Irish Tax Institute

January 2025

Tax Treatment of Interest in Ireland

Response to the Public Consultation

Table of Contents

1. About the Irish Tax Institute 3

2. Executive Summary 4

3. Institute Recommendations 7

3.1. Taxation of Interest Income 7

3.2. Interest Deductibility 7

3.3. ATAD Interest Limitation Rule 10

3.4. Anti-avoidance provisions and other restrictions 10

3.5. Financial Services Transactions 11

3.6. Withholding Tax 12

3.7. Reporting Obligations 12

3.8. Broader Policy Considerations 12

4. Consultation Questions 13

4.1. Taxation of Interest Income 13

4.2. Interest Deductibility 16

4.3. ATAD Interest Limitation Rule 27

4.4. Anti-avoidance provisions and other restrictions 30

4.5. Financial Services Transactions 33

4.6. Withholding Tax 39

4.7. Reporting Obligations 40

4.8. Broader Policy Considerations 42

1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 33,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Executive Summary

The Institute welcomes the publication of the Consultation on the Tax Treatment of Interest in Ireland and the opportunity to engage with the Department of Finance on the taxation, and deductibility, of interest by businesses in Ireland.

While the underlying principles regarding the rules on interest deductibility are generally well understood, the rules have been amended on a piecemeal basis over the years, often in response to specific concerns around base erosion. These amendments have resulted in the rules becoming excessively complex making it difficult and costly for businesses to operate in Ireland and comply with their tax obligations. For example, while the interest as a charge provision in section 247 TCA 1997 is intended to be a relief, the overwhelming feedback from our members is that in many cases the conditions attached to the relief are prohibitive.

Much of the complexity surrounding the rules on interest deductibility stem from amendments made to the rules prior to the implementation of extensive reforms in domestic legislation over the last decade. They pre-date the OECD base erosion and profit shifting (BEPS) 2015 reports and the transposition of the EU Anti-Tax Avoidance Directives (ATAD1[1] and ATAD2[2]) to eliminate BEPS opportunities and to prevent aggressive tax planning. The BEPS reform measures enacted into Irish law include an ATAD compliant Interest Limitation Rule (ILR), Controlled Foreign Company (CFC) rules, anti-hybrid rules and extended transfer pricing rules.

In addition to the abovementioned BEPS measures, Finance (No.2) Act 2023 transposed the Pillar Two Global Anti-Base Erosion (GloBE) Model Rules[3] into Irish law to provide for a minimum effective tax rate of 15% for in-scope multinational enterprises (MNEs). The same Finance Act introduced outbound payments defensive measures which are designed to prevent double non-taxation arising on outbound payments of interest and royalties and distributions by Irish resident companies and Irish branches. Both measures further limit the ability of an Irish-based company to reduce its taxes through interest deductions.

The key objective of the Consultation on the Tax Treatment of Interest in Ireland must be to streamline the existing rules taking into account the protections against base erosion for the Exchequer which now exist in the Irish tax code. In simplifying the rules, the overriding principle should be to recognise that debt and the payment of interest thereon is a normal commercial reality and legitimate cost of doing business.

A reformed, principle-based section 247 and section 249 Taxes Consolidation Act (TCA) 1997, which enables companies to claim relief for interest as a charge for interest paid on borrowings incurred for valid commercial purposes, would significantly reduce the complexity faced by companies operating in Ireland.

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[1] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.
[2] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.
[3] OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en

While we note that the review undertaken by the Department of Finance is a multi-year project, we believe there are some straightforward changes that could be implemented as part of this year's Finance Bill, and which would go some way towards making the rules on interest deductibility easier to administer. These include:

- Removing the common director requirement in section 247 TCA 1997. There is no clear policy rationale for this requirement, which is administratively burdensome and can be problematic for group restructurings.

- Reforming the rules which were introduced in Finance Act 2017 in section 247 regarding double holding company structures and their interaction with the deemed recovery of capital rules in section 249 TCA 1997. These rules are unnecessarily complex and do not always operate as intended.

- Removing the specific anti-avoidance provision in section 247(2B). The provision is duplicative and should be removed given the protection afforded by section 817A TCA 1997.

- Permitting Case III interest income and expenses to be computed on a net basis, relying on the protection afforded by the transfer pricing rules to ensure that any deduction for interest paid is calculated on an arm's length basis.

- Expanding the scope of relief available under section 552 TCA 1997 to include interest on funds used to purchase land on which a building is constructed. Such interest is a valid commercial cost of acquiring the asset.

- Removing the restriction under the section 110 rules for interest paid to tax-exempt persons, such as pension funds and investment entities which are tax resident in an EU Member State or a DTA country and are 'specified persons'. In our view, it is inappropriate to deny a tax deduction based solely on the tax-exempt status of such entities, particularly where the same treatment does not apply to such persons that are tax resident in Ireland.

As most groups have financing arrangements in place which were designed with the existing rules on interest deductions in mind, changes to the rules could cause significant uncertainty. Therefore, it is important that the Department of Finance publishes a roadmap outlining any changes envisaged with clearly defined milestones signposted.

It is also critical that there is close engagement between the Department, Revenue and stakeholders at each stage of the process, with an opportunity for taxpayers and their representatives to provide feedback on draft legislative approaches. Stakeholder input will be key to ensuring any changes, when implemented, are clearly understood and do not give rise to unintended consequences.

We have summarised in Section 3 of this submission, the Institute's detailed recommendations for the reform of tax treatment of interest in Ireland and we have outlined in further detail our responses to the consultation questions in Section 4.

Consideration should also be given to removing Ireland's schedular tax system and different corporation tax rates. The trading and non-trading distinction between the 12.5% trading rate and passive 25% rate creates unnecessary complexity within the Irish corporation tax code, which businesses do not have to contend with in other tax systems.

Ireland should have only one rate applying to corporates, particularly as the Pillar Two global minimum effective tax rate of 15% has now been implemented. This would help Ireland to maintain a clear, competitive, and stable taxation policy and remain an attractive location for FDI in a rapidly changing global environment

The Institute looks forward to further engagement on this matter as the review process continues. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in relation to this submission.

3. Institute Recommendations

3.1. Taxation of Interest Income

1. Consideration should be given to permitting Case III interest income and expenses to be computed on a net basis. The transfer pricing rules can be relied upon to protect the Exchequer and ensure any deduction for interest paid is calculated on an arm's length basis.

2. With the implementation of the Pillar Two rules into Irish law, we believe it is appropriate for policymakers to consider more broadly to eliminate the trading and passive distinction in the Irish corporation tax code.

3. Revenue should consider amending its practice in respect of the exemptions in section 246(3)(ccc) and (3)(h) TCA 1997 to ensure where an interest payment is made to a transparent entity, such as a partnership, it is possible to 'look through' to determine if the ultimate recipient of the interest would qualify for an exemption from withholding tax. Any withholding tax requirement should apply only in respect of that part of the interest which is paid to an ultimate recipient who does not qualify for an exemption.

4. The anti-avoidance provisions in sections 812 and 813 TCA 1997 should be reviewed as they are widely drafted and can apply to scenarios which we believe were not intended by policymakers.

5. The anti-avoidance provision in section 815 TCA 1997 does not apply if the security has been held by the same owner for a continuous period of at least 2 years. In our view, this 2-year holding period should be reduced to 12 months, in line with the approach adopted in other provisions of the tax code, such as sections 626B and 831B TCA 1997.

3.2. Interest Deductibility

6. Where a loan used for the purchase, improvement or repair of a rented premises is replaced by another loan, interest paid on the replacement loan is not strictly deductible under section 97(2)(e) TCA 1997. Revenue's practice of treating the interest on such replacement loans as tax deductible should be put on a statutory footing.

7. Where interest is incurred on financing used for the purposes of overhead expenses arising in the course of the business of letting property, a deduction for such interest should be allowed.

8. Interest equivalent (as defined in paragraphs (a), (b)(i), (d) and (e) of the definition of interest equivalent in section 835AY TCA 1997) should be treated as deductible in computing taxable rental income.

9. Pre-letting interest should be allowed as a deduction against rental income, in a similar manner to pre-trading interest under section 82 TCA 1997.

10. Where a landlord is engaged in a trade, consideration should be given to taxing the landlord under Case I principles, with a wholly and exclusively test applying to any rental deductions.

