Irish Tax Institute

January 2026

Phase One of Reform of Ireland's Taxation Regime for Interest

Response to the Feedback Statement

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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 Phase One Feedback Statement and the opportunity to engage with the Department of Finance regarding the reform of the framework for the taxation and deductibility of interest in Ireland.

The current rules on interest deductibility in Ireland are excessively complex making it difficult and costly for businesses to operate in Ireland and comply with their tax obligations. The Feedback Statement recognises that "*reform of the taxation regime for interest is needed to help safeguard Ireland's competitiveness, to provide administrative simplification and give greater certainty to Irish businesses, while continuing to ensure that Ireland's tax system for interest is fair and sustainable.*"

While the Institute welcomes some elements of the Strawman Proposal, the strong feedback we have received from our members is that the proposed changes outlined in the Feedback Statement will not provide the administrative simplification which is necessary to protect Ireland's competitiveness.

Our members consider the new interest deductibility rule to be overly restrictive and are concerned that *bona fide* Case I deductions for interest that qualify under the current rules may not qualify under the Strawman Proposal, which would lead to increased costs for businesses. They also believe the inherent subjectivity of the proposed "profit motive" test would introduce further complication and significant uncertainty for taxpayers as they endeavour to understand how Revenue will apply this new test in practice and how the Courts will interpret it. Such an outcome would go against the stated aim for reforming Ireland's tax regime for interest in the first place, which is to safeguard the country's competitiveness and deliver administrative simplification and greater certainty for Irish businesses.

We have set out our observations and recommendations on each element of the Strawman Proposal in section 3 of this submission. However, there are several elements of the proposal which, at a minimum, should be reconsidered. These are:

Introduction of a Profit Motive Test for Interest Deductibility

- The proposal to move away from the “wholly and exclusively” test which applies for a Case I or Case II interest deduction towards the “profit motive” test, outlined in the Strawman Proposal, is very concerning. The existing “wholly and exclusively” test is a long-established principle with an extensive body of case law developed over many years. Rather than providing administrative simplification and greater certainty to Irish businesses, replacing the “wholly and exclusively” test with the proposed “profit motive” test, which requires annual testing of the “intention” of the borrowings, would result in more complication, increased ambiguity and an onerous administrative burden for taxpayers.

Alignment of Tax Treatment Between Trading and Passive Interest Income

- Under the Strawman Proposal, interest expenses would be allocated to a Schedule and Case and the interest accrued on borrowings would be matched to the Case/Schedule under which the profits or gains arising from the activity/investment supported by the borrowings are taxed. But in contrast to the position that exists for Case I losses, it would not be possible to offset Case III losses against non-Case III income earned in the accounting period on a value basis, to carry the loss back to the preceding accounting period or to avail of the group relief provisions in respect of the Case III loss.

- The commercial arrangements which the proposed changes are intended to address are unclear, as in many instances, it would result in trapped Case III losses. As a result, we consider that the proposed changes to the taxation of Case III interest will do little to enhance Ireland’s competitiveness.

Transfer Pricing

- It is our firm view that the proposed new interest deductibility regime does not justify the extension of the transfer pricing rules to medium-sized entities. Rather than being overburdened with additional compliance requirements, SMEs should be supported as they seek to expand in Ireland and overseas.

Interest Limitation Rule (ILR)

- It is proposed that the ILR rules should be amended to apply a new *de minimis* threshold on a group basis at a level of €6 million for the group of Irish entities within a worldwide group, in addition to the current entity-by-entity *de minimis* threshold of €3 million. We consider that the introduction of a new group threshold would be very restrictive for large groups with multiple Irish entities. It has the potential to make Ireland uncompetitive compared with the ILR regimes in other EU Member States and reduce the country's attractiveness as a location for investment.

- The rationale for the introduction of the new group threshold is to strengthen the protection of the Exchequer from excessive fragmentation of debt amongst member companies. We consider that the existing general anti-avoidance rule in section 811C TCA 1997 is the most appropriate tool to tackle any perceived artificial fragmentation of debt rather than the introduction of a new group threshold, which would make the Irish ILR more restrictive and cumbersome to operate than the ILR which exists in other EU Member States.

- The Anti-Tax Avoidance Directive (ATAD[1]) ILR was layered on top of pre-existing targeted rules in the TCA 1997 regarding the deductibility of interest. These robust rules were in place for many years before the introduction of the ILR and must still be satisfied before the ILR even

[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.

becomes relevant. Given that the Government's stated position when ATAD was agreed at EU level in 2016 was that Ireland's pre-existing interest deductibility rules were at least equally effective as the ATAD ILR, we cannot understand the policy justification now for the introduction of a new €6 million group threshold.

Sections 247 Taxes Consolidation Act (TCA) 1997

- It is imperative that sections 247 and 249 TCA 1997 are streamlined to remove conditions that do not have a clear policy rationale. While the proposed amendments to section 247 are welcome, they do not represent meaningful simplification of the section and the related recovery of capital provisions under section 249 TCA.

- Many of the rules 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. Considering the extensive protections against base erosion which now exist in the Irish corporation tax code, several conditions associated with section 247 relief and section 249 recovery of capital rules are no longer necessary and should be removed.

Basis of Assessment for Interest Income and Double Taxation

- The proposed change to move the basis of assessment for Case III income from a receipts basis to an accruals basis for all taxpayers is concerning as it will mean that taxpayers would be required to account for tax on interest before they receive it. The taxation of interest income on an accruals basis should apply on an election basis for corporate taxpayers.

