CANADA:
A GUIDE TO INTERNATIONAL FUND DISTRIBUTION

irish funds

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ABOUT
IRISH FUNDS

Established in 1991 the Irish Funds Industry Association (Irish Funds) is the representative body of the international investment fund community in Ireland. We represent the fund promoters / managers, administrators, custodians, transfer agents and professional advisory firms involved in the international funds industry in Ireland, with more than 14,000 funds and net assets of more than €5.2 trillion. The objective of Irish Funds is to support and complement the development of the international funds industry in Ireland, ensuring it continues to be the location of choice for the domiciling and servicing of investment funds. Through its work with governmental and industry committees and working groups, Irish Funds contributes to and influences the development of Ireland's regulatory and legislative framework. Irish Funds is also involved in defining market practice through the development of policy and guidance papers and the promotion of industry-specific training.

Our Mission

We are the voice of the Funds and Asset Management industry in Ireland.

Our Vision

Ireland will be the premier location to enable and support global investing through its reputation for trust, capability and innovation.

Our Values

- **Collaboration** – we succeed together and in working with others
- **Commitment** – to achieving better outcomes for investors
- **Dedication** – to member interests
- **Excellence** – in delivering and enhancing our capabilities
- **Integrity** – in everything we do
- **Society/Community engagement** – we give back
- **Transparency** – In who we represent, our interests and our decisions

MARKET OVERVIEW & KEY DISTRIBUTION CHANNELS

The Canadian investment market represents a significant pool of potential investors, including Canada's pension industry (the fifth largest in the world), as well as the eight largest investment fund market in the world.

- At the end of 2019, Canadian investment fund assets totalled C$1.6 trillion*. The Canadian investment fund industry is a mature industry, demonstrated by both its relative size and level of concentration. The marketing of investment products and services, however, is subject to significant regulation.
- The sale of shares of an Irish fund (each, "Fund") to a resident of Canada will trigger licensing and/or Fund registration issues under the laws of Canada.
- It is not, however, possible to register a foreign investment fund for retail registration in Canada. As a result, Irish Funds may only be offered and sold to residents of Canada on a "private placement basis", as described more fully below.

8th
Canada is the 8th largest fund market in the world.

5th
Canada has the 5th largest pension industry in the world.

C$1.6 Trillion
As of Q4 2019, Canadian net fund assets totalled C$1.6 trillion.

C$5.9 Billion
As off Q4 2019, net fund assets in alternative investment funds.

Key distribution channels

In Canada, investment funds are distributed through the following seven distinct channels with Canadian banks dominating the distribution landscape: (i) financial advisors; (ii) full-service brokerage; (iii) deposit-taking bank branches; (iv) private wealth management through bank owned or numerous independent firms; (v) direct sellers, including robo-advisers; (vi) online / discount brokerage; and (vii) institutional direct investors.

The size of the various distribution channels varies considerably from the relatively small percentage of investors using self-directed platforms to the large portion of asset flows through banks and financial advisors.

* Source: The Investment Funds Institute of Canada (IFIC), 2019 Investment Funds Report, January 2020

DISTRIBUTING UCITS IN CANADA

Funds regulated as UCITS are sold primarily to Canadian investors on a "private placement" basis, as described more fully below. It is not currently possible to offer such a Fund to retail investors in Canada.

Distribution of UCITS can be done through European disclosure documents with a "Canadian wrapper" that is designed to provide supplemental tax and regulatory disclosure to Canadian investors and to serve as a supplemental application form to elicit the necessary information for a private placement.