11. Sections 247 and 249 TCA 1997 should be streamlined to remove conditions that do not have a clear policy rationale. A reformed, principle-based section 247 and 249, which enables companies to claim relief for interest as a charge for interest paid on borrowings incurred for valid commercial purposes, would significantly reduce the complexity faced by companies operating in Ireland. At a minimum, we consider that the following provisions should be amended:

    a. The requirement for a common director under section 247 (3)(b) should be removed as it is administratively burdensome and can be problematic for group restructurings.

    b. Section 247(4) disallows relief where the loan is first used for "*some other purpose*" before being applied for a qualifying purpose. Confirmation should be provided that entering into a swap to exchange the currency of the borrowing into another currency, in order to apply the proceeds of a borrowing for a qualifying purpose, is not considered to be for "*some other purpose*", as such a step is ancillary to deploying the funds for a qualifying purpose.

    c. Section 247(2) requires that for the loan to be a qualifying loan, the borrower must "*defray money applied*". This terminology can cause issues in practice as it implies it is necessary to show the flow of funds from the borrower through the group down to the user of the funds (i.e., the "*company concerned*"). We recommend that the requirement is instead to show the flow of funds from the lender to the user of the funds.

    d. Section 247(4E) denies interest relief as a charge in respect of interest on an intra-group loan used to finance the purchase of certain assets from another group company. Consideration should be given to simplifying or removing this measure as the ATAD ILR applies a limitation cap to both group and third-party borrowings.

    e. Section 247(4A)(b), which prevents relief being available where an investing company borrows from a third party and that third party receives an equivalent funding from a company connected with the investing company, should be reviewed. The provision is widely drafted, with the result that if a company in a group has funds on deposit with the same financial institution that is lending to another group member, relief under section 247 may be restricted.

    f. Given the protection afforded by section 817A, we consider that the specific anti-avoidance provision in section 247(2B) is unnecessary and should be removed.

g. Relief under section 247 applies where money is used to acquire or lend to holdings companies which ultimately own trading companies. Relief for interest on loans used to acquire rental companies is also available under section 247 but not if it is a multiple holding company structure. The policy rationale for the distinction between trading and rental companies is unclear and should be reconsidered.

h. The very broad scope of the recovery of capital rules in section 249 means common steps taken by Irish companies to tidy up balance sheets of group companies to simplify forecasting and monitor compliance with the ILR or similar interest limitation rules in other jurisdictions, can trigger the deemed recovery of capital provisions in circumstances which are wholly unrelated to the borrowing in question. We believe that the impact of the recovery of capital rules in section 249 is disproportionate and need to be reconsidered.

i. The rules concerning double holding company structures, which were introduced in Finance Act 2017, should be reformed as they are unnecessarily complex and do not always operate as intended.

j. It would be helpful if it were possible to reorganise at investor company level without triggering a deemed recovery of capital. In addition, the re-investment provisions available to intermediate holding companies should also be available to section 247 companies.

12. The very restrictive nature of section 76E TCA 1997 means the relief is only available in exceptionally limited circumstances. A number of amendments to section 76E are needed to enhance the attractiveness of the Qualifying Finance Company (QFC) regime for multinational groups considering locating their treasury operations here.

    a. Relief under section 76E only applies where the QFC has a 75% interest in a qualifying subsidiary and/or an intermediate holding company. As many financing companies have subsidiaries much further down the chain than this, consideration should be given to broadening the scope of the relief.

    b. Determining whether a financing company is carrying on a trade is not always a straightforward exercise and can give rise to uncertainty. To alleviate this uncertainty, consideration could be given to deeming the lending activity undertaken by a QFC to be carried on in the course of a trade which is taxable under Schedule D Case I.

    c. Relief for external interest paid by a QFC is restricted in genuine commercial situations, such as where there is a dormant company in the group. There would appear to be no clear policy rationale for this restriction and in our view relief for external interest should not be withdrawn from a QFC in such circumstances.

    d. Section 76E is restricted to third-party debt and no deduction applies for interest paid on foot of related party debt. Given the protections afforded by the ILR, the anti-hybrid rules and the transfer pricing rules to the Exchequer,

the rationale for excluding such related party debt is unclear and should be reviewed.

13. Interest on funds used to purchase land on which a building is constructed is a valid commercial cost of acquiring the asset. Consideration should be given to expanding the scope of relief available under section 552 TCA 1997 to include such interest.

3.3. ATAD Interest Limitation Rule

14. As part of the European Commission's evaluation of ATAD, it would be important that Ireland advocates for benchmarking the cap on exceeding borrowing costs under the ILR and the €3 million *de minimis* given the significant increase in interest rates since ATAD was adopted in 2016.

15. Once the €3 million *de minimis* threshold is exceeded by an interest group, the ILR restriction applies. This 'cliff edge' approach can result in significant additional tax due where the *de minimis* is exceeded by just €1. We believe how the *de minimis* threshold operates should be amended so that relief is given on exceeding borrowing costs up to €3 million.

16. Certain sectors capitalise interest incurred on large-scale projects on their Balance Sheet throughout the course of the project. This capitalised interest is unwound to the Income Statement when the project is completed. A restriction under the ILR may apply to the amount of the deductible interest expense even though not all of the interest was incurred in that accounting period. Ireland should advocate for an amendment to the ILR so that a deduction of interest, which was previously capitalised in the accounts of a taxpayer, is not restricted in the year of unwind to the extent that the restriction would not have applied in the accounting period during which the interest was capitalised.

17. The very significant disclosures regarding the application of the ILR in the Form CT1 are administratively burdensome for taxpayers and can have a knock-on impact on the application of time limits where inadvertent errors occur. A review should be undertaken to identify how the information reported under the existing requirements is utilised, in an effort to streamline the reporting requirements where possible.

18. At the time of filing the Form CT1, it is possible that complete information on the interest position of group members is not available to make a fully informed decision regarding the merits of electing into an interest group. A legislative amendment is necessary to ensure a taxpayer has the ability to amend an interest group election in such circumstances.

3.4. Anti-avoidance provisions and other restrictions

19. Section 840A TCA 1997 should be amended to clarify that the provision does not apply in circumstances where an asset and its funding are transferred together as part of a *bona fide* reorganisation of the business of a group, subject to the conditions previously outlined in Revenue guidance.

20. The provisions relating to the treatment of interest as a distribution should be streamlined, removing any provisions which are unnecessary given the protections afforded by the transfer pricing rules, anti-hybrid rules and the outbound payments defensive measures. In addition, both the general rule and any exemptions from this treatment should be contained within a single section of the TCA 1997.

21. Section 835AA(3) TCA 1997 provides any interests of enterprises which are *'acting together'* must be amalgamated and considered in totality. However, the meaning of acting together in the context of partners in a partnership can be unclear and should be clarified.

3.5. Financial Services Transactions

22. A number of simplifications are required in respect of the deductibility of interest relating to a qualifying company as defined in section 110 including: extending the 8-week period for electing into the section 110 regime; lowering the €10 million day one qualifying asset test; and permitting section 110 companies to make an election under section 452(2) TCA 1997.

23. Section 110 (4A)(b)(ii) TCA 1997 denies a deduction for interest paid to tax-exempt persons such as governmental bodies, pension funds and investment entities which are resident for tax purposes in an EU Member State or a DTA country and which are 'specified persons'. This provision should be amended as it is inappropriate to deny a tax deduction based solely on the tax-exempt status of such entities, particularly where the same treatment does not apply where such persons are resident in Ireland.

24. Certain provisions in Chapter 1 of Part 28 contain exceptions to disapply the bond-washing rule where the taxpayer is considered a dealer in securities. A taxpayer, such as a treasury company, which is taxable under Case I or II, should equally qualify for these exceptions irrespective of whether they are dealing in securities.

25. The legislative provisions dealing with stock lending and sale and repurchase (repo) transactions do not address the application of the rules to companies entering stock lending and repo transactions as part of their Schedule D Case I activities nor to pension funds. If the rules are not intended to apply to such activities, then it is important for this to be clearly stated in legislation.

26. There are a number of issues with the existing legislation on stock lending and sale and repo transactions which can result in relief for genuine costs incurred being disallowed. The definitions of '*financial transaction'* and '*manufactured payment'*; the tax treatment of a *'manufactured payment'*; and the record keeping requirements should be reviewed.

3.6. Withholding Tax

27. Section 246 TCA 1997 should be amended so that the charge to withholding tax arises only where there is a clear policy rationale for doing so, such as where the payment is made to a country included in Annex 1 of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes or to a *'no-tax'* and *'zero-tax'* jurisdiction, similar to the position which exists for the outbound payments defensive measures.

28. Section 258 TCA 1997 requires relevant deposit takers to file a DIRT return within 15 days (23 days when filed through ROS) of the end of the year of assessment. This deadline should be extended by a least a further month to allow for collation and aggregation of the data.

29. The operation of encashment tax is a burden on paying agents and as it is only required to be operated by Irish paying agents, it could potentially be viewed as discriminatory. The continued existence of encashment tax should be reconsidered.

3.7. Reporting Obligations

30. The increasing volume of reporting obligations relating to the payment of interest is administratively burdensome for payers. A full review should be undertaken to identify how the information reported by payers (other than financial institutions) in respect of the payment of interest under existing reporting requirements is utilised, and any unnecessary or duplicative reporting requirements should be removed.

31. In respect of financial institutions, consideration should be given to the continued requirement for the reporting requirements under sections 891 and 891B TCA 1997. If it is decided that these reporting requirements should be retained but with amendments, it would be important that there is close engagement with the industry prior to implementing any changes.

3.8. Broader Policy Considerations

32. The key objective of the review of the tax treatment of interest in Ireland must be to streamline the existing rules, taking into account the current protections against base erosion which now exist in the Irish tax code.

33. In simplifying the rules, the overriding principle should be to recognise that debt and the payment of interest thereon, is a normal commercial reality and a legitimate cost of doing business.

4. Consultation Questions

4.1. Taxation of Interest Income

1. Should there be closer alignment of the rules regarding the taxation of trading and passive interest income? What would the benefits and any adverse consequences of alignment be?

Interest income of a trade is taxable on a net basis under Schedule D Case I. In contrast, interest income which is considered passive income is taxed on a gross receipts basis under Schedule D Case III at a rate of 25% for companies and no amounts incurred in earning that income are deductible (i.e., a company is taxable on its gross Case III income rather than its net Case III profits.)

