This technical query paper was submitted to Revenue on 17 June 2022 to provide feedback on the draft Tax and Duty Manual on the Interest Limitation Rule, which was circulated to the TALC BEPS Implementation Subcommittee on 1 June 2022.

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12	The draft TDM clearly states as to when an election is made and how long it lasts for, but the timeframe for the withdrawal is not quite as clear. For example, accounting period from 1 January 2022 – 31 December 2022. The company elects into an interest group for this period (FY22) via their Form CT1 to be filed on 23 September 2023. The election lasts for 3 years from the beginning of the accounting period to which the election relates. So, the election applies for the following periods: • 1 January 2022 – 31 December 2022 • 1 January 2023 – 31 December 2023 • 1 January 2024 – 31 December 2024 In the above example, the earliest that the withdrawal can be made is 1 January 2025. As this is done via the Form CT1, the withdrawal is included in the return filed on 23 September 2026 (for FY25). However the draft manual says that the withdrawal will apply for a period of three years from the beginning of the accounting period *"in which the withdrawal is made".* Strictly speaking the withdrawal was made in the accounting period 1 January 2026 – 31 December 2026, so does this mean that the 3 year period of withdrawal starts on 1 January 2026? If so, doe this mean that for FY25, the election remains in place? If it is intended to start the 3-year withdrawal period from 1 January 2025, should the manual refer instead to "3 years from the beginning of the accounting period *in respect of which the withdrawal is made"*?
15	Example 3.4: Standalone Entity refers to SE Ltd and then refers to SA Ltd – we presume this is a typo?
18	The previous comment on negative interest in section 4.1 has now been removed. Can Revenue please clarify if this means that negative interest may in some cases be viewed as interest/interest equivalent?
19	Example 4.1: A Ltd is a trading company raising finance – why is the payment amount of €4.8m only taken into consideration as part of the interest equivalent, when the actual interest/finance charge is greater than this (12% of the principal of €17m)? Should the actual legal interest charged be taken into account as opposed to the payment made?

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<tr><td>24</td><td>Example 4.5 - Interest equivalents and purchased loans
This example refers to non-performing loans but absent any other examples, we assume that it applies to any purchased loans (performing or non-performing) and irrespective of the presence or absence of a (material) discount.

The revised example essentially looks at a scenario where a loan book is acquired and takes that acquisition as if it were a single asset and provides for a manner to work out an IRR in respect of the portfolio. Essentially, to the extent that the return matches the expected IRR, that can be treated as an interest equivalent.

However, to the extent that the portfolio exceeds expectations such that it gives rise to a gain in the income statement, that gain is not treated as a taxable interest equivalent. Conversely, if performance is below expectations, a loss in the income statement is treated as a deductible interest equivalent. The commentary goes on to suggest that a similar approach should be applied to loans which are subject to fair value accounting.

While this example has moved on considerably from the previous example, there are still a number of significant underlying issues.

Accounting treatment
The example indicates that where the performance of the relevant loan book is better than was expected at the time of its acquisition, this additional return (or gain) is not to be treated as an interest equivalent.

It should be noted that, under IFRS, there will be no separate disclosure of any such gain in the financial statements. In the event that the performance of a loan portfolio is expected to be better than was originally determined, the company would take the new projections and apply the original discount rate to those future flows. It will then reflect the increased return as part of the interest income element shown in the financial statements in which the improved return is recognised. This will form part of a single item (interest) in the company’s financial statements and there will not be any separate disclosure of the increased element of the return.

Moreover, in many (albeit not all) instances this will be done in respect of the loan book in aggregate and not the individual loans making up that loan book. This means that any improved expected performance in respect of one or more loans in the portfolio is automatically netted against any disimproved expected performance in respect of other loans in the portfolio. As noted elsewhere, the guidance accompanying the example indicates that the benefit of any improved expected performance should not be treated as equivalent to interest whereas the loss arising from a disimprovement in expected performance should be. If that principle is to be applied, then any review of performance would need to be performed individually in respect of each loan so that the amounts to be treated as equivalent to interest can be separate from those which are not. While this may be done in situations, it is certainly not universally so.

