent Funds (TTF)
- Reporting funds
- Finance Act/Summer Budget 2015
- Base Erosion and Profit Shifting (BEPS)
- Common Reporting Standards (CRS)



Budget 2013: HMRC UK investment management strategy

Aim: improve UK's leading global role in fund management and increase market share of fund domicile (36% of assets under management in Europe are managed in the UK, but only 11% domiciled in the UK)

Budget changes included:

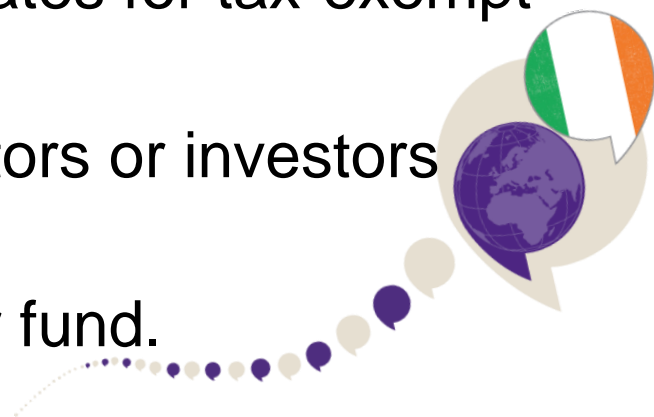
- tax transparent funds
- abolition of SDRT for UK funds (effective 1 April 2014)

Limited developments since then – indeed unfavourable changes for investment managers eg LLP tax changes, taxation of non-domiciled individuals.



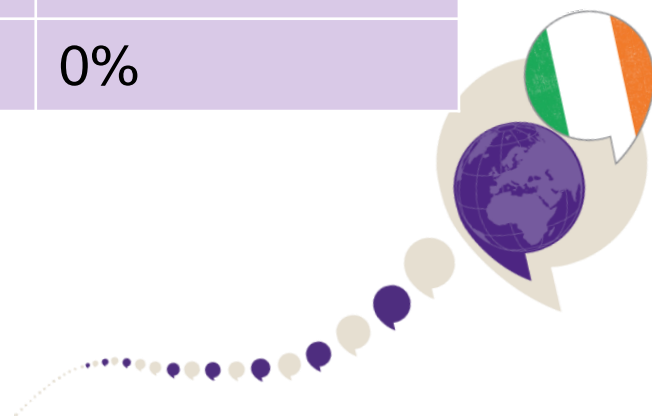
Tax Transparent Funds (TTFs)/Authorised Contractual Schemes (ACSs)

- two types of TTFs or ACSs:
 - partnership fund
 - co-ownership fund
- two main benefits:
 - facilitate master-feeder structures in the UK under UCITS IV
 - access to better double tax treaty rates for tax-exempt investors
- investors limited to professional investors or investors investing at least £1m
- other investors can invest via a feeder fund.



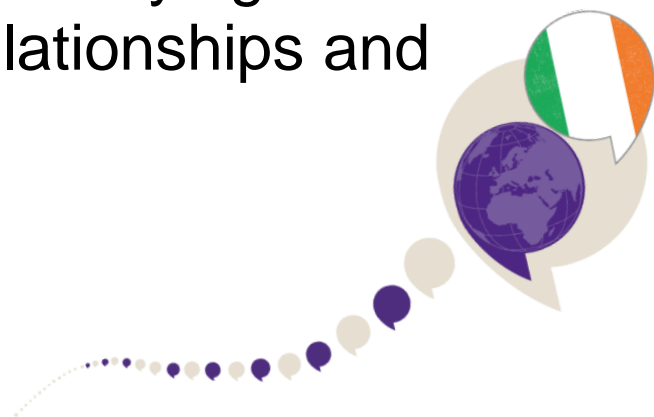
Access to double tax treaties: WHT rates on dividends

	Non treaty rate	UK OEIC	Pension fund
Australia	30%	15%	0%
US	30%	15%	0%
Japan	7.6%	10%	0%
Germany	25%	15%	10%
Switzerland	35%	15%	0%



ACS vehicles – Limited Partnership (LP) fund

- transparent for income and gains
- regulated by the FCA
- based on existing model so well understood by foreign tax authorities
- administrative complexity of providing full information on income and gains
- participants need to fully understand underlying income and gains and tax accordingly e.g., loan relationships and derivative for corporate investors
- required to submit UK tax return.