Following Ireland's commitment to the OECD BEPS project and the transposition of the EU Anti-Tax Avoidance Directives (ATAD1[4] and ATAD2[5]) into Irish law, extensive reforms have been implemented in domestic legislation to eliminate BEPS opportunities and to prevent aggressive tax planning, including the ILR, CFC rules, anti-hybrid rules and extended transfer pricing rules.

In addition, Finance (No.2) Act 2023 transposed the Pillar Two GloBE Model Rules into Irish law to provide for a minimum effective tax rate of 15% for in-scope MNEs and therefore, further limiting the ability of such MNEs to reduce their taxes through interest deductions.

In light of these developments, we believe consideration should be given to permitting Case III interest income and expenses to be computed on a net basis, relying on the protection afforded by the transfer pricing rules to ensure that any deduction for interest paid is calculated on an arm's length basis. Such an approach would ensure that taxpayers are taxed on their Case III profits rather than their gross Case III income. The absence of a deduction for interest against taxable passive income is not in line with international norms and undermines the competitiveness of the Irish regime.

More generally, we would note that the trading and passive distinction is not confined to interest income, and it does not exist in the corporate tax systems of other countries. With the implementation of the Pillar Two rules into Irish law, we believe it is appropriate for policymakers to consider more broadly eliminating the trading and passive distinction in the Irish corporation tax code.

Ireland should have only one rate applying to corporates, particularly since the adoption of the Pillar Two global minimum effective tax rate of 15%. This would help Ireland to have a clear, competitive and sustainable taxation policy to attract and retain FDI in the rapidly changing global business environment.

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[4] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.
[5] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

2. Are there any simplification measures or enhancements which should be made in respect of non-resident persons? Please explain, noting both the benefits and any adverse consequences of same.

Section 246 TCA 1997

Section 246(3)(ccc) and (3)(h) TCA 1997 provide an exemption from withholding tax from certain interest payments where the recipient of the interest is resident in a Member State of the European Communities, other than Ireland, or a territory with which Ireland has a double tax agreement (DTA).

Where the interest payment is made to a transparent entity, such as a US LLC, Revenue guidance[6] confirms that Revenue is prepared to 'look through' the entity in certain circumstances where the ultimate recipients of the interest would themselves qualify for an exemption from withholding tax under section 246(3)(ccc) or 246(3)(h).

Revenue guidance sets out a number of conditions which must be satisfied by each of the members in the transparent entity for the exemption from withholding tax to apply. If any of the members are unable to satisfy these conditions, then withholding tax will apply.

This approach means, for example, where an interest payment is made to a transparent entity such as a partnership, if a partner with a 5% interest in the partnership is resident in a non-DTA country and the other 95% are resident in a DTA country, withholding tax will apply to the total payment of interest (i.e., the withholding tax is not confined to the 5% received by the non-DTA resident). This requires eligible taxpayers to make claims for repayment of the tax withheld, generating unnecessary administration for both taxpayers and tax authorities, in addition to impacting the taxpayer's cashflow.

In our view, Revenue's practice should be amended so that the withholding tax requirement applies only in respect of interest paid to the partner not eligible to receive the interest gross, similar to the position which exists for the outbound payment defensive measures.

3. Are there any simplification measures which could be taken in respect of the above-mentioned anti-avoidance provisions? Please explain, noting both the benefits and any adverse consequences of same.

The anti-avoidance provisions in sections 812 and 813 TCA 1997 are widely drafted and can apply to scenarios which we consider were not envisaged by policymakers. For example, section 813 is intended to counteract arrangements under which credit

[6] Paragraph 5, Tax and Duty Manual, Part 08-03-06

might be given in consideration for what would be, in substance but not in form, interest with the aim of reducing the tax liability of the debtor.[7]

However, feedback from our member indicates that a tax charge can be triggered under section 813 on income that has accrued on a loan which a company collapses for valid commercial reasons. We do not believe that this is the policy intention of the section.

The anti-avoidance provision in section 815 TCA 1997 does not apply in certain circumstances, including if the security has been held by the same owner for a continuous period of at least 2 years, or where the seller is a dealer in securities the profits of whose trade are assessed to tax under Case I of Schedule D. In our view, this 2-year holding period should be reduced to 12 months, in line with the approach adopted in other provisions of the tax code, such as sections 626B and 831B TCA 1997.

A business, which is not a financial trader, may engage in the purchase and sale of securities for valid commercial reasons. Ensuring such transactions do not fall foul of the bond-washing provisions in section 815 can be administratively burdensome. In our view, consideration should be given to providing an exclusion from the treatment under section 815, subject to an appropriate *bona fide* clause, for businesses carrying on a trade which is subject to tax under Schedule D Case I.

[7] Revenue Commissioners, Taxes Consolidation Act 1997 Notes for Guidance - Finance Act 2022 Edition, section 813.

4.2. Interest Deductibility

4. Are there any aspects of relief for interest as a trading expense which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.

5. Are there any aspects of relief for interest incurred in relation to the provision of Irish rental property which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.

The scope of the deductions against rental income which are permitted under the legislation is very narrow. We outline below several amendments which we believe are necessary to reflect the commercial realities of letting property.

Replacement loans

Section 97 (2)(e) TCA 1997 permits a deduction against Case V rental income for interest on "*borrowed money employed in the purchase, improvement or repair of the premises*". Where a loan used for the purchase, improvement or repair of a rented premises is replaced by another loan, interest paid on the replacement loan is not strictly deductible under section 97(2)(e). This is because the replacement loan is used to replace the original loan and not directly for the specified purposes. However, Revenue's practice has been to treat the interest on a replacement loan as tax deductible, subject to certain conditions.[8] In our view, this practice should be put on a statutory footing.

Interest equivalents

Where interest, and interest equivalents, is incurred on financing used for the purposes of overhead expenses arising in the course of the business of letting property, a deduction for such interest should also be allowed. In addition, interest equivalent (as defined in paragraphs (a), (b)(i), (d) and (e) of the definition of interest equivalent in section 835AY TCA 1997) should be treated as deductible in computing taxable rental income. In practice, Revenue treats certain interest equivalents as deductible. In our view, putting Revenue's practice on a legislative footing would provide certainty to taxpayers.

Pre-letting interest

In general, in computing a charge to tax under Case V of Schedule D, no deduction is available for interest on loans used for the purchase, improvement or repair of premises, where such payments arose before the first occupation of the premises. An exception to this general rule is found in section 97A TCA 19997 which permits a deduction for expenses, including interest, incurred on a vacant residential premises prior to it being first let after a period of non-occupancy.

[8] Paragraph 10, Tax and Duty Manual, Part 04-08-06 https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-04/04-08-06.pdf

The restriction on pre-letting interest means that interest incurred on loans used to carry out improvements to a premises prior to its first occupation is not deductible.

Furthermore, where there is a gap between the drawdown of a loan to purchase a premises and the grant of a lease, interest incurred during that gap period is not allowed as a deduction. We believe the general rule should be amended to allow pre-letting interest as a deductible expense against rental income, in a similar manner to pre-trading interest under section 82 TCA 1997.

More broadly, where a landlord is engaged in a trade, consideration should be given to taxing the landlord under Case I principles, with a wholly and exclusively test applying to any rental deductions.

6. **Other than with respect to anti-avoidance provisions (set out in further detail below), are there any aspects of relief under section 247 TCA which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.**
7. **Are there any aspects of the anti-avoidance provisions contained in section 247 TCA which could be simplified or are no longer required? Please explain, noting both the benefits and any adverse consequences of same.**
8. **Are there any aspects of the provisions in section 249 which could be simplified or are no longer required? Please explain, noting both the benefits and any adverse consequences of same.**

The rules governing the deduction of interest as a charge on income in section 247 TCA 1997 and the recovery of capital rules outlined in section 249 TCA 1997 have been developed on a piecemeal basis, over many years, since 1974. These sections have become increasingly complex and administratively burdensome for taxpayers in the decades since.

Many of the conditions in sections 247 and 249 were developed in response to specific concerns amongst policymakers in relation to identified base erosion risks. However, extensive reforms have been implemented in Irish legislation over recent years to eliminate opportunities for base erosion including the ILR, CFC rules, anti-hybrid rules and extended transfer pricing rules.

Compounding this, multinational companies in scope of the Pillar Two GloBE Rules will be subject to a 15% minimum effective tax rate, in either the local jurisdiction or via another group company, further limiting the ability of such companies to reduce their taxes through interest deductions.

In light of the extensive protections against base erosion which now exist in the Irish corporation tax code, many of the conditions associated with section 247 relief and

the section 249 recovery of capital rules are no longer necessary and should be removed.