If this is not done (and a portfolio approach is maintained), in addition to this being inconsistent with the accompanying guidance, it could also mean that an entity which has acquired multiple loan books could be subject to arbitrary treatment. For example, if an improvement in expected return for one portfolio is not treated as an interest</td></tr>
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	equivalent then it cannot be netted against an interest equivalent on another portfolio arising from a disimprovement in its expected returns. This would be irrespective of the fact that there could be nettings of gains and losses within those portfolios in respect of individual loans. This would appear to be quite arbitrary. Further arbitrary treatment could arise where one company treats separately acquired portfolios as separate portfolios in its accounts where another aggregates separately acquired portfolios into a single combined portfolio in its accounts. It is also important to compare the treatment of originated loans and acquired loans, bearing in mind that acquired loans are not necessarily purchased with a (material) discount. The expected performance of an originated loan can improve where, for example, its coupon is linked to a reference rate (such as Euribor) which rises. There is no re-measurement in such a scenario and any additional return is booked as the interest is earned. We understand that it is common for any such additional amounts earned, are interest. However, this very same cause of improvement in performance is part of the gain that could arise in respect of a purchased portfolio. That is, an improvement in expected returns on an acquired portfolio will inherently be an assessment of all possible contributors to a better or worse performance including changes in reference rates but also the ability of the borrower to repay the debt (which itself will be impacted on borrower specific factors but also market factors such as general economic outlook). Therefore, the guidance (as it is drafted) proposes that loans that are acquired and loans that are originated, be treated differently even if the reason for the improvement in expected returns is the same (e.g., an increase in reference rate). This seems inequitable. Given that the various elements affecting the (re)assessment of an acquired loan portfolio are not typically separately assessed and tracked (and in many cases would not be capable of separation given the underlying interdependencies between factors), merely adjusting the guidance to say that changes due to some factors are interest equivalents and others are not, will not remedy this issue. In the case of loans that are held at fair value, the guidance suggests that the same principles, as those in the example, should be applied. However, this will not be practical. Where a company applying fair value accounting acquires a loan, it essentially does the same exercise as would have been the case for one which uses EIR accounting (assess present value of expected future cash flows). If a loan/ loan book performs exactly as originally expected, the only thing that will go through the company's Income Statement is a small return reflecting the fact that the actual amount received will be greater than the discounted cash flows applied in the original projections (because of the discount applied). This amount is obviously much less than the interest actually earned because most of the interest actually received, is already recognised as part of the loan asset on the Balance Sheet (at its net present value when originally booked in the accounts). So, when that interest is received, it mainly gives rise to a Balance Sheet movement (from loan assets to cash), with only the effect of the discount rate giving rise to an Income Statement credit. Any change to the fair value of the loan assets is reflected as a gain or loss through the Income Statement. However, there is no distinction made in booking any such gain or

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	loss between improvements in general market conditions and performance improvements in respect of the particular loan book. As with the EIR example, if you had a portfolio of loans held at fair value and their performance improves because, for example, their return on those loans is linked to a benchmark rate (e.g. Euribor), then you will see a gain booked in the Income Statement. If that loan had been an originated loan, that extra income would flow through the Income Statement when earned and would be treated as interest. However, any improvement linked to, say, the ability of the borrower to repay the loan will also be booked as a gain. Importantly, as with the EIR example, (i) these elements are not separately assessed and tracked; and (ii) the assessment may be done at an aggregate portfolio level, meaning that individual gains and losses are netted notwithstanding that this is not consistent with the different treatment the guidance proposes for gains and losses. Again, this would appear to be inequitable result. **Interest** Section 4 of the draft Manual starts out by drawing a clear distinction between “interest” and amounts which are deemed (for the purposes of ILR alone) to be “economically equivalent to interest”. This is clearly appropriate, as they are different and they are mutually exclusive – both in law and in logic (as otherwise it would not be necessary to include both in the definition of “interest equivalent”). In applying the “economically equivalent to interest” concept to amounts only part of which is to qualify as an interest equivalent, it is (inherently) necessary to come up with some metric to divide those amounts into their qualifying and non-qualifying components. This is the case for lease payments, for instance, where there is no “interest”, as that term is understood for Irish tax law purposes (even in finance leases where the so-called interest component is not interest for tax purposes). No such metric could or should be required for amounts that are interest – by definition the totality of these amounts qualify as a taxable interest equivalent or a deductible interest equivalent. Example 4.5 seems to ignore this fundamental distinction. Where there is a debt instrument with a coupon attached, by definition that coupon is interest for tax purposes irrespective of its accounting treatment or whether it was purchased with the debt instrument. Hence, in a non-trading context, if someone buys a loan cum-interest they are taxed on the interest as income without any deduction for the capital cost incurred in buying that income stream. In acquiring a NPL portfolio, almost by definition there would be amounts of accrued interest. In general, a loan will specify that all payments on a loan go first towards accrued interest and then towards principal. Thus, in the case of a NPL, cash payments received will initially be all interest in character. Accounting convention ignores this fact when applying EIR accounting which, instead, is a measure of expected profit based on estimated future cash flows. No distinction is made