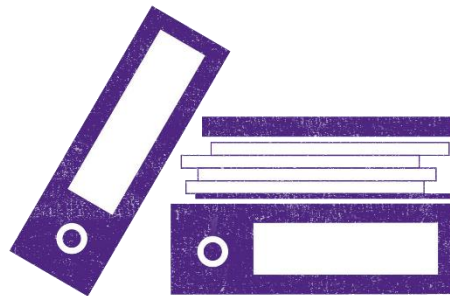
ACS vehicles – Co-ownership fund

- transparent for income but opaque for gains
- regulated by FCA
- comparable to existing offshore contractual funds in e.g. Ireland, Luxembourg, France, Netherlands
- investors require full information for income but not gains
- participants need to fully understand underlying income and tax accordingly e.g., loan relationships and derivatives for corporate investors
- designed so that they give 'best chance' of being recognised as transparent by overseas authorities
- not required to submit UK tax return .



Reporting funds

- no changes in legislation in the last year
- HMRC clarification re treatment of series
- 33,000+ share classes now registered
- each share class needs to be registered separately
- remember: important to register each new share class before the end of its first accounting period.



#GTFS



Reporting funds – other practical issues

- investments in other offshore funds/partnerships
- treatment of reportable income from reporting funds
- treatment of non-reporting funds:
 - either movement in market value in the year treated as income or
 - treat as a deemed reporting fund if sufficient information is available
- treatment of investments in limited partnerships and transparent funds
- effective yield adjustments.



Finance Act 2015 and Summer Budget 2015

- taxation of interest for savers:
 - impact for bond funds
- pensions:
 - flexibility, but restrictions on how much can be saved for higher earners
- non doms:
 - deemed domiciled if in the UK for 15 out of 20 years
- corporate tax rates:
 - currently 20%, reducing to 19% from 2017 and 18% from 2020
- disguised fee income for investment managers:
 - carried interest changes



Value Added Tax (VAT) – fund management exemption

- exemption in UK legislation for the management of “recognised overseas schemes”
- the schemes in question are those recognised by the FCA to be sold to UK clients
- exemption should only catch funds marketed to be sold to retail customers in the UK
- if no retail customers or retail are less than 5% of investors, management is not within the UK VAT exemption
- benefit of not being in the exemption is the ability of the manager to recover VAT, with no UK VAT charged to the fund



Other tax developments

- Base Erosion and Profit Shifting (BEPS)
- FATCA
- common reporting standards
- diverted profits tax



BEPS – general overview

- OECD produced a 15 point action plan on Base Erosion and Profit Shifting in July 2013
- main areas of relevance to investment management industry are treaty abuse, interest deductions, permanent establishments, hybrids and country by country reporting
- in September 2014, OECD published reports on first seven deliverables
- recommendations due early October 2015



BEPS – impact for investment managers/funds

- treaty abuse – where main purpose is to obtain treaty benefits
- interest deductions – challenges to the use of leverage in fund structures, for example private equity, real estate, infrastructure funds
- PE status – potential impact where activities being carried out overseas
- transfer pricing



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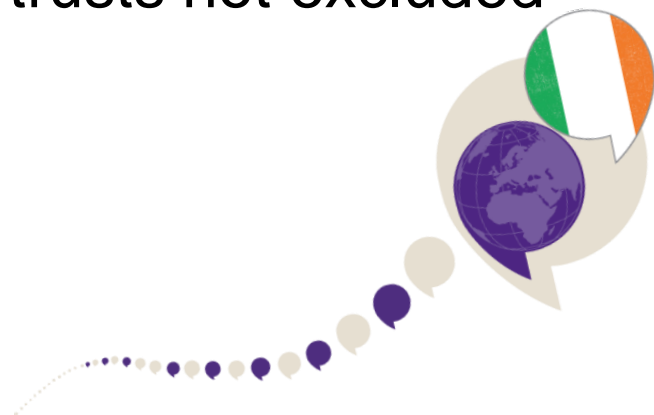
Common Reporting Standards (CRS)

- HMRC guidance dated 14 September 2015
- 50+ jurisdictions have agreed to early adoption
- information to be captured for accounts in existence at 31 December 2015, new accounts from 1 January 2016 and first reporting in 2017
- definition of financial accounts different from FATCA – regularly traded shares not excluded



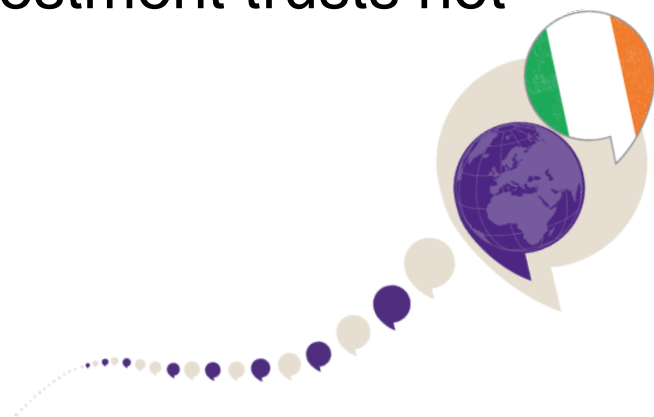
Common Reporting Standards (CSR) (cont.)