In our view, sections 247 and 249 should be streamlined to remove any conditions that do not have a clear policy rationale. At a minimum, we consider that the following provisions should be amended:

a. Common director requirement

The requirement for a common director under section 247 (3)(b) is administratively burdensome and can be problematic for groups that are restructuring. There is no clear policy rationale for this requirement, and it should be removed.

b. First use of loan

Section 247(4) disallows relief where the loan is first used for "*some other purpose*" before being applied for a qualifying purpose. This requirement is very restrictive. While Revenue guidance confirms that the placing of funds on temporary deposit is not regarded as applied for "*some other purpose"*, it would also be welcome if confirmation could be provided that entering into a swap to exchange the currency of the borrowing into another currency, in order to apply the proceeds of a borrowing for a qualifying purpose, is not considered to be for "*some other purpose*", as such a step is ancillary to deploying the funds for a qualifying purpose.

c. "Defray money applied"

Section 247(2) requires that in order for the loan to be a qualifying loan, the borrower must "*defray money applied*". This terminology can cause issues in practice as it implies it is necessary to show the flow of funds from the borrower through the group down to the user of the funds (i.e., the "*company concerned*"). In some cases, a bank may be unwilling to release the funds into the bank account of the section 247 company and insist on the funds flowing directly to the user of the funds. It would be preferable if the requirement were to show the flow of funds from the lender to the user of the funds.

d. Intra-group loan used to finance the purchase of certain assets from another group company

Section 247(4E) denies interest relief as a charge in respect of interest on an intra-group loan used to finance the purchase of certain assets from another group company. Consideration should be given to simplifying or removing this measure as the ATAD ILR applies the limitation cap to both group and third-party borrowings.

e. Monies held on deposit with financial institution

Section 247(4A)(b) prevents relief being available in circumstances where an investing company borrows from a third party and that third party receives an equivalent funding from a company connected with the investing company. While the rule is intended to prevent the circular flow of funds, the provision is widely drafted with the result that if a company in a group has funds on deposit with the same financial institution that is lending to another group member, relief under section 247 may be restricted.

There may be valid commercial reasons why an investing company will borrow to fund an acquisition while another group member hold funds on deposit. Notably, this restriction does not apply where funds are held on deposit with a different financial institution.

In our view, this condition should be reviewed as companies are increasingly likely to fall foul of this provision as there are now fewer financial institutions in the Irish market than previously.

f. Duplicative anti-avoidance provisions

Section 817A TCA 1997 is an anti-avoidance provision which states that interest will not qualify for tax relief, as a charge on income, if a scheme has been put in place and the sole or main benefit of the scheme is to obtain a reduction in tax.

Section 247(2B) also contains an anti-avoidance provision which restricts the availability of relief under subsection 247 (2)(a)(iv), (b)(iv) and (bb) to circumstances where "*the company and each intermediate holding company exists for bona fide commercial reasons and not as part of a scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax".*

Given the protection afforded by section 817A and more broadly by section 811C, we consider that the specific anti-avoidance provision in section 247(2B) is unnecessary and should be removed.

g. Section 247(2)(bb)(ii)

Section 247(2)(bb)(ii) requires the company with the profile mentioned in paragraph (a)(iv) to use the money from the loan for the purposes of acquiring and holding a holding company of trading entities. Given the character of a company within the scope of paragraph (a)(iv), this is restrictive, as it does not allow such an entity to use the company to acquire or hold trading entities via an intermediate holding company or companies.

h. Loans used to acquire rental companies

Relief under section 247 is limited to circumstances where money is used to acquire or lend to holdings companies which ultimately own trading companies. Relief for interest on loans used to acquire rental companies is also available under section 247, but not if it is a multiple holding company structure. The rationale for the distinction between trading and rental companies is unclear and should be reconsidered.

i. Recovery of capital rules

If the borrower company recovers or is deemed to recover an amount of capital which is not used to repay a qualifying section 247 borrowing, the borrower company is deemed to have repaid an amount of the qualifying borrowing which is equivalent to the recovered capital amount. This means that a corresponding amount of otherwise deductible interest expense paid is restricted on the borrowing and a deduction is denied for the restricted interest paid.

The measures apply not just to actual recoveries of capital by the borrower company from the investee company but also to several deemed recovery of capital events which can include:

- The assignment of connected party debt (even if the debt is wholly unrelated to the qualifying borrowing of the borrowing company or the investment made because of the deployment of the proceeds of the qualifying loan).
- The settlement of debt amounts.
- Recovery of capital arising to subsidiaries in an underlying holding chain of companies, apart from certain circumstances where permitted exclusions are available for capital recoveries resulting from the liquidation or unwinding of intermediate companies in the holding chain, which have been undertaken for *bona fide* commercial purposes.

In general, the way corporate groups comply with earnings stripping measures in other countries is to ensure that the largest borrowers in their group manage their debt levels and forecasted interest costs during the taxable period so as not to exceed 30% of EBITDA.

It is normal for groups to endeavour to reduce the risk of exceeding the 30% of EBITDA ceiling where the group overall has debt levels and interest expense within that ceiling. It is typical for such groups to attempt to mitigate any excess interest limitation amount in the period in order to minimise the uncertainties arising from potential reliance on reliefs.

The very broad scope of the rules can mean common steps taken by Irish companies to tidy up balance sheets of group companies and to simplify forecasting and monitoring of compliance with the ILR or similar interest limitation rules in other jurisdictions, can trigger the deemed recovery of capital provisions in circumstances which are wholly unrelated to the borrowing in question. We

believe that the impact of the recovery of capital rules in section 249 TCA 1997 are disproportionate and need to be reconsidered.

In particular, our members highlight a number of key areas which should be reviewed. The rules around double holding company structures, which were introduced in Finance Act 2017, should be reformed as they are unnecessarily complex and do not always operate as intended.

In addition, it would be helpful if it were possible to reorganise at investor company level without triggering a deemed recovery of capital. The dissolution provisions in the section 249(2)(ac)(iii)(IV) do not extend to section 247 companies and *"companies concerned".* In addition, following the Finance Act 2017 amendments, the re-investment provisions previously available to companies concerned and now available to intermediate holding companies are not also available at investor level.

We outline below some examples which demonstrate the difficulties which can arise when applying the recovery of capital rules:

Example 1

In this example, a company (TopCo) has borrowed from a third-party bank and used the proceeds for a qualifying purpose under section 247, such as lending to a group member that is engaged in carrying on a trade (TradeCo) who in turn uses the loan proceeds for a qualifying purpose. Separately, TopCo has advanced loans funded from its equity capital in the past to TradeCo who in turn used these loans to fund general working capital requirements as part of its trade.

The group decides it will focus its efforts to centralise cash balances and to monitor net borrowing costs in compliance with ILR in TopCo (which has significant third-party expense) and TradeCo (which is one of the biggest trading companies in the group). The group forecasts that its net borrowing costs will fall below the 30% of EBITDA for ILR purposes.

TradeCo holds balances of trade debtors owed by another group member, SubCo, which does not have the liquidity to repay the sums due and TradeCo decides to assign these debtors to TopCo in settlement of the prior working capital borrowings. No part of the section 247 loan advance is repaid by TradeCo and TopCo has not realised any cash from the assigned debtor amounts owed by SubCo. This assignment of intragroup balances relates to a completely separate loan advanced by TopCo to TradeCo but gives rise to a deemed recovery of capital by the borrower, TopCo, equal to the amount of the debtors assigned/ loan repaid by TradeCo. This results in a restriction of TopCo's deductible interest expense.

The effect of these assignments is to deem TopCo to have repaid an amount of its debt to the third-party bank. There is no difference in the amount of interest

expense borne by the group. This straightforward tidy up exercise has triggered a disallowance of expense.

It may be technically possible to avoid triggering a deemed recovery of capital in the above scenario, however, to do this involves entering into transactions which are not required from a commercial perspective, and which potentially give rise to significant additional costs for the group. Therefore, careful consideration needs to be given to simplify the existing legislation.

Example 2

Where an Irish parent company (Irish TopCo) uses funds borrowed from a third-party bank for a qualifying purpose to invest in the share capital of its direct subsidiary, which is a holding company (Irish HoldCo), then the debt borrowed by Irish TopCo may be deductible as interest as a charge under section 247.

In this scenario, Irish Holdco is indirectly holding shares in trading companies through Irish and foreign subsidiary holding companies and uses the funds borrowed to finance the investment in a new foreign group. The deemed recovery of capital provisions may apply in this group structure to Irish HoldCo as it is a holding company which holds other holding companies (section 249 (2)(ac) TCA 1997). The repayments of loans, share capital sales and loan assignments between the subsidiary holding companies and trading companies in the group must be monitored, as well as any capital recovered (or deemed to be recovered) by Irish HoldCo or by Irish TopCo.

Even where the business intention to restructure the level of interest-bearing debt and related net borrowing costs of the Irish group members is to better align with the 30% EBITDA limit, the repayments of loans between the subsidiary holding companies may trigger a deemed recovery of capital by Irish HoldCo. This is notwithstanding there is no actual capital recovered from the group’s investments and there are no funds received by Irish HoldCo.

The recovery of capital provisions deem Irish TopCo, the borrower and investing company, to have recovered any capital recovered by “*an intermediate holding company*” from another company where the company concerned owns directly or indirectly 50% of the share capital of the intermediate holding company or both companies are under the control of the same person.

The result of the application of the deemed recovery of capital provisions is that the receipt of the loan repayment proceeds by a subsidiary holding company triggers a deemed recovery of capital by TopCo such that it is treated as though it had repaid the corresponding amount of its qualifying borrowing to the bank, when in fact this did not happen, nor would it be possible for this to happen in a commercial environment.

This results in a disallowance of a portion of the interest expense deduction otherwise available to Irish TopCo. The outcome applies notwithstanding that the investment in the Irish and foreign operating groups is held through a parallel ownership chain and is in no way linked to the original borrowing used to finance the investment in the foreign group.

Example 3

Issues can arise where there are two funding arrangements within a group that qualify for section 247 relief. In such circumstances, where one set of funding is repaid involving an intermediate holding company, it is unclear that the repayment would not trigger a recovery of capital under the other section 247 funding arrangement which remains in place. This is because the rules do not cater for scenarios where there is more than one section 247 funding arrangement in place.