TOP THREE DISTRIBUTION CHANELS IN CANADA

BANKS

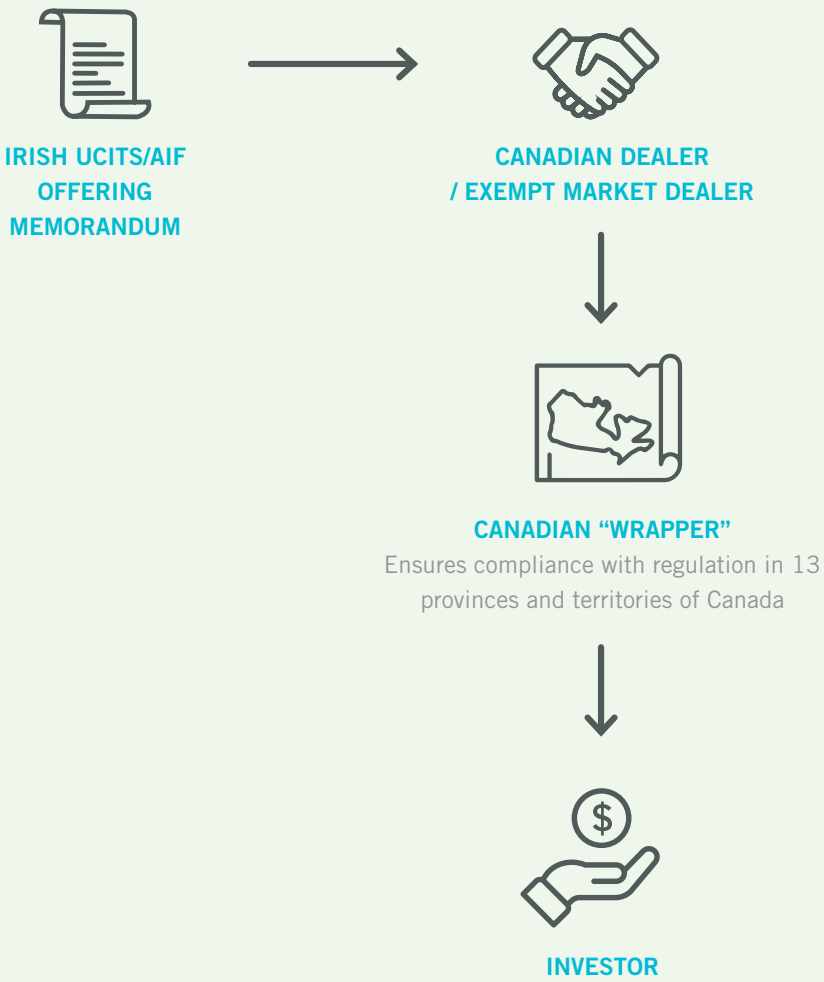
FINANCIAL ADVISORS

DIRECT INSTITUTIONAL

DISTRIBUTING AIFS IN CANADA

Funds regulated as AIFs are sold primarily to Canadian investors on a "private placement" basis, as described more fully below, with the use of a "Canadian wrapper."

ACCESSING THE MARKET: PRIVATE PLACEMENT



REGULATORY AUTHORITIES & COSTS OF REGISTRATION

Territorial / Provincial Regulation

Securities regulation in Canada, including regulation of the management of investment assets and the offer and sale of securities of a non-Canadian fund (e.g., a Fund), is carried out at the provincial/territorial level.

As a result, each of the ten (10) provinces and three (3) territories of Canada has a securities regulatory authority that administers the jurisdiction's securities laws and regulations. The following are the regulators for each province or territory: (i) Alberta Securities Commission; (ii) British Columbia Securities Commission; (iii) Saskatchewan Financial and Consumer Affairs Authority; (iv) Manitoba Securities Commission; (v) Ontario Securities Commission; (vi) Autorité des marchés financiers du Québec; (vii) New Brunswick Financial and Consumer Services Commission; (viii) Securities Commission of Newfoundland and Labrador; (ix) Nova Scotia Securities Commission; (x) Northwest Territories Registrar of Securities; (xi) Nunavut Registrar of Securities; and (xii) Yukon Registrar of Securities.

Securities regulators from each of the 10 provinces and 3 territories in Canada have formed the Canadian Securities Administrators ("CSA"). The CSA is an umbrella organization of Canada's provincial and territorial securities regulators whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets.

CSA ACVM

WWW.SECURITIES-ADMINISTRATORS.CA

Although Canada has thirteen sets of securities regulations and securities regulators, Canada (through the work of the CSA) has implemented a streamlined and nationally harmonized registration system that facilitates the distribution of Irish UCITS and AIFs (among other non-Canadian funds) to qualified investors in Canada under National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103"), although some distinctions exist (notably, with respect to investment fund manager registration requirements discussed below). This Guide will summarize the securities regulation in Ontario and will note whether another province or territory's regulation differs significantly. Unless otherwise noted, the user of this Guide can assume that the securities regulation of the other provinces and territories in Canada is substantially the same as Ontario's regulation.