- in CRS, each jurisdiction is able to define an account as an Excluded Account provided it presents a low risk of being used to evade tax has substantially similar characteristics to other specified categories of excluded accounts
- HMRC have included VCTs on the list of excluded accounts as similar characteristics to non-retirement savings products, but for example, investment trusts not excluded



Common Reporting Standards (CSR) (cont.)

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Questions & feedback





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US tax update

30 September 2015

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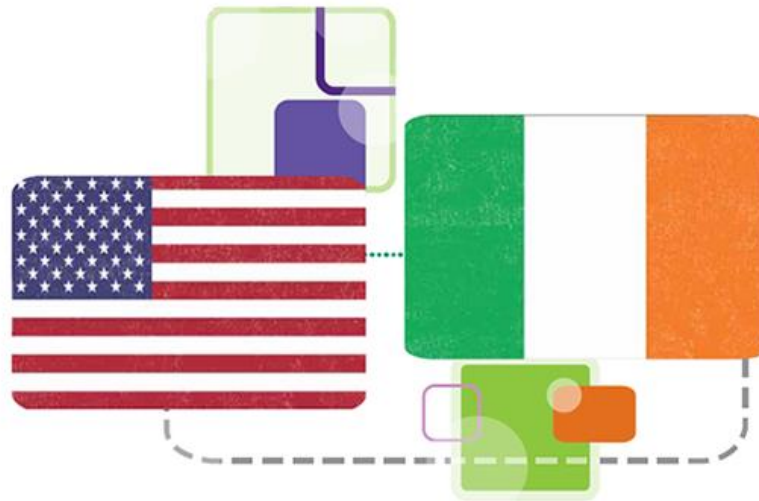
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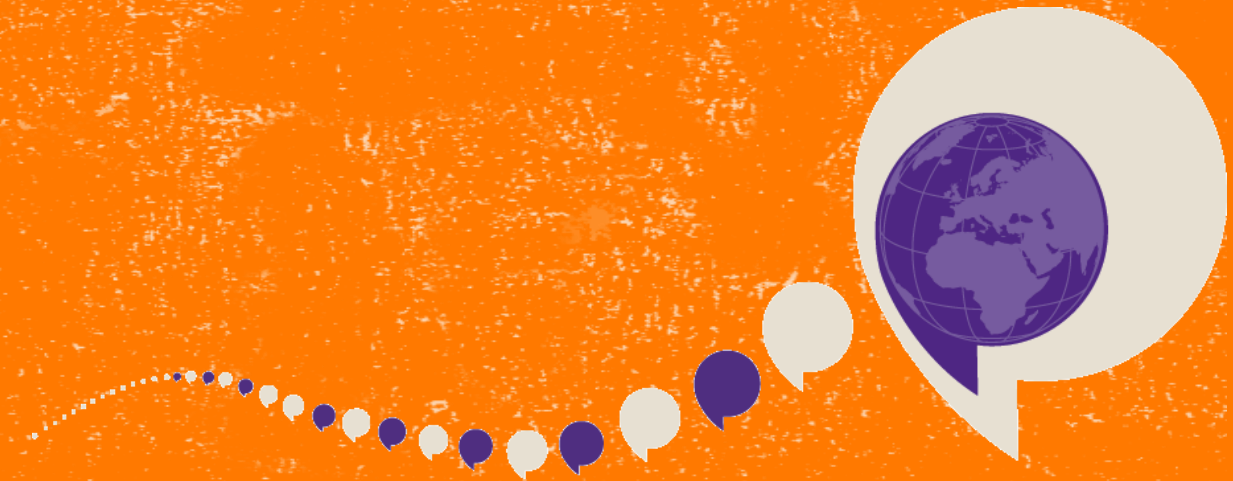