Example 4

Issues can arise where an intermediate holding company transfers all of its assets and liabilities to another company within the group and is voluntarily struck off. The rules in section 249(2)(ac)(iii)(IV) TCA 1997 confirm that there is no recovery of capital if the company was dissolved, with or without going into liquidation. However, it is unclear if that provision applies where the company is voluntarily struck-off. We understand that Revenue has confirmed in individual cases that section 249(2)(ac)(iii)(IV) TCA can be relied upon in such cases, however, this is not clear from the legislation or from Revenue guidance.

9. Are there any aspects of relief for interest paid by QFCs which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.

Section 76E TCA 1997, which was first introduced in Finance (No. 2) Act 2023, permits certain intermediary financing companies, known as Qualifying Financing Companies (QFCs), to obtain a deduction for interest paid in certain circumstances. The QFC regime has the potential to enhance Ireland's attractiveness as a headquarter location for multinational groups. However, the very restrictive nature of section 76E means the relief is only available in exceptionally limited circumstances. In our view, consideration should be given to broadening the scope of the relief under section 76E.

Deeming the lending activity of a QFC to be carried on in the course of a trade

Determining whether a financing company is carrying on a trade is not always a straightforward exercise and can give rise to uncertainty. To alleviate this

uncertainty, consideration could be given to deeming the lending activity undertaken by a QFC to be carried on in the course of a trade, which is taxable under Schedule D Case I. Such an approach would increase Ireland's attractiveness as a location to for treasury operations for multinational groups.

Definition of a QFC

One of the conditions of section 76E is that a QFC must hold at least 75% of the ordinary share capital of a qualifying subsidiary, and/or an intermediate holding company. An intermediate holding company in respect of a QFC is a company in which the QFC holds a direct ownership of at least 75% of the ordinary share capital of the company, and whose business consists wholly of the holding of ordinary shares of indirect qualifying subsidiaries of the QFC.

An indirect qualifying subsidiary of a QFC is any company that would be a qualifying subsidiary for the purposes of section 76E, but for the fact that 75% or more of its ordinary share capital is held directly by an intermediate holding company.

This narrow drafting of section 76E excludes many valid commercial structures from availing of the relief. For instance, where a financing company holds say a 74% interest in a subsidiary indirectly via an intermediate holding company, the financing company is not considered to be a QFC and no relief for external interest applies.

Relief under section 76E only applies where the QFC has a 75% interest in a qualifying subsidiary and/or an intermediate holding company. In reality, many financing companies will have subsidiaries much further down the chain than this. The policy rationale for excluding the application of the relief in such groups is unclear.

Relief for external interest paid by a QFC is also restricted in genuine commercial situations where relief may previously have been available under section 76E. For example, where a subsidiary ceases to trade, although it will inevitably take a period of time to wind up the company, it would appear that a financing company may no longer be considered a QFC immediately post the cessation of trade of the subsidiary. As companies become dormant as part of the normal business lifecycle there would appear to be no clear policy rationale for this restriction. In our view, relief for external interest should not be withdrawn from a QFC where there is a dormant subsidiary in the group.

Restriction to third-party debt

Section 76E TCA 1997 is restricted to third-party debt and no deduction applies for interest paid on foot of related party debt. Where a group is owned by a bank, a group company is most unlikely to borrow from a third party and therefore, it would not be able to benefit from the interest deduction under section 76E. The policy rationale for excluding such related party debt is unclear given the protections afforded by the ILR, the anti-hybrid rules and the transfer pricing rules.

It is often the case that large international groups will raise funding centrally in a single jurisdiction and in a single entity that has good access to capital markets; is in a reasonable location to manage foreign exchange risk and has a good credit rating. Those funds are typically on-lent within the group. This type of funding arrangement is not facilitated under section 76E which is a significant disadvantage.

10. Are there any aspects of relief for interest for CGT purposes which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.

Relief under section 552 TCA 1997 is limited to interest on capital expenditure incurred on the construction of "*any building, structure or works".* To qualify, the company must have charged the interest to capital and there must be no possibility that the interest could be allowed against income or profits for income tax or corporation tax purposes.

Interest on funds used to purchase land on which a building is constructed is a valid commercial cost associated with the acquisition of an asset. Consideration should be given to expanding the scope of the relief available under section 552 to include such interest.

11. (a) Are there any ways that the interaction of the above five areas of relief for interest could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.
(b) Are there any commercial scenarios where tax relief for interest expense is not currently available for businesses under existing legislation, where tax relief should be available in your view?

The interaction of the above five areas of relief for interest could be enhanced by streamlining the rules and taking into account the protections against base erosion which now exist in the Irish tax code. In reforming the rules, the overriding principle must be to recognise that debt and the payment of interest thereon, is a normal commercial reality and legitimate cost of doing business.

As we have outlined in our response to Question 1, interest income which is considered passive income is taxed on a gross receipts basis under Schedule D Case III at a rate of 25% for companies and no amounts incurred in earning that income are deductible. While relief may be available under the interest as a charge provision in section 247 TCA 1997 or under section 76E TCA 1997, these provisions apply in very limited circumstances.

Consideration should be given to permitting Case III interest income to be computed on a net basis relying on the protection afforded by the transfer pricing rules to ensure that any deduction for interest paid is calculated on an arm's length basis. Denying deductions for interest against passive taxable income is not in line with the approach typically adopted in other jurisdictions and makes the Irish regime particularly uncompetitive.

Furthermore, the Irish regime is overly restrictive on when deductions can be taken for related party debt even though (as outlined in our response to Question 9) establishing a central funding entity to access the capital markets cost effectively and efficiently and then to on-lend those funds within a group is the normal approach taken by large international groups to managing their funding requirements.

As outlined in our response to Question 10, we consider that the scope of relief under section 552 TCA 1997 should be expanded to include interest on funds used to purchase land on which a building is constructed, as such interest is incurred as a valid commercial cost of acquiring an asset.

4.3. ATAD Interest Limitation Rule

12. Are there any aspects of the ILR which could be enhanced or simplified, within the confines of ATAD? Please explain, noting both the benefits and any adverse consequences of same.
13. When implementing ATAD, Ireland made policy choices, based on pre-existing domestic rules, in the following areas:
a) treatment of a group as a single taxpayer,
b) application of a de minimis exemption,
c) application of a standalone entity exemption,
d) application of a legacy debt exemption,
e) application of long-term public infrastructure project exemption,
f) application of an equity ratio and group ratio rule,
g) rules relating to the carry forward/back of restricted interest and spare capacity,
h) application of a financial undertakings exemption.
Should the policy choices made in respect of above be re-evaluated as part of this review process? Are there areas where the ILR, as implemented in Ireland, could be strengthened so as to provide greater protection to the Exchequer, thereby allowing other interest related provisions to the removed or simplified? Please explain, noting both the benefits and any adverse consequences of same.

Benchmarking the 30% limit on exceeding borrowing costs and the €3 million *de minimis*

The ATAD ILR is intended to discourage companies in engaging in base erosion profit shifting through excessive interest payments by limiting the deductibility of taxpayers' exceeding borrowing costs. The ILR limits the exceeding borrowing costs that a taxpayer may deduct in a tax period to 30% of EBITDA.

The interest rate environment has changed significantly since ATAD was adopted in 2016 with interest rates increasing as governments have adjusted their monetary policies to address inflation. While inflation is now easing and interest rates have begun to fall, it remains unlikely that the low rates which prevailed in 2016 will return in the near future.

This means that taxpayers are facing higher interest costs on borrowings compared to 2016. However, the 30% limit under the ILR and the €3 million *de minimis* has not changed since then, despite the significant increase in interest rates.

We believe Ireland should advocate, in its engagement with the European Commission and other Member States, as part of the review of ATAD, for consideration to be given to benchmarking the cap on exceeding borrowing costs under the ILR and the €3 million *de minimis* to reflect changes in interest rates in the EU.

Operation of the €3 million *de minimis*

An interest group with exceeding borrowing costs of €3 million or lower is exempt from the ILR. Once the €3 million *de minimis* is exceeded by the interest group, the ILR restriction applies. This 'cliff edge' approach can result in significant additional tax due where the *de minimis* is exceeded by just €1. We do not believe this approach is required under ATAD, nor is it in line with the approach adopted in other EU Member States. In our view, the operation of the *de minimis* should be amended so that relief is available on exceeding borrowing costs up to the €3 million *de minimis*, with the restriction applying where this threshold is exceeded.

Treatment of capitalised interest

Certain sectors, such as the construction sector, normally capitalise interest incurred on large-scale projects on their Balance Sheet throughout the course of the project. This capitalised interest is unwound to the Income Statement when the project is completed. Where the unwind of the interest expense exceeds the €3 million *de minimis* in that accounting period, a restriction under the ILR may apply to the amount of the deductible interest expense even though not all of the interest was incurred in that accounting period.

In our view, Ireland should advocate for consideration to be given to amending the ILR so that the deduction of such interest would not be restricted by the ILR in the year of unwind, to the extent that the restriction would not have applied in the accounting period during which the interest was capitalised.

Reporting requirements

Irrespective of whether there is an interest restriction, relevant disclosures in respect of the ILR are required to be made on the Form CT1 for accounting periods which commenced on or after 1 January 2022. Following the transposition of the ILR into Irish law, 39 new panels relating to the application of the ILR were included on the Form CT1. Undoubtedly, this level of disclosure is administratively burdensome for taxpayers and where a taxpayer inadvertently makes an error in completing the disclosures, this can have a knock-on impact in terms of the application of the time limits in Chapter 5 of Part 41A TCA 1997.