(Source: Finansinspektionen (SFSA))

REGULATORY REQUIREMENTS

Canadian securities legislation provides that any individual or entity that engages, in Canada, in one or more of the following activities in this context must be registered (unless an exemption is available): (1) the issuance of a prospectus in connection with the offer and sale of shares of a Fund; (2) acting as an investment fund manager; and (3) engaging in the business of, or holding itself out as being in the business of, dealing in securities.

(1) Prospectus Registration

Generally, the offer of shares / units of a Fund to residents of Canada by means of a prospectus requires that the prospectus be cleared by the applicable Securities Commission in the province or territory of the offer, unless an exemption from the prospectus requirement applies. If a prospectus exemption is not available, the prospectus of the Fund would have to be filed and cleared in Canada.

There are a number of prospectus exemptions available under National Instrument 45-106 Prospectus Exemptions ("NI 45-106"). The two most commonly used exemptions for the sale of Irish UCITS or AIFs under NI 45-106 are the Accredited Investor Exemption and the Minimum Investment Amount Exemption, as described more fully below.

Accredited Investor Exemption – The most common prospectus exemption utilized by an Irish UCITS or AIF to offer and sell its shares to a resident of Canada is the exemption for sales to "accredited investors" outlined in Section 2.3 of NI 45-106.

Specifically, the Accredited Investor Exemption permits sales of a foreign fund without an approved prospectus to any person or company, purchasing as principal, that meets any one of the specified qualification criteria set out in NI 45-106, which include: (i) an individual, who either alone or jointly with a spouse, beneficially owns financial assets having an aggregate net realizable value exceeding C$1 million, and (ii) an individual whose net income exceeded C$200,000 in each of the last two most recent years or whose joint income with a spouse exceeded C$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same income level in the current year.

Individuals purchasing under the Accredited Investor Exemption must complete a new Risk Acknowledgment form relating to the investment, unless such individual qualifies as a "permitted client" under NI 31-103.

The Minimum Investment Amount Exemption - The Minimum Investment Amount Exemption in NI 45-106 permits trades to any entity that purchases securities as principal from a single issuer with a purchase price of not less than C$150,000, paid in cash at the time of purchase. The definition of 'person' includes, among other things, corporations, partnerships and trusts; however, a group of investors cannot pool their money together in a single entity for the sole purpose of having that entity then invest the minimum C$150,000.

It is important to note that the Minimum Investment Amount Exemption is not available where the purchaser is an individual.

(2) Fund Manager Registration

On September 28, 2012, two different registration proposals for non-Canadian fund managers came into force - Multilateral Instrument 32-102 Registration Exemptions for Non-Resident Investment Fund Managers ("MI 32-102") and Multilateral Policy 31-202 Registration Requirements for Investment Fund Managers ("MP 31-202"). An investment fund manager is the administrative manager of a Fund. They direct the business, operations or affairs of an investment fund. They organize the Fund and are responsible for its management and administration. "Investment fund" is a defined term under Canadian securities laws, and some Funds will not constitute an "investment fund".

MI 32-102 (which applies in Ontario, Québec and Newfoundland) requires a non-Canadian fund manager to register as an investment fund manager (or avail themselves of the single exemption from such registration) in each of the provinces that has passed MI 32-102, unless (i) none of the investors in the manager's Fund(s) reside in the relevant province or (ii) neither the manager nor any of the Funds actively solicits persons resident in that province to purchase securities of the manager's Fund(s) and has not done so at any time since September 27, 2012. "Active solicitation" includes intentional actions taken by the manager or Funds

directly, or through third parties receiving compensation, to encourage an investment in the Fund.

Under MI 32-102, the non-Canadian manager is exempt from the investment fund manager registration requirement if the Canadian distribution of a Fund"s securities is restricted to "permitted clients" under the International Fund Manager Exemption. The non-Canadian manager will be required to notify the securities regulator in the province where the "permitted client" is located of the manager's reliance on this exemption and take other required steps to perfect the so-called 'permitted client exemption' when the manager first starts to solicit "permitted clients."