Learning objective

US tax reporting rules of non-US investment funds



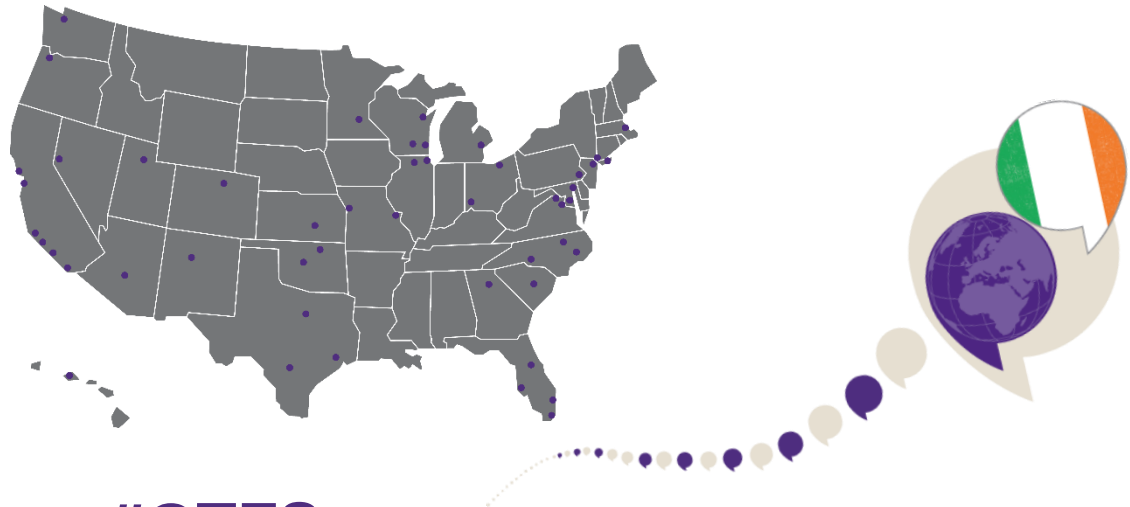
Effectively Connected Income (ECI) and Fixed, Determinable, Annual, Periodical income (FDAP)



What is ECI?

ECI is Effectively Connected Income:

- when a foreign person engages in a trade or business in the United States, all income from sources within the US **connected** with that trade or business is considered to be effectively connected income.



What is FDAP?

FDAP is Fixed, Determinable, Annual, Periodical income

Examples of FDAP income:

- a) interest (other than portfolio interest)
- b) dividends (look through to see components if from another fund)
- c) rents
- d) royalties



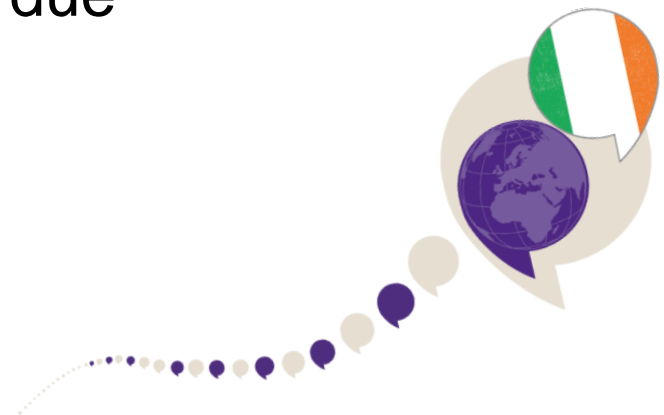
General filing deadlines



US tax reporting season

For US partnerships with a year-end of 31 December 2014:

- returns are required to be filed by **15 April 2015**
- provide each partner with a copy of Schedule K-1, partner's share of income, deductions, credits, etc.
- partnerships are able to request a six month extension (on Form 7004) of time to file the return and provide Schedule K-1. The Form 1065 is then due **15 September 2015**



US tax reporting season

- special rules apply for non-US entities, please consult with your Grant Thornton LLP adviser
- the filing dates are set to be accelerated in 2016.
December 2016 returns will be due by 15 March 2017.
Can still extend through 15 September 2017.



When is a non-US partnership required to file a Form 1065?



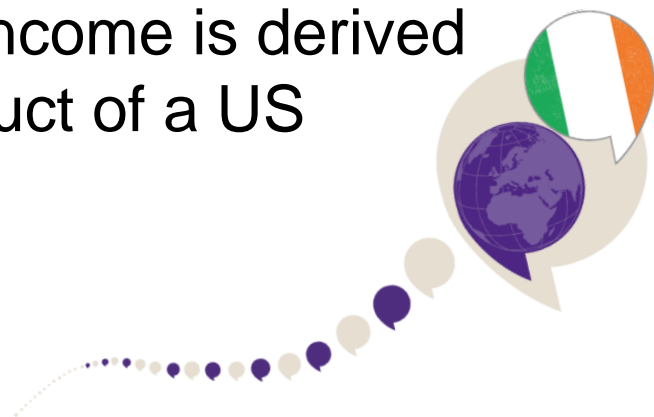
When to file Form 1065

When is a non-US partnership required to file a Form 1065?

1. if the partnership has income effectively connected with the conduct of a US trade or business

What is ECI?