We consider that a review should be undertaken to identify how the information reported under the existing reporting requirements is utilised, with a view to streamlining the reporting requirements where possible.

Amending an interest group election

Revenue has confirmed[9] their view that the 'self-correction without penalty' provision in the *Code of Practice for Revenue Compliance Interventions* cannot be used by a taxpayer to amend an interest group election for the purposes of the ILR after the specified return date.

The basis for Revenue's view is that given section 835AAK (3)(c) TCA 1997 requires an interest group election to be made on or before the specified return date for the accounting period in respect of which the election is made, section 959V(6)(b) TCA 1997 operates such that a notice to amend a Form CT1 in respect of the interest group election cannot be made after the specified return date.

Revenue's position is that the provision in the *Code of Practice for Revenue Compliance Interventions* to self-correct without penalty operates in parallel with the general 4-year time limit for amending a return under section 959V and as a result, it is not possible for a taxpayer to self-correct an interest group election after the specified return date. Furthermore, a valid claim for the repayment of tax cannot be made where an interest group election is made after the specified return date.

At the time of filing the Form CT1, it is possible that complete information on the interest position of group members is not available to make a fully informed decision regarding the merits of electing into an interest group. Where such uncertainty arises, the ability to self-correct a tax return without penalty is an important safeguard for taxpayers.

We would urge that a legislative amendment is made to ensure a taxpayer has the ability to amend an interest group election for the purposes of the ILR. We consider that the self-correction facility should be encouraged, as a policy matter, as it promotes a better compliance culture which benefits both taxpayers and Revenue.

[9] Minutes of Main TALC, 5 December 2023

4.4. Anti-avoidance provisions and other restrictions

14. Are there any aspects of the targeted anti-avoidance measures outlined above which could be enhanced, simplified or removed? Please explain, noting both the benefits and any adverse consequences of same.

Section 817A

As outlined above, section 817A provides that interest will not qualify for tax relief, as a charge on income, if a scheme has been put in place and the sole or main benefit of the scheme is to obtain a reduction in tax. Section 247 (2B) TCA 1997 contains a similar anti-avoidance provision to deny interest relief as charge on income. Such duplication in the corporation tax code adds unnecessary complexity for taxpayers and therefore, we recommend section 247(2B) TCA 1997 is removed to address this.

However, we would note that the inclusion of specific targeted anti-avoidance provisions in general adds complexity to legislation making it more complicated for taxpayers to comply with their obligations. When interpreting a statute, it is necessary for a taxpayer to consider the meaning of each provision. But this can be difficult where specific targeted anti-avoidance provisions are layered on top of general anti-avoidance provisions (i.e. section 811C TCA 1997).

Rather than including specific targeted anti-avoidance provisions within individual measures, policymakers should endeavour to rely on the existing general anti-avoidance rule in section 811C as protection for the Exchequer.

Section 840A

Section 840A TCA 1997 is an anti-avoidance provision that denies a trading deduction for interest payable on intra-group borrowings to purchase assets from a connected company.

Following the introduction of section 840A TCA 1997 in 2011, Revenue issued an eBrief[10] which confirmed that:

> "*where an asset and its funding are transferred together in a bona fide reorganisation of the businesses of a group of companies, so that –*
>
> - *a company disposes of an asset to another group company,*
> - *that other company takes on (by novation) indebtedness in the amount outstanding on the loan which funded the acquisition of the asset by the company making the disposal, and*
> - *interest on that funding loan was deductible under the Tax Acts before its novation,*

[10] Revenue eBrief No. 11/11

> *then interest payable on the loan after its novation will be treated as continuing to be so deductible".*

As this confirmation has not been replicated in subsequent guidance published by Revenue on section 840A, it is necessary to apply to Revenue for clearance on a case-by-case basis where there is an internal reorganisation within a group. This approach gives rise to uncertainty, and we understand from members it can impact genuine commercial transactions.

In our view, section 840A should be amended to clarify that the provision does not apply in circumstances where an asset and its funding are transferred together in a *bona fide* reorganisation of the business of a group of companies, subject to the conditions which were previously set out in Revenue guidance.

15. Are there any aspects of the provisions relating to the treatment of interest as a distribution, and associated exemptions outlined above, which could be enhanced, simplified or removed? Please explain, noting both the benefits and any adverse consequences of same.

Section 130 (2)(d) TCA 1997 is intended to prevent equity investments being disguised as debt in order to obtain an interest deduction. Determining the correct tax treatment can be cumbersome as there are a significant number of exemptions or overrides from the general rule both within section 130 and in various other sections of the TCA 1997, including sections 452, 452A and 845A.

In our view, the provisions relating to the treatment of interest as a distribution should be streamlined, with any provisions that are no longer necessary removed given the protections afforded by the transfer pricing rules, anti-hybrid rules and the outbound payments defensive measures. In addition, we would recommend that both the general rule and any exemptions from the distribution treatment should be contained within a single section of the TCA 1997.

If policymakers are of the view that it is not possible to streamline all of the rules relating to the treatment of interest as a distribution in the manner suggested, at a minimum, we would urge that the following provisions are amended:

- Interest on debt without any 'equity' characteristics where it is payable to a non-resident 75% group member is automatically treated as a distribution under section 130(2)(d)(iv). This treatment is disapplied for EU and UK residents by section 130 (2B). Sections 452, 452A and 845A also provide for elections to override distribution treatment.

  In light of the protections afforded by the BEPS measures and the outbound payments defensive measures, consideration should be given to the merits of removing the automatic treatment as a distribution for interest paid to a non-resident 75% group member, which is not otherwise within the scope of section 130 measures targeted at interest on debt with equity characteristics.

In considering any potential changes, it must be noted that the application of distribution treatment may be of benefit to some companies that qualify for an exemption from dividend withholding tax (DWT) but may not qualify for an exemption from withholding tax on interest.

- We believe that section 130(2)(d)(iii)(II) TCA 1997 should be removed as it is a measure that addresses the quantum of interest akin to thin capitalisation rules (rather than the purpose of the interest). This section is no longer required in the Irish corporation tax code given the 30% EBITDA cap under the ATAD ILR and the transfer pricing rules operate to limit both the quantum of debt and interest permitted.

16. Are there any aspects of the above provisions relating to other interest restrictions which could be enhanced, simplified or removed (within the confines of Ireland's international obligations)? Please explain, noting both the benefits and any adverse consequences of same.

In general, the anti-hybrid rules are well understood by practitioners. However, one area that can give rise to some uncertainty is the application of the associated enterprises test to partnerships.

Section 835AA(3) TCA 1997 provides any interests of enterprises which are *'acting together'* must be amalgamated and considered in totality. However, the meaning of acting together in the context of partners in a partnership can be unclear and we would welcome clarification on this aspect of the anti-hybrid rules.

4.5. Financial Services Transactions

17. Are there any aspects of the provisions relating to the deductibility of interest in respect of a qualifying company as defined in section 110 TCA which could be enhanced, simplified or removed? Please explain, noting both the benefits and any adverse consequences of same.

The section 110 regime has an important role to play in financing structures given the limitations of the Irish interest deductibility regime. Where an Irish non-trading company obtains external finance and wishes to advance a loan to a group member on similar terms to those on which it has itself borrowed, it may elect into the section 110 regime if it can meet the relevant conditions.

Otherwise, it would not be permitted to claim a tax deduction for its interest expense and would be subject to tax on its gross income at 25%, unless it comes within the very narrow provisions of section 247 TCA or section 76E TCA. We outline below a number of issues relating to the deductibility of interest in respect of a qualifying company as defined in section 110 TCA 1997 which should be reviewed.

Restriction on deductibility for 'specified persons'

Similar to the position which exists in Ireland, payments to governmental bodies, pension funds and investment entities are generally not subject to tax in their home jurisdictions. However, section 110 (4A)(b)(ii) TCA 1997 denies a deduction for interest paid to such tax-exempt persons, which are resident for tax purposes in an EU Member State or a DTA country and are 'specified persons'. Many UK and EU pension funds invest in Irish special purpose vehicles (SPVs). This provision creates unnecessary uncertainty and prevents *bona fide* commercial transactions by such pension funds with no clear policy rationale.

We believe it is inappropriate to deny a tax deduction based solely on the tax-exempt status of such entities, particularly where the same treatment does not apply where such persons are resident in Ireland. We would urge that the provision be amended as in our view, it is potentially discriminatory under EU law and in breach of non-discrimination provisions in double tax treaties. It goes beyond what is required under ATAD to prevent hybrid arrangements.

€10 million of qualifying assets on day one

In order to be a qualifying company under section 110, on the first day the company acquires qualifying assets, it must have €10 million of qualifying assets. The policy rationale for the €10 million test is unclear and it can be problematic where investment fund managers wish to use a SPV to hold assets with a lower value on day one. Therefore, in our view, the €10 million threshold should be lowered.

In addition, we believe that consideration should be given to providing a reasonable period within which the test must be satisfied. In some cases, a company can

inadvertently breach the day one threshold, as it is not always possible to accurately predict when a financial transaction entered into will be settled on the market. Notably, for the purpose of the anti-reverse hybrid rules,[11] a 24-month period is provided to allow an entity to meet the conditions to be a 'collective investment scheme.' Allowing a company to meet the €10 million test by the end of its first accounting period would be more appropriate.