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	as to the legal character of those payments. However, while the accounting convention may ignore it, it remains a fact that payments will be of interest first and not of principal. For Example 4.5 to respect the distinction in Irish tax law (as referenced in the opening text in Section 4), it should state that all accrued interest that is actually paid is to be treated as a taxable interest equivalent. It could then specify that part of the discount on the principal is to be treated as "economically equivalent to interest" using the proposed metric; though presumably it would need to be reformulated to strip out the quantum of the accrued interest and the amount paid for it. (As to how one would apportion the purchase price is unclear but there would certainly be case to say that if the loan specifies that payments go to interest first, then logically any discount should apply to the principal first and not to interest). **Economically equivalent to interest** The statutory test applicable here is as follows: amounts economically equivalent to interest including— (v) such portion of the profit or loss on— (I) a financial asset (within the meaning of section 76B), or (II) a financial liability (within the meaning of section 76B), the coupon or return on which principally comprises interest … to the extent that it would be reasonable to consider that such amount is economically equivalent to interest, As noted in Revenue's TDM on the anti-hybrid rules: The word "reasonable" is based on the common law "reasonable man test" . The reasonable man test asks what a "reasonable person of ordinary prudence" would do in a given situation. It is an objective test. The word "consider" is an action verb which therefore suggests that something is to be done by the entity. It means; to think carefully about, to contemplate, or to reflect upon. Therefore, what is important, in the context of the anti-hybrid rules, is whether an Irish entity has taken action and thought carefully about/contemplated the tax treatment of a payment in a manner akin to a hypothetical reasonable entity. The test involves asking oneself a hypothetical question of what a reasonable entity would reasonably consider, given the facts of the case. What is not important is the particular facts or circumstances of the Irish entity as that would be a subjective test. As already outlined, it is an objective test. This objective test is to be applied to the question of whether the profit concerned is economically equivalent to interest. Thus, it is a test with respect to the profit made (not just the actual interest) and it is not a test of its legal equivalence or its accounting equivalence. It is suggested that the treatment in the example does not reflect the underlying economic equivalence. Notable economists have variously described interest as follows:

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	• "Interest is the reward of parting with liquidity for a specified period." - JM Keynes • "Interest is the return from the fund of capital." - Edwin RA Seligman • "Interest is the income which goes to the owner of capital." - TN Carver • "Interest is the remuneration for mere abstinences." - JS Mill Indeed, an element of this economic assessment can even be seen in tax cases. For example, Lord Wright in Riches v Westminster Bank Ltd: "…the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation." Applying this to the subject matter of the example, the rate of interest on a loan will reflect, inter alia, the credit risk associated with the borrower. Where the risk that the borrower may not be able to pay increases (be that due to a worsening economic environment generally or a specific issue faced by that borrower), the cost of refinancing that loan will rise. That is to say, a prospective lender would now charge more for the same principal. As a corollary, if the lender wants to sell that loan, they must do so at a discount because the embedded interest rate is below what a lender would now charge. The creation of a new loan at a higher interest rate and the purchase of the existing loan at a discount are economically equivalent and the expected return is the same. Logically, therefore, it does not seem appropriate to apply different treatments to these situations for ILR purposes. (This economic equivalence can be kept to the narrow case of Case I financiers as they tax the return as a single item as part of their trading income unlike a non-trading lender described above who has both income and capital treatment). The fact that a loan returned more than the accounting estimate does not seem to be a sound justification for drawing a distinction on treatment. As discussed above, a better performance might be as a result of an increase in benchmark interest rates with the same factors improving performance equally applying to an originated loan. **Gains and losses** Example 4.5 proposes to apply a different treatment to gains and losses on a debt portfolio. In essence, it is proposed that if a portfolio out-performs expectation, the gain is not an interest equivalent but if it under-performs, the loss is an interest equivalent. This different treatment seems inherently unfair. Take a situation where a portfolio's outlook improves and a gain is recorded in the Income Statement. Per the example, that gain is not a taxable interest equivalent and a restriction is applied. In later years, the outlook disimproves such that the gain is reversed (for illustrative purposes, assume the reversal is the same as the earlier uplift). Per example 4.5, this is a deductible interest equivalent even though it is just reversing something which was not a taxable interest equivalent. This is not equitable. **Aggregation**