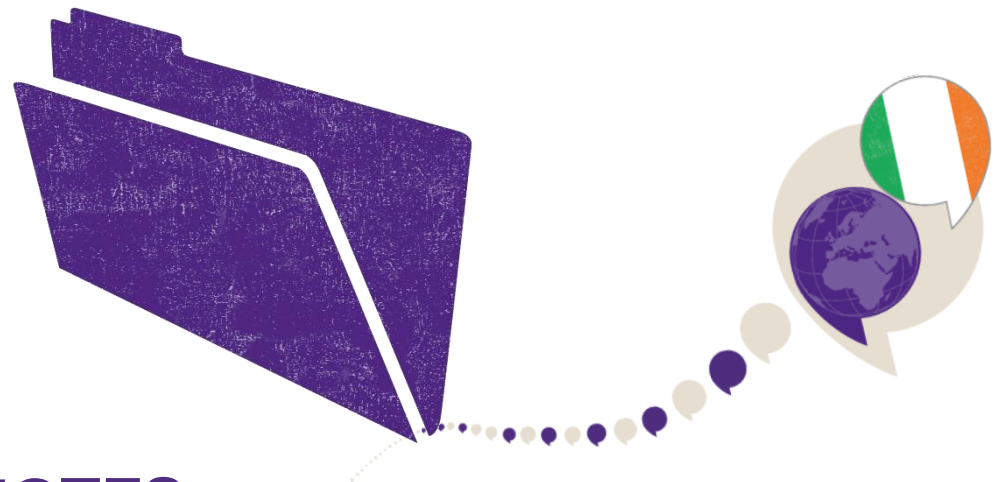
- a) all income from sources within the US connected with the conduct of the partnership, regardless of the connection between the income
- b) interest, dividends, rents and royalties are treated as effectively connected income if the income is derived from assets used in or held for conduct of a US trade or business.



When to file Form 1065

When is a non-US partnership required to file a Form 1065?

- c) withholding is not required on US sourced ECI but subject to taxes at prevailing US rates
- d) to obtain withholding exemption for ECI the foreign entity must submit Form W-8ECI to each withholding agent



When to file Form 1065

When is a non-US partnership required to file a Form 1065?

2. the partnership has U.S-source income of \$20,000 or more during its tax year

What is considered US-source income? - when paid by US payers:

- a. interest
- b. dividends
- c. rents
- d. royalties



When to file Form 1065

When is a non-US partnership required to file a Form 1065?

3. exception

Capital gains from the sale of US publicly-traded securities is not necessarily considered US-source income unless the capital gain meets one of three exceptions:

- a. capital gains must not be generated by the sale of US real property or the stock of US real holding corporations
- b. any capital gain from the sale of an active trade or business
- c. rare scenario: non-resident aliens present in the US for more than 183 days.



When does a non-US partnership generally have a US tax filing requirement?



When to file Form 1065

When does a non-US partnership generally have a US tax filing requirement?

1. the partnership does not have income effectively connected with the conduct of a US trade or business, but has other US-source income.

Examples:

- a. interest
- b. dividends



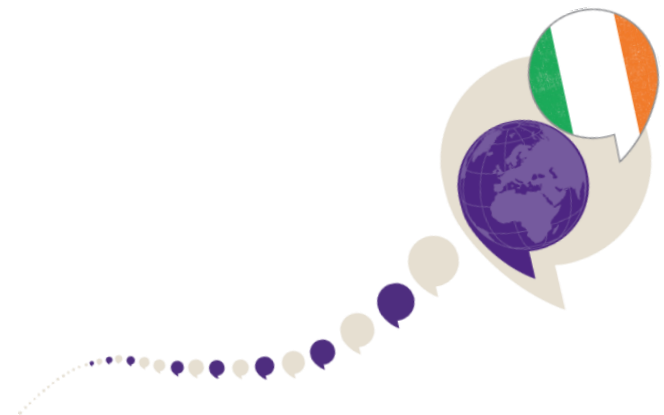
When to file Form 1065

When does a non-US partnership generally have a US tax filing requirement?

2. the partnership has FDAP (Fixed, Determinable, Annual, Periodical income)

Examples of FDAP income:

- a. interest (other than portfolio interest)
- b. dividends (look through to see components if from another fund)
- c. rents
- d. royalties