If it is decided that the €10 million test should continue to apply on day one, then it would be helpful to clarify that amounts which may be drawn down (for example, through share capital) and used to meet various costs before the company commences its securitisation activities, do not impact on its ability to satisfy the requirement that it holds no less than €10 million qualifying assets on the first day that such assets are acquired, held or created.

8-week period for electing into the section 110 regime

The legislation provides a period of 8 weeks to make an election into the section 110 regime. The late filing of this election means that a SPV will be taxed under normal Case III principles. The consequences of late filing are therefore enormously disproportionate to the administrative nature of the election. In our view, the 8-week time limit should be extended, and consideration should be given to replacing it with an election contained in the corporation tax return of the SPV.

Section 452 election

The activities of an Irish company are often financed by monies lent to the Irish entity by a foreign parent and interest is payable to that parent. As outlined previously, under section 130 (2)(d)(iv) TCA 1997, if the interest is payable to a non-resident company of which the Irish company is a 75% subsidiary or associate, it is treated as a distribution and, therefore, is not deductible as a trading expense.

However, section 452(2) TCA 1997 allows interest to escape the application of section 130(2)(d)(iv), if the company so wishes, where the interest is payable to a company which is a resident of a tax treaty country, or an EU Member State. The interest concerned must also be payable by a company in the course of its trade and be deductible for tax purposes but for the rule in section 130 (2)(d)(iv). The treatment in section 452(2) is optional and the company can elect in its corporation tax return for the period in question to take a deduction for the payment of interest.

As section 110 companies compute their taxable profits using Case I trading principles, it has been the long-standing practice that this permits such companies to make a section 452 election. However, Revenue updated its guidance[12] in December 2022 to state that section 110 companies may not make an election under section

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[11] Section 835AVB, Taxes Consolidation Act, 1997

[12] Section 110: entitlement to treatment, Tax and Duty Manual, Part 04-09-01, at para. 2. https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-04/04-09-01.pdf

452 unless the relevant income/expense itself is of a trading nature, and it is not sufficient to rely on the Case I basis of calculation. The policy rationale for this change in practice is unclear and should, in our view, be reconsidered in the overall context of reforms to the treatment of interest as a distribution and the corresponding overrides of that treatment.

18. Are there any aspects of the provisions relating to Chapter 1 of Part 28 which could be enhanced, simplified or removed? Please explain, noting both the benefits and any adverse consequences of same.

Certain provisions in Chapter 1 of Part 28 contain exceptions to disapply the bond-washing rule where the taxpayer is considered a dealer in securities. We consider that a taxpayer, such as a treasury company, which is taxable under Case I or II, should equally qualify for these exceptions irrespective of whether they are dealing in securities.

19. Are there any aspects of the provisions relating to Chapter 3 of Part 28 which could be enhanced, simplified or removed? Please explain, noting both the benefits and any adverse consequences of same.

20. Are there any aspects of section 845 and 846 TCA which could be enhanced, or simplified? Please explain, noting both the benefits and any adverse consequences of same.

Stock lending and sale and repurchase (repo) transactions are important sources of liquidity in properly functioning financial markets. Legislative provisions were introduced in Finance Act 2019 which sought to put Revenue guidance[13] dealing with such transactions on a legislative footing. However, the legislation does not address the application of the rules to companies entering stock lending and repo transactions, as part of their Schedule D Case I activities nor to pension funds. If it is not intended for the rules to apply to such activities, then it is important for this to be clearly stated in legislation.

In addition, there are a number of issues with the existing legislation which can result in relief for genuine costs incurred being disallowed. We have outlined below the key legislative provisions which need to be addressed. Given the technical nature of these provisions, it would be beneficial for stakeholders to be provided with an opportunity for consultation on draft legislation to ensure that any proposed amendments do not give rise to any further unintended consequences.

Definition of 'financial transaction' (section 753A TCA 1997)

The legislation does not cater for the differences between stock lending and repo transactions. Repo transactions are generally entered into by persons seeking to

[13] Tax and Duty Manual Part 04-06-13

raise finance, such as banks effectively using large portfolios of securities as collateral when borrowing funds from a counterparty bank, including the Central Bank of Ireland.

In contrast, stock lending transactions are generally undertaken for the purposes of market making or providing liquidity in the securities market by institutional investors, such as life assurance companies and pension funds. These investors do not seek to raise finance and may even be precluded from borrowing money.

Revenue guidance[14] which was in place prior to Finance Act 2019 stated that the substance of stock lending and repo transactions "*is essentially one of lending*". However, section 753A TCA 1997 goes further and defines financial transactions as *"equivalent to a transaction or agreement for the lending of money, or money's worth at interest*".

Although stock lending may be a form of lending, in many cases it is the lending of securities rather than money. By defining a relevant financial transaction in this way, many stock lending transactions are excluded from the rules, with the consequence of potential negative implications for those who have historically relied on Revenue guidance.

In addition, a strict application of the provision would pose difficulties for most pension funds that are generally prohibited from borrowing or incurring any indebtedness. If pension funds cannot rely on previous Revenue guidance or the legislative provisions introduced by Finance Act 2019 to deem the substitute payments to have the same character as the related securities income, they may not be able to satisfy the requirements of the exemption under section 774(3) TCA 1997 in respect of *"income derived from investments or deposits of a scheme".*

This is a significant issue which needs to be addressed in the legislation. We would recommend that the definition of *"financial transaction"* is amended to remove the requirement that the transaction be *"equivalent to a transaction or agreement for the lending of money, or money's worth at interest*".

Definition of 'manufactured payment' (section 753A TCA 1997)

In commercial terms, a manufactured payment or substitute payment is made to compensate the original holder of the securities for any dividend or interest which is payable on the securities during the currency of the stock loan or repo.

Section 753A TCA 1997 introduced a new requirement that a manufactured payment be in return for "*any distribution or interest arising or accruing to the stock buyer".* As a result, relief may be denied for manufactured payments in many common *bona fide* commercial stock lending and repo transactions where the stock buyer is not in receipt of the distribution or interest on the stock. For example, where

[14] Tax and Duty Manual Part 04-06-13

the stock buyer has shorted the stock and as a result is liable to make a manufactured payment but is not in receipt of real interest or distribution.

To address these concerns, we would suggest an alternative definition of a 'manufactured payment' as: *"a payment by a stock buyer to a stock seller made pursuant to a financial transaction to compensate the stock seller for any distribution or interest payable on the stock which, as a consequence of the financial transaction, is receivable otherwise than by the stock seller."*

<u>Tax treatment of 'manufactured payment' (sections 753B & 753C TCA 1997)</u>

The deductibility of a 'manufactured payment' where the payer is not in receipt of the corresponding 'real' dividend or interest in respect of the underlying securities (referred to as the *"specified amount"*) is unclear. This issue arises where the securities have been used in successive stock lending/repo transactions or where the stock has been sold 'short'.

In the former case, the payer will be in receipt of a 'manufactured payment' against which the obligation to make a 'manufactured payment' would be expected to be offset. This issue could be resolved by deeming any 'manufactured payment' received to constitute a 'specified amount' in section 753C(1) TCA 1997.

In the latter case, there is no income, merely an expense of making the manufactured payment. This is a natural feature of 'shorting' securities. To facilitate the stated aim of achieving a tax treatment consistent with the substance of the transaction,[15] we believe that the following wording could be inserted at section 753B(2)(c) TCA 1997: *(iii) in circumstances where the stock buyer is in receipt of neither the corresponding specified amount nor any manufactured payment representative thereof, any manufactured payment paid by the stock buyer shall be taken into account in the computation of any income, profits or gains as is referred to in subsection (b) above.*

<u>Align record keeping requirements with existing obligations (section 753F TCA 1997)</u>

The record keeping requirements set out in legislation are onerous and for many businesses their existing record keeping systems may not be able to produce the information in the manner envisaged by the legislation. The provisions do not consider the existing requirements under the Companies Acts to maintain proper books of account and to meet regulatory oversight requirements. Furthermore, in the case of pension funds and investment funds, the responsibility for maintaining this information typically lies with a custodian or prime broker.

In our view, the record keeping requirements contained in section 753F TCA 1997 could be aligned with existing regulatory oversight requirements, which would remove the need to redesign existing systems and, in many cases, to modify

[15] Section 33, Explanatory Memorandum to Finance Bill 2019.

contractual agreements with the pension fund or investment fund. Alternatively, the record-keeping requirement could be restricted to securities which are subject to Irish dividend withholding tax or deduction of income tax at source.

21. Are there any aspects of the taxation of the financing income or expense of lessors which should be enhanced, or simplified? Please explain, noting both the benefits and any adverse consequences of same.
22. Are there any aspects of the taxation of the specified financial transactions which should be enhanced, or simplified? Please explain, noting both the benefits and any adverse consequences of same.

We welcome the engagement which has taken place between practitioners and policymakers at the Department of Finance Leasing Working Group regarding the significant changes to the legislation around the tax treatment of finance lessors in recent years. The full impact of these amendments, in particular the changes to section 299 TCA 1997, which was substantially amended in both Finance Act (No.2) Act 2023 and Finance Act 2024, will only become clear with the passage of time.

We look forward to continued engagement at the Leasing Working Group to ensure any remaining tax technical issues arising in the area of leasing, which require legislative amendment, can be addressed.

4.6. Withholding Tax

23. Are there any aspects of the Irish interest withholding tax provisions which could be enhanced, simplified or removed? Please explain, noting both the benefits and any adverse consequences of same.