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	The example also treats the loan portfolio as a single item and applies its analysis to the aggregate position of the portfolio rather than the individual loans. While this is tempting given the accounting treatment does likewise, aggregating the individual results such that a 'gain' on one loan' is offset with an equivalent 'loss' on another is not appropriate when those gains and losses may be different underlying elements (i.e., interest and principal). Essentially ILR works to allow a 100% deduction of interest expense against taxable interest equivalents but only allows a 30% deduction against other amounts. Therefore, if some portion of a purchased NPL is to be treated as taxable interest equivalent but another part is not (i.e., it is in the 'other amount' category), then netting the pluses and minuses on the taxable interest equivalents with the 'other amounts' on a one-for-one basis before deducting out the deductible interest equivalents is not appropriate. Therefore, treating a portfolio as single item and thereby, allow the netting off of the pluses and minuses on the individual loans making up that portfolio, is only possible where all of the underlying components are treated as "interest equivalents" (i.e., interest or economically equivalent to interest). **Alternative approach** While the approach in Example 4.5 could be modified to attempt address some of the issues called out above, this would, at a minimum, see to require disaggregating all loans and doing separate calculations on each using a methodology which is not dependent on the particular accounting treatment. It is suggested this is not a good remedy. It would create an enormous burden for both taxpayers and for Revenue and would seem to confer little real benefit. It would also seem or require that assessments of future performance be broken down into components that are not normally separately assessed as otherwise it would result in significant inequality of treatment for purchased and non-purchased loans. This would either be impossible or extremely difficult (and absent there being a commonly understood way to do so, subject to substantial variation between taxpayers). It is suggested this is not a good remedy. We suggest that for someone engaged in a financing activity taxed under trading principles, the test for interest equivalence in the legislation can readily be met with respect to the whole profit or loss on that Section 76B financial asset or liability. In other words, for a taxpayer who taxes all of the return on its debt financing activities (be it interest income, interest expense, gain, or loss) as part of a composite taxable profit, it is reasonable to consider such profits or losses to be economically equivalent to interest. We would again suggest the solution, which would make sense, would be to treat all amounts passing through the Income Statement as equivalent to interest. The Institute Reps would be happy to facilitate a discussion between Revenue and their accounting colleagues, to discuss the accounting issues raised above in greater detail, should that be of interest to Revenue.

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26	Examples 4.6 and 4.7 - It appears that a profit on the financial asset will not be interest equivalent but a loss will? The wording in section 835AY TCA 1997 is "*such portion of the profit or loss on—* *(I) a financial asset (within the meaning of section 76B), or* *(II) a financial liability (within the meaning of section 76B),* *the coupon or return on which principally comprises interest or one or more of the amounts referred to in this paragraph, to the extent that it would be reasonable to consider that such amount is economically equivalent to interest*". The profit element in the manual suggests that it is a gain over and above the "expected" interest the taxpayer was expecting based on its IRR etc. However, the taxpayer bought loans with a coupon attaching, which the creditor was expected to adhere to. Therefore, the creditor is paying more (than the taxpayer expected) in its interest obligations under the contract which the taxpayer acquired.
27	A similar point can be made regarding the fair value elements if interest equivalents.
28	Example 4.8: Presumably this conclusion is reached on the basis that the arrangement is within paragraph (f) of the definition of interest equivalent i.e. *"any amount arising from an arrangement, or part of an arrangement, which could reasonably be considered, when the arrangement is considered in the whole, to be economically equivalent to interest;".* This is on the basis of the comments that *"Although a receivables factoring may be a sale from a legal perspective, it is generally viewed as a financing transaction…*" It would be useful to clarify the basis for the conclusion in guidance.
32	Example 4.11: The point is made that *"As such, the credit protection fee paid by J Ltd, which is passed on as a return to the investors, can be reasonably considered to be economically equivalent to interest (as an expense for J Ltd and income for the SSPE)."* Is this because the SSPE and J are in a corporate group? It would be difficult to consider how it could be anything other than credit protection for J. Please see point on commodities in Example 4.12, which explains there is not a payment by time for the use of money.
42	EBIDTA: This is a point separate from the guidance which has arisen recently. Section 835AZ(7) TCA 1997 explains "relevant loss" is computed similarly to relevant profits and *"shall be read as a reference to the amount of losses, after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against profits, including deductions and reliefs which under any provision are treated as reducing profits for those purposes".* Consider the position where excess management expenses arising in a prior period (including any unrelieved interest as a charge) are treated under section 83(3) TCA 1997 as being carried forward and treated as disbursed in a subsequent period. In those circumstances, they could augment any "relevant loss" arising in the subsequent accounting period, thereby reducing EBITDA either for the company itself or the interest group where it was part of a group. Section 835AZ(4) excludes amounts carried forward/back (where applicable) in respect of trade losses, case IV and case V losses and also deals with group relief