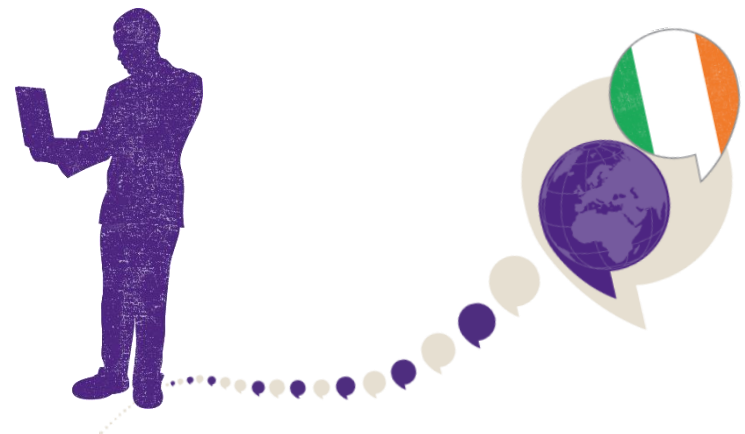
Modification to reporting



When to file Form 1065

Modification to reporting

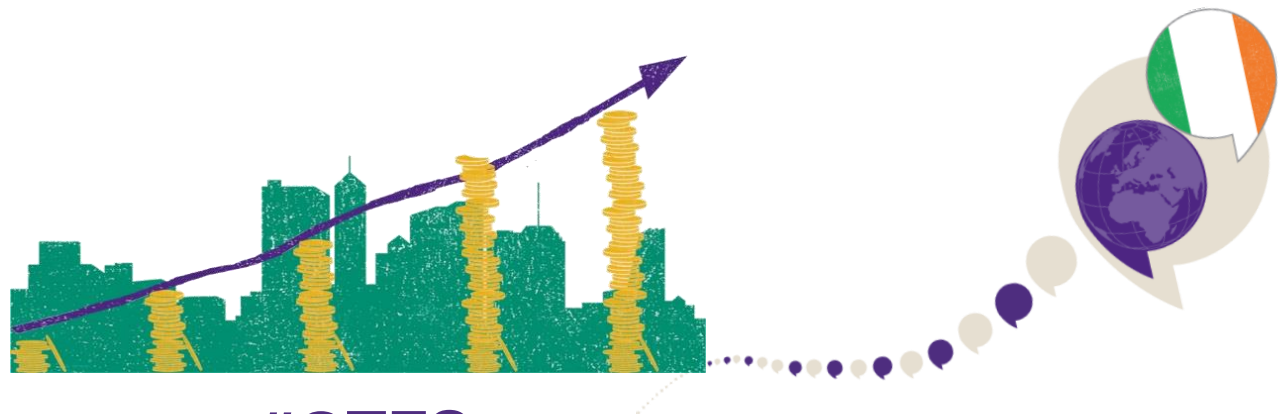
1. all US-source income allocable to the non-US partners is taxed at the applicable withholding tax rates.
 - reported on Forms 1042 and 1042-S by either the non-US partnership or the applicable withholding agent (i.e. a prime broker)
 - typically taxed on gross basis at a flat 30% or the lower treaty rate is applicable.



When to file Form 1065

Modification to reporting

2. for many investment funds managed outside the US with a combination non-US and US investors, it is often assumed by fund management that the prime broker is the withholding agent on all US-source income.



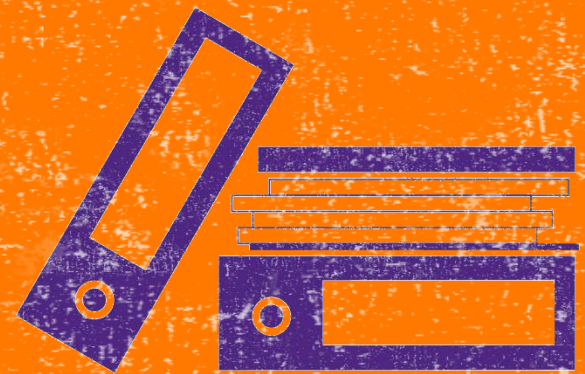
When to file Form 1065

Modification to reporting

3. if the modification applies, a US partnership return should be filed by the non-US partnership, but only the Schedule K-1 for the US investor(s) needs to be issued.



Form 8865



Form 8865

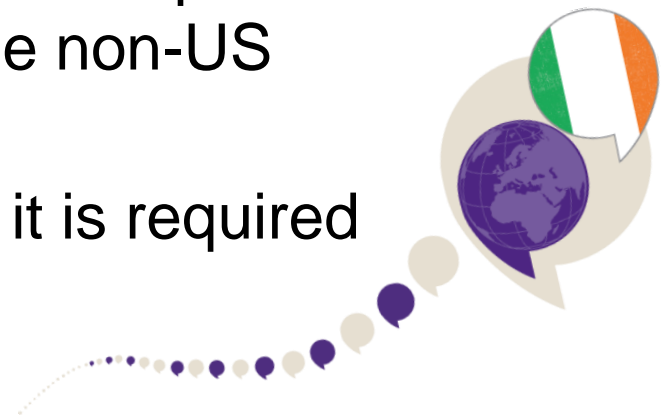
Filing requirement

What is it?