Under MP 31-202 (which applies in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island, New Brunswick, Nova Scotia, the Northwest Territories, Yukon and Nunavut), the non-Canadian manager will only be required to register in a province or territory that has passed MP 31-202 if it directs or manages the business, operations or affairs of the investment fund in or from that province or territory, in a way that establishes a substantial connection to that province or territory. The presence of security holders or the solicitation of investors in a province or territory will not be, by themselves, sufficient to require a non-Canadian manager to register in the province or territory under MP 31-202.

(3) Broker-Dealer Registration

As discussed more fully below, the offer and sale of an Irish UCITS or AIF triggers "broker-dealer type" licensing in Canada. Practically, the distributor of an Irish UCITS or AIF will either appoint a locally licensed agent in Canada or otherwise seek an exemption from registration under the "International Dealer Exemption."

Background: Canadian securities legislation creates two categories of securities that may be sold to residents of Canada: (i) prospectus-qualified securities; and (ii) securities issued under a prospectus exemption. Securities issued under the prospectus exemptions of NI 45-106, otherwise known as non-reporting issuers, are typically considered to form the "exempt market." Securities of a Fund would be considered exempt market securities, which would rely on a prospectus exemption in NI 45-106.

Under NI 31-103, a new dealer registration category was introduced in all jurisdictions across Canada to regulate the sale of securities in the exempt market - the exempt market dealer ("EMD"). A critical change under NI 31-103 was the introduction of the "business trigger" for dealer registration. Prior to September 28, 2009, the requirement to be registered as a dealer was triggered by a person engaging in a "trade" of securities.

NI 31-103 adopts a "business" trigger for dealer registration in lieu of the "trade" trigger that previously existed in all provinces and territories other than Québec. The adoption of a "business" trigger establishes uniform dealer and adviser (underwriter and IFM registration are not subject to a 'business trigger' test) registration requirements throughout Canada, subject to certain exceptions (e.g., as described under Section (2) above). In other words, the adoption of NI 31-103 established uniform dealer, adviser, underwriter and investment fund manager registration requirements throughout Canada, subject to certain exceptions (e.g., as described under Section (2) above).

NI 31-103 also removes from the ambit of securities legislation those persons or companies who are not engaged in the business of trading in or advising on securities - and thereby facilitates the elimination of a number of dealer registration exemptions that previously existed to accommodate their exempt trading activity.

According to the Companion Policy to NI 31-103, there are two components to any assessment of the application of the "business" trigger. The first component involves an assessment of whether the particular activity involves dealing in securities or advising on securities. If so, the second component involves an assessment of the extent to which the activity is being conducted as a business. Factors that are taken into account for the purpose of determining whether any trading or advisory activity is being conducted as a business will include: (i) engaging in activities similar to a registrant (such as marketing securities or stating that the firm will buy or sell securities); (ii) intermediating a trade between a buyer and seller of securities; (iii) undertaking the activity, directly or indirectly, with repetition, regularity or continuity; (iv) being, or expecting to be, remunerated or otherwise compensated for undertaking the activity; (v)

soliciting, directly or indirectly, others in connection with the activity; and (vi) holding oneself out, directly or indirectly, as being in the business of the activity. Generally speaking, one-time trading or advising activities, particularly if they are not solicited or compensated, will not require a person or company to become registered as a dealer.

The dealer registration requirement is likely triggered for a Fund or its manager by marketing activities and the solicitation of prospective investors in Canada.

Appointing a Locally Licensed Agent. The Fund or manager could avoid registration by ensuring that the offer and sale of Fund shares are made through an agent of the Fund who is registered as a dealer in the applicable province or territory (or exempt from such registration). That dealer entity's personnel need to be significantly involved in the marketing process from the outset. Involving a dealer of record to bless the trade after the offer and sale has already been initiated does not cleanse the lack of required registration.

NI 31-103 introduced consistent rules concerning proficiency, conduct, capital and compliance requirements and makes it clear that EMDs are subject to the same know-your-client ("KYC") and suitability requirements as other dealer categories.

Northwest Exemptions to EMD Registration. Several jurisdictions have issued a blanket order making available certain limited trade-based registration exemptions to persons who would otherwise be required to register as EMDs. For example, Alberta has Blanket Order 31-505, introduced on February 12, 2010. With the implementation of the new registration regime in NI 31-103, the trade-based registration exemptions that tracked the prospectus exemptions available under NI 45-106 were repealed on March 27, 2010.