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	matters. However, there is no equivalent disapplication of section 83(3). Is there potential for a double restriction?
45	Is the purpose of the insertion in the section, Leasing – section 845AY, to confirm that where contingent amounts are suffered/received over the period of the lease, then they are to be taken into account in the accounting period suffered/received?
49	Long-term Public Infrastructure Project – Section 835AAA: The Institute's original submission on the draft TDM outlined that it is possible that a taxpayer involved with a public infrastructure project might incur an interest expense before it is generating revenue and, therefore, there may be uncertainty about whether or not interest incurred prior to reaching revenue generation stage would meet the conditions for the exemption for long-term infrastructure projects. Revenue queried in what circumstances there would be a deduction taken before revenue is being generated. Regarding "income arising", this can arise in the context of large scale construction projects, often carried out by way of public private partnership agreements. Generally, a company would be set up under the agreement whose trade would be the construction of the facility. As such, any interest accruing in connection with that would be regarded as deductible (albeit subject to facts and circumstances supporting a trading status) from Day 1 of the project. At the same time, income may not yet be received as the facility is not fully operational, for example, in the case of solar or wind energy facilities where initial construction takes a number of years but no income accrues until such time as the "go live" date for the facility. However, the company has nevertheless been engaging in their trade for some time. In order to drawdown funding for these type of projects, the project operator would normally carry out extensive modelling of their future incomes, expenses for the life of the project, including the operational phase so it would be clear that the income (when arising) would be in a Member State. Also, there could be circumstances where a project is developed and brought to operational stage and then sold shortly before becoming income generating. In that instance, the tax payment might tale a tax deduction for the capitalised interest as part of their CGT calculation and that would be before income has actually been generated. We would welcome further clarification from Revenue in relation to income arising in this context.
51	New text has been inserted at the start of Section 10: "…i.e. *the amount of tax payable is recalculated taking into account the interest limitation. The tax payer will be required to recalculate the tax computation taking into account the impact of the interest limitation."* This suggests that when one applies ILR, one then re-does the tax computation having applied ILR. Presumably this implies an iterative process (as opposed to a single iteration). That being so, it might be useful to confirm same in the guidance.
73	Special rules for SCWGs - Section 13.5:

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	We understand that Revenue has included, on a concessional basis, the proposal that an orphan SPV will not be considered an associate of other orphan SPVs notwithstanding that they might have the same corporate trustee 100% shareholder and therefore, under common voting control. However, we understand that Revenue's view is that the SPV concerned is still an associated enterprise of the corporate trustee and, therefore, could not be considered a standalone entity in such a circumstance. It would be helpful if Revenue stated that clearly in the guidance, as it is possible to draw a different inference from what is stated in as much as if one concluded that Revenue were taking a view – rather than providing a concession – that the nature of the trust arrangement is such that association does not arise vis a vis another SPV, then it would follow that there is also no association with the trustee. However, if Revenue is acting purely on a concessional basis and not applying an interpretation, then it would be better to have that clearly stated in the guidance so that no incorrect inferences are drawn.
77	It would be helpful if Example 14.1 stated that the above methods apply whether or not one or more companies are trading.