- return of U.S. persons with respect to certain foreign partnerships.

Application:

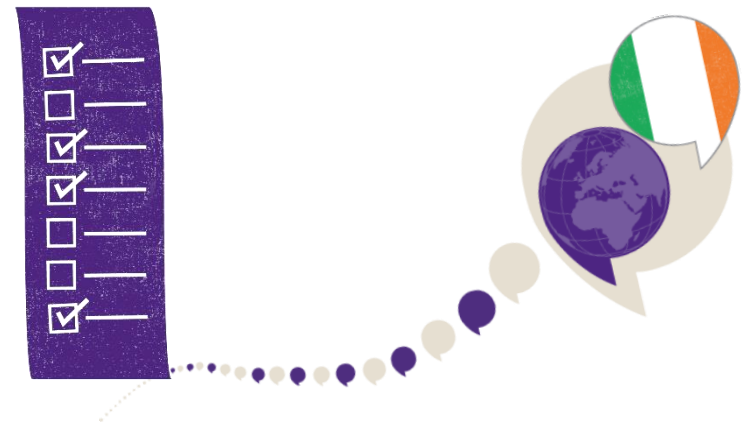
- regardless of whether or not a non-US partnership files Form 1065, the US partners will likely be required to file Form 8865 to report their interest in the non-US partnership:
 - most of this form is duplicative, but it is required nevertheless.



Form 8865

Filing requirement

- other rules may apply if the non-US partnership is a controlled foreign partnership
 - this generally means the non-US partnership is more than 50 percent owned or controlled by US persons.



Form 8865

Our observations

- many non-US investment funds managed outside the US, including non-US master funds, do not file a Form 1065
 - instead, they provide each of their US investors and feeder funds with a pro forma Schedule K-1 and all information necessary to prepare and file a Form 8865.



Form 8865

Our observations

- we suggest that managers of any non-US investment funds, including non-US master funds, consider on an annual basis the fund's investor profile and sources of income to determine whether or not to file a Form 1065 with the Internal Revenue Service (IRS)
- non-US funds should be prepared to provide each US investors with a Schedule K-1 and all information needed to prepare and file a Form 8865.

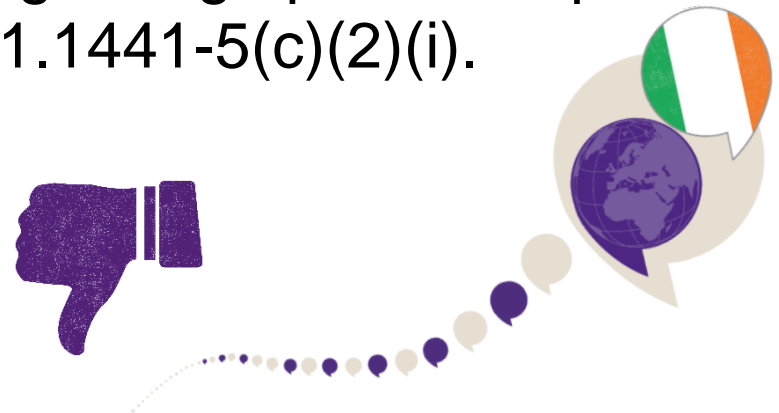


When not to file

Exception for foreign partnerships with US partners:

A return is not required if:

- a. the partnership had ECI during its tax year
- b. less than 1% of any partnership item of income, gain, loss, deduction, or credit was allocable in the aggregate to direct U.S. partners at any time during its tax year
- c. the partnership is not a withholding foreign partnership as defined in regulations section 1.1441-5(c)(2)(i).

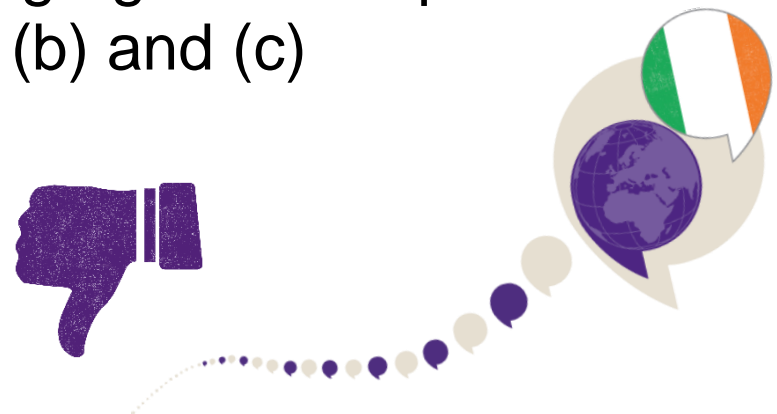


When not to file

Exception for foreign partnerships with no U.S. partners:

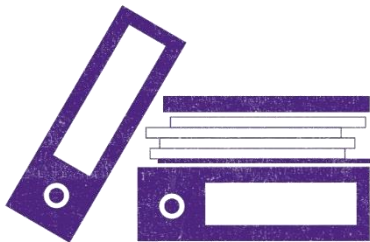
A return is not required if:

- a. the partnership had no ECI during its tax year
- b. the partnership had no U.S. partners at any time during its tax year
- c. all required Forms 1042 and 1042-S were filed by the partnership or another withholding agent as required by regulations sections 1.1461-1(b) and (c)



When not to file

- d. the tax liability of each partner for amounts reportable under regulations sections 1.1461-1(b) and (c) has been fully satisfied by the withholding of tax at the source
- e. the partnership is not a withholding foreign partnership as defined in regulations section 1.441-5(c)2(i).



Benefits of the ICAV structure



Benefits of the ICAV Structure

Check the box" eligible entity:

- treated as a true flow-through partnership for US tax purposes:
 - a. can flow through losses unlike a QEF(corporation)
 - b. all items of income, gain, loss and deduction are separately stated on a form K1 rather than ordinary and long term gains only on a QEF statement
 - c. no pooled earnings and profits concept
 - d. competitive with Cayman entities
 - e. file Form 8832 to elect partnership treatment
 - f. US owners file Form 8865 with their annual tax returns.



Sample form K-1

Schedule K-1 (Form 1065)

Department of the Treasury
Internal Revenue Service

For calendar year 2013, or tax year beginning _____, 2013
ending _____, 2013

Partner's Share of Income, Deductions, Credits, etc.

► See back of form and separate instructions.

Part I Information About the Partnership	
A	Partnership's employer identification number
B	Partnership's name, address, city, state, and ZIP code
C	IRS Center where partnership filed return OGDEN
D	<input checked="" type="checkbox"/> Check if this is a publicly traded partnership (PTP)
Part II Information About the Partner	
E	Partner's identifying number FOREIGNUS
F	Partner's name, address, city, state, and ZIP code

☐ Final K-1 ☐ Amended K-1

OMB No. 1545-0099

651113

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items			
1	Ordinary business income (loss)	15	Credits
	427		
2	Net rental real estate income (loss)		
	434		
3	Other net rental income (loss)	16	Foreign transactions
		A	VARIOUS
4	Guaranteed payments	B	86,271
5	Interest income	C	33,476
6a	Ordinary dividends	D	17,079
6b	Qualified dividends	E	22
7	Royalties	F	118
8	Net short-term capital gain (loss)	*	STMT
	557		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
	35,452	A	1
9b	Collectibles (28%) gain (loss)	B	(2)

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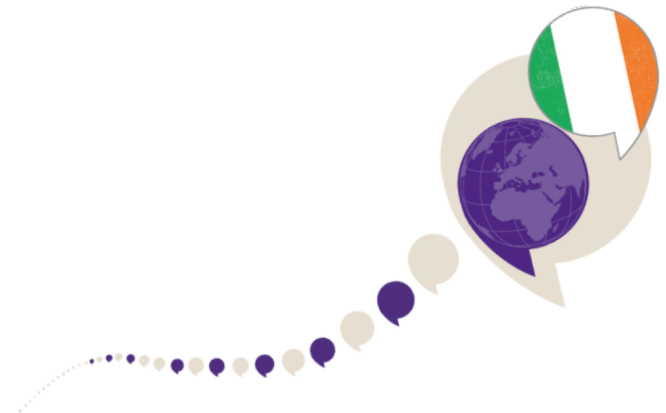
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Questions & feedback

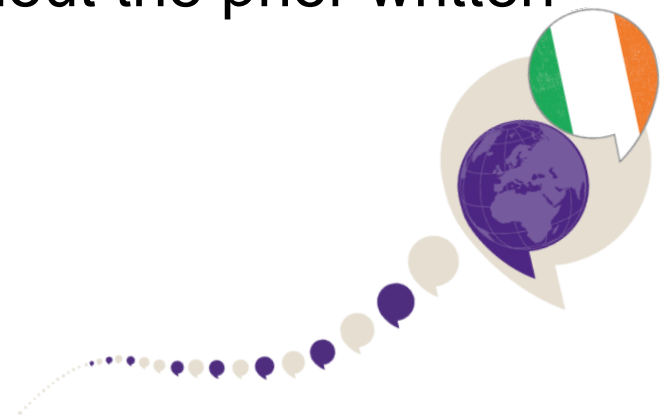


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ONESOURCE Workflow

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