Pursuant to Alberta Blanket Order 31-505, effective March 27, 2010, an exemption from the EMD registration requirement is available for persons trading in securities in reliance on certain prospectus exemptions under NI 45-106, specifically, the Accredited Investor Exemption and Minimum Investment Amount Exemption. The Blanket Order, however, applies only where certain conditions are met. Specifically, the person or company seeking to rely on the Blanket Order must (among other things) (i) not be registered or required to be registered in any province, territory or foreign jurisdiction; (ii) must not have provided advice to the purchaser with respect to suitability (defined as investment needs, and objectives, financial circumstances or risk tolerance); (iii) must obtain from the purchaser a signed risk acknowledgement in the form prescribed by the blanket order; (iv) must not have provided financial services to the purchaser at any time; (v) must not hold or have access to the purchaser's assets; and (vi) must electronically file with the Alberta Securities Commission a current or updated information report in the prescribed form within 10 calendar days of relying on the exemption. British Columbia, Manitoba, Saskatchewan, the Northwest Territories, Nunavut and the Yukon Territory have issued similar orders. These orders have limited application to the sale of Funds since most Distributors are registered or required to be registered in a non-Canadian jurisdiction.

International Dealer Exemption. Prior to NI 31-103, Ontario and Newfoundland had an international dealer registration category, used for non-Canadian dealers that trade into those provinces. Under NI 31-103, an "international dealer" is one that has its head office or principal place of business outside of Canada, and that is registered under the securities legislation of its home jurisdiction (where its head office or principal place of business is located) in a category of registration that permits it to carry on the activities in that home jurisdiction that registration as a dealer would permit it to carry on in Canada. In other words, an international dealer must be registered in its home jurisdiction (as a broker-dealer) to carry on the same activities. This International Dealer Exemption is relatively easy to claim and has potential application in the present context.

Under NI 31-103, international dealers would be exempt from dealer registration in Canada if activities are limited to the following: (i) carrying on activities, other than the sale of a security, that are reasonably necessary to facilitate a distribution of securities that are offered primarily abroad (e.g., clearing activities); (ii) dealing in debt securities (i.e., either Canadian or foreign debt securities) in the course of a distribution where the debt securities are offered primarily abroad and no prospectus has been filed in Canada for the distribution. Effective December 4, 2017, the ability

to trade in debt of a Canadian issuer will be expanded to include dealing in debt securities (i.e., either Canadian or foreign debt securities) where the debt securities are (A) denominated in a currency other than the Canadian dollar, or (B) are or were offered primarily abroad and no prospectus has been filed in Canada for the distribution; (iii) dealing in a foreign debt security, other than in the course of the distribution by which a foreign debt security was issued; (iv) dealing in foreign securities, other than in the course of a distribution for which a prospectus has been filed in Canada (e.g., sale of Fund shares); (v) dealing in any foreign security with a Canadian investment dealer; or (vi) dealing in any security (i.e., either Canadian or foreign securities; debt or equity securities) with a Canadian investment dealer acting as principal.

In each case, the dealing in Canada by the international dealer must only be with a "permitted client". This group of permitted clients is narrower than what was formerly permitted in Ontario and Newfoundland for registered international dealers, who were essentially permitted to deal with any accredited investor, other than individuals. Under NI 31-103, "permitted clients" are limited to Canadian financial institutions (banks, loan corporations, trust companies, insurance companies, treasury branches, credit unions or caisse populaires), a Schedule III bank, the Business Development Bank of Canada, subsidiaries of the foregoing financial institutions, Canadian registered advisers, investment dealers, mutual fund dealers and EMDs, federal or provincial governments and Crown corporations or agencies, Canadian municipalities, public boards and commissions, Canadian pension funds, trust companies acting on behalf of fully-managed accounts, investment funds that are advised by a portfolio manager registered in Canada, or a person acting on behalf of a fully-managed account if that person is registered or authorized to carry on business as an adviser in Canada or a foreign jurisdiction. The "permitted client" must be, depending on the type of entity, resident, incorporated or organized in or otherwise governed by the laws of Canada or a province or territory of Canada.

The definition of "foreign security" includes securities of non-Canadian issuers, including foreign Funds.