Withholding tax under section 246 TCA 1997 on interest payments is rarely applied in practice. The approach adopted in section 246 is to apply a blanket charge to withholding tax on payments of interest by companies generally and by any person to another person located outside the State, with various exclusions from the requirement to operate withholding tax set out in numerous sections of the TCA 1997.

While the range of exemptions from the requirement to apply withholding tax is broad, the approach of imposing a withholding tax charge and then applying an exemption can be administratively burdensome for taxpayers. For example, where interest is exempted from withholding tax by virtue of section 246(3)(h), section 891A TCA 1997 imposes a reporting obligation on the payer in respect of the payment of interest.

Broadly speaking withholding tax does not usually apply where the payment is made to a recipient in an EU or DTA country. However, where interest is paid to a recipient in a non-DTA country such as Brazil, Argentina or Indonesia, withholding tax will generally apply. In our view, this approach is unnecessarily restricting potential sources of financing for Irish business.

It would be preferable if section 246 were amended so that the charge to withholding tax only arises where there is a clear policy rationale for the imposition of a withholding tax, such as where the payment is made to a country included in Annex 1 of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes or to a '*no-tax'* and *'zero-tax'* jurisdiction, similar to the position which exists for the outbound payments defensive measures.

Certain language in section 246 can cause uncertainty. For example, section 246(2) TCA 1997 imposes an obligation to deduct withholding tax on the person "*by or through whom*" the payment is made. Clarity regarding the meaning of "*by or through whom*" in this context would be welcomed.

Where a payment of interest is made to a partnership and one of the partners is not eligible to receive the interest free from withholding tax, the withholding tax applies to the whole of the payment (i.e., it is not possible to *pro rata* the withholding tax based on the interest held by that partner in the partnership). In our view, Revenue's practice should be amended so that the requirement to apply withholding tax applies only in respect of interest paid to the partner in the 'bad' jurisdiction, similar to the position which exists for the outbound payments defensive measures.

24. Are there any aspects of the DIRT provisions which could be enhanced, or simplified? Please explain, noting both the benefits and any adverse consequences of same.

It has been a number of years since there has been a material update to the guidance on the operation of DIRT. We would urge Revenue to engage with the banking sector, as we understand from members that there are a number of areas where improvements to the existing guidance is required to account for modern banking practices, and to make the operation of DIRT more efficient for tax authorities, customers and banks.

Section 258 TCA 1997 requires relevant deposit takers to file a DIRT return within 15 days (23 days when filed through ROS) of the end of the year of assessment. This is a very short time period within which the financial institution must prepare and file a return for the full year. In our view, this deadline should be extended by at least a further month to allow for collation and aggregation of the data.

25. Are there any aspects of the encashment tax provisions which could be enhanced, or simplified? Please explain, noting both the benefits and any adverse consequences of same.

In our view, the continued existence of encashment tax should be reconsidered. The legislation underpinning encashment tax is unwieldy and there can be ambiguity regarding its application. The operation of encashment tax is a burden on paying agents and as it is only required to be operated by Irish paying agents, it could potentially be viewed as discriminatory.

In addition, the policy rationale for encashment tax is unclear as the underlying payment is already reported to Revenue under other provisions of the TCA 1997 and the payment must be included in the individual's tax return. Notably, the UK abolished encashment tax in 1996.

4.7. Reporting Obligations

26. Observations are requested on the reporting obligations in relation to the payment of interest. Are there any aspects of these reporting obligations which could be enhanced, or simplified? Please explain, noting both the benefits and any adverse consequences of same.

The increasing volume of reporting obligations in relation to the payment of interest is administratively burdensome for payers. As outlined above, very significant disclosures in respect of the ILR alone are required to be made on the Form CT1. Where a taxpayer inadvertently makes an error in completing the disclosures on the Form CT1, this can have a knock-on impact in terms of the application of the time limits in Chapter 5 of Part 41A TCA 1997.

A full review should be undertaken to identify how the information reported in relation to the payment of interest under all existing reporting requirements (other than for financial institutions which are addressed below) is utilised and any unnecessary or duplicative reporting requirements should be removed.

In respect of financial institutions, reporting requirements arise under the Foreign Account Tax Compliance Act (FATCA), the Common Reporting Standard (CRS) and domestically under sections 891 and 891B TCA 1997. Consideration should be given to the continued requirement for the domestic reporting requirements under sections 891 and 891B. If it is decided to retain these reporting requirements but that amendments are necessary, it would be important that there is close engagement with the industry prior to implementing any changes. This is because any changes to the reporting requirements would have a significant impact on the existing data collection and retention procedures of financial institutions.

We would encourage the Department to actively engage with the European Commission's ongoing Evaluation of the Directive on Administrative Co-operation (DAC). We firmly believe that a crucial focus of the Commission's evaluation of the DAC and consequential recommendations, should be to streamline the reporting requirements to the greatest extent possible, to help ease the administrative burden and cost imposed on businesses. Such an approach would also be in line with the Commission's REFIT programme and the Commission's goal of reducing burdens associated with reporting requirements by 25% without undermining the policy objectives of the concerned initiatives.[16]

In order to minimise the administrative burden associated with DAC2, which brought the operation of the CRS into EU law, consideration could be given to the better alignment of the classifications under FATCA and DAC2. For example, we understand that there can be uncertainty regarding the classification of derivatives for the purposes of DAC2 which can generate excessive documentation. It would be helpful if clarification could be provided that derivatives only constitute a financial account for the purposes of DAC2 when there is a cash value element. Given the technical nature of the requirements, it would be important that there is engagement with stakeholders prior to implementing any changes.

[16] Commission's Work Programme 2024

4.8. Broader Policy Considerations

27. Should Ireland introduce a commercial business purpose test, or any other basis, for the deduction of interest expense? In explanation of your answer, please consider each of the issues noted above and any other issues you consider to be relevant, noting both the benefits and any adverse consequences of same.

Please provide examples of regimes in other jurisdictions, and consider, and include in your analysis, the broader corporate tax regime in that country within which the interest provisions operate.

In our view, the key objective of the review of the rules on interest deductibility must be to streamline the existing rules, taking into account the protections against base erosion which now exist in the Irish corporation tax code.

In simplifying the rules, a key principle should be to recognise that debt and the payment of interest thereon, is a normal commercial reality of doing business. A simplified, principle-based section 247 and 249, which enables companies to claim relief for interest as a charge for interest paid on borrowings incurred for valid commercial purposes, would significantly reduce the complexity faced by companies operating in Ireland.

As most groups have financing arrangements in place which were designed with the existing rules on interest deductions in mind, changes to the rules could cause significant uncertainty. Therefore, it would be important that the Department of Finance publishes a roadmap outlining any changes envisaged with clearly defined milestones signposted.

It is also critical that there is close engagement by the Department and Revenue with stakeholders at each stage in the process, with an opportunity for business stakeholders to provide feedback on draft legislative approaches to ensure that any changes, when implemented, are clearly understood and do not give rise to unintended consequences.

The requirement for transitional rules would be dependent on the nature of the proposed changes and their potential impact for taxpayers. In principle, if there are fundamental changes around the existing interest deductibility rules which could negatively impact the level of relief available to a taxpayer, an appropriate lead in time and grandfathering of existing arrangements would need to be considered to ensure that the changes do not negatively impact any cohort of taxpayers.

Many of the recommendations which we have made in respect of Questions 1 to 26 of this Consultation Paper would also be relevant if policymakers decide to introduce a commercial business purpose test for the deduction of interest expense as part of a redesign of the interest deductibility rules. In considering whether to introduce a

commercial business purpose test for the deduction of interest expense as part of a reformed interest deductibility regime, we would make the following observations:

- As Ireland has differing rules for trading and non-trading activities, a legislative basis for claiming a tax deduction for interest arising in a non-trading context would need to be established within the Irish corporation tax code. The current default position of denying interest deductions against taxable passive income is not in line with international norms and undermines the competitiveness of the Irish regime.

- The scope of section 81 TCA 1997 could be broadened so that a taxpayer is entitled to deduct interest and 'interest equivalent' expenses that is incurred for a business or commercial purpose.

- We do not believe it would be necessary for thin capitalisation rules to be introduced in conjunction with any new interest deduction rule. The ILR rules and the existing transfer pricing legislation already provide sufficient protection against any base erosion risks.

- The Consultation Paper welcomes observations on the requirement or otherwise of a rule that takes into account the level of taxation of the recipient. We do not believe such a requirement is necessary given the outbound payments defensive measures introduced in Finance (No.2) Act 2023, which apply to payments of interest, address any risk of double non-taxation. In addition, the rules in Part 35C TCA 1997 would operate to deny a deduction where there is hybridity.

- The Consultation Paper also welcomes observations on the requirement for new rules to prevent abusive transactions relating to any new interest deduction rule, in particular the requirement for targeted or principles based anti-avoidance rules. As set out at paragraph 4.4 above, the inclusion of specific targeted anti-avoidance provisions adds complexity for taxpayers. Rather than including specific targeted anti-avoidance provisions within individual measures, it is preferable for policymakers to rely on the general anti-avoidance rule in section 811C, where appropriate, as protection for the Exchequer.

- Consideration could be given to permitting a deduction for interest payments made in respect of quasi-equity instruments where they satisfy the commercial business purpose test. Such an approach would be in line with the European Commission's Debt Equity Bias Reduction Allowance (DEBRA) initiative. Quasi-equity instruments are often used by start-ups who may face difficulties in accessing other forms of financing.