There are two pre-conditions for relying upon the International Dealer Exemption. International dealers may only rely upon the exemption if they: (i) have appointed an attorney for service in each of the particular Canadian provinces in which they propose to trade; and (ii) deliver a prescribed submission to jurisdiction form to the relevant security regulatory authority(ies) by filing Form 31-103F2. In addition, the international dealer must give prescribed notice to its proposed clients in Canada regarding its non-resident and non-registered status.

Costs Implications: An exemption filing fee may be payable with the local provincial securities regulator. Currently, each of the Saskatchewan and Manitoba securities regulator charges firms that rely on the International Dealer Exemption an initial fee and an annual fee of C$1,150 and the Alberta and British Columbia securities regulator each charges such firms an initial fee and an annual fee of C$1,400. The Ontario Securities Commission charges firms that rely on the International Dealer Exemption an annual fee based on a percentage of the dealer's revenues from its Ontario-based capital markets activities, including fees or commissions attributable to Ontario-resident investors.

FILING REQUIREMENTS

Where a private placement is made pursuant to the Accredited Investor Exemption or the Minimum Investment Amount Exemption (both as discussed above), a report of the private placement must be made in each of the Provinces where such placement was made.

The requirement to make the filing, which is on Form 45-106F1 Report of Exempt Distribution, is generally the same across the Provinces, with some slight differences. Most Provinces require that the filing be made within 10 calendar days after the distribution and must include certain information regarding the purchaser and the dollar value of the purchase (although if the Fund qualifies as an "investment fund" under securities laws in Canada, one aggregate Form 45-106F1 filing can be made by January 30th for all sales of the Fund in the previous calendar year). The filing is ultimately signed by or on behalf of the issuer (i.e., the Fund). Where the private placement is made in Ontario, a notice regarding the Authorization of Indirect Collection of Personal Information for Distributions in Ontario must be provided to the investor if the investor is an individual. This is customarily done in the Canadian supplemental disclosure document". It is worth noting that the information submitted on the Form 45-106F1 may become publicly available as a result of certain freedom of information legislation in certain Provinces.

As noted above, in certain jurisdictions of Canada, where an 'offering memorandum' (as such term is defined under relevant securities laws) is provided in connection with a distribution of shares of a Fund, that offering memorandum must be filed with the local securities regulator within the required timeframe, typically 10 calendar days.

LOCAL TAXATION REQUIREMENTS

There are important tax considerations impacting Canadian investors in Irish Funds.

Irish Funds are not subject to any taxes on their income (profits) or gains arising on their underlying investments. Rather, tax is generally levied at the investor level.

While dividends, interest and capital gains which a fund receives with respect to its investments may be subject to taxes, including withholding taxes, in the countries in which the issuers of investments are located, these foreign withholding taxes may nevertheless be reduced or eliminated under Ireland's network of tax treaties to the extent applicable.

The Irish fund may be subject to withholding, capital gains or other taxes on dividends, interest and capital gains arising from the investments of the fund, including taxes imposed by the jurisdiction in which the issuer of securities held by the fund is incorporated, established or resident for tax purposes.

There are a number of events when an Irish Fund is required to deduct tax from payments to investors in respect of Chargeable Events. Chargeable Events are:

- Making a Relevant Payment or any other payment other than a disposal.
- Making a payment on the cancellation, redemption or repurchase of units.
- The transfer of units.
- The cancellation of unit's consequent on a transfer.
- On a Deemed Disposal.

A non-Irish resident investor, such as a Canadian resident investor, should generally not be subject to Irish tax on their investment and do not incur any withholding taxes on payments from an Irish fund provided the appropriate declaration of non-Irish residence is in place and has been provided to the Irish fund.

However, the non-Irish resident investors may be subject to Irish tax on the disposal of shares that are considered to be "specified assets", being assets that derive a greater part of their value directly or indirectly from the following:

- land in Ireland;
- minerals in Ireland or any rights, interests or other assets in relation to mining or minerals or the searching for minerals;
- exploration or exploitation rights within designated areas of Ireland.

This may have an impact on the individual investors tax position. Consequently, Canadian investors should seek independent tax advice from their own tax advisors with regard to local Canadian treatment.

To the extent the non-Irish resident investor is liable to tax on Irish source income, the Irish self-assessment regime requires the non-Irish resident investor to submit a tax return and pay the relevant tax owing.

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October 2020

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