- A requirement to move to an accruals basis would have an adverse effect on start-up and scaling companies which often raise funds by borrowing from angel investors with interest on these loans frequently rolled up for several years. Under the Strawman Proposal, these investors would be taxed on an annual basis even where there is no realistic prospect of the interest being paid for many years. As investors will not enter new arrangements where they will be taxed on interest they have not received, the move to an accruals basis could have a significant damaging effect on access to capital for start-up and scaling companies.

- Where foreign source interest income is received and taxed on an accruals basis of assessment, double taxation relief for foreign tax paid could be denied in certain circumstances due to the operation of the 4-year time limit, for example, where interest is rolled up and paid in one instalment at the end of the loan-term. Denying double taxation relief for foreign tax would place unnecessary additional costs on taxpayers and would not align with the objective of ensuring that Ireland's tax system for interest is fair.

Taxation and Deduction of Interest Equivalents

- Should the scope of interest deductibility be widened to include 'interest equivalent' amounts, as proposed, it would be important to ensure that interest equivalents do not come within the scope of the interest withholding tax provisions in section 246 TCA 1997.

Much of the complexity surrounding the current interest deductibility regime stems from amendments made to the rules prior to the implementation of extensive reforms in domestic legislation over the last decade. A key objective of reforming the interest deductibility should be to streamline the existing rules taking account of the protections against base erosion risks for the Exchequer which now exist in the Irish tax code.

These include the EU ATAD measures (i.e. ILR, Controlled Foreign Company (CFC) rules, anti-hybrid rules), extended transfer pricing rules and outbound payments defensive measures. On top of this, we also have the Pillar Two GloBE Model Rules which ensure a minimum effective tax rate of 15% for in-scope MNEs.

It must be recognised by policymakers that all these measures have severely limited the ability of Irish companies to artificially reduce their taxes through interest deductions. It is regrettable that the Strawman Proposal does not take these base erosion protections into account in any meaningful way.

Overall, our members do not consider that the Strawman Proposal delivers meaningful reform to help safeguard Ireland's competitiveness and provide administrative simplification and greater certainty to Irish businesses. Indeed, our members are concerned that the Strawman Proposal could adversely impact Ireland's competitiveness, as it could restrict *bona fide* Case I deductions for interest that qualify under the current rules leading to increased costs.

While the Institute is steadfast in its belief that reform of the interest deductibility rules is necessary, if the choice is between the Strawman Proposal, as it stands, and the status quo, it would be preferable to retain the existing interest deductibility rules for Case I and Case II trades, given the concerns raised by our members about increased complexity, costs and uncertainty for Irish businesses resulting from the proposed new "profit motive" test. This is notwithstanding the difficulties with the existing regime and the fact that it would continue to leave Ireland at a competitive disadvantage.

We note the Department of Finance intends to publish an outline of draft legislation for further stakeholder feedback on 16 April. If the Department plans to proceed with this timeframe, we strongly urge Department and Revenue officials to engage with stakeholders directly and via the Business Taxes Stakeholder Forum, before publishing the draft legislation, considering the extent of the changes that would need to be made to the Strawman Proposal.

The Institute would welcome the opportunity to discuss the matters raised in this submission. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in this regard.

3. Strawman Proposal for Reform of Ireland's Regime for Interest

3.1. New Interest Deductibility Rule for Corporation Tax

3.1.1. Profit Motive Test

The Feedback Statement proposes the introduction of a new "profit motive" test for determining interest deductibility. This new rule would be the default rule for providing relief for an interest expense for corporation tax purposes instead of the current "wholly and exclusively" test for trading interest. Under the new test, interest would be deductible where it is incurred in respect of borrowings used to fund activities or investments in an accounting period with the purpose of realising profits or gains. An interest deduction would only be allowed when the borrowings are used for activities or investments aimed at directly generating profits or gains, which would be subject to tax under Cases I, II, III, and IV of Schedule D and Schedule F.

We consider the interpretation of the "profit motive" test would be inherently subjective, with a lack of relevant case law to provide guidance to taxpayers and their advisers and Revenue on its application. Such a "profit motive" test, as described in the Strawman Proposal, is not a widely applied concept in other jurisdictions. This means there is minimal experience and case law available to support how this test should be interpreted and operate in practice.

We believe the introduction of the "profit motive" test, as outlined in the Strawman Proposal, would likely result in significant further complexity, costs and uncertainty for Irish taxpayers and their advisers as they endeavour to understand how Revenue would apply the test in practice and how the Courts would interpret it. For example, the distinction that is drawn in the Feedback Statement between transactions such as borrowing to make a capital contribution and borrowing to acquire share capital is arbitrary and would frequently produce differences in opinion and disputes resulting in uncertainty for taxpayers. In our view, such an outcome would fly in the face of the stated objective of reforming Ireland's tax regime for interest which is to provide administrative simplification and give greater certainty to Irish businesses.

The Strawman Proposal notes that an interest deduction would only be allowed when the borrowings are used for activities or investments aimed at "directly" generating profits or gains. This requirement would create uncertainty for taxpayers because even though the funds may be used in the business it may not be clear that they are "directly" generating profits or gains. For example, where a company purchases stationery for use in its business, would this stationery be considered as directly generating profits? Common commercial arrangements would be excluded if the test condition did not refer to borrowings which are used for activities or investments aimed at "directly or indirectly" generating profits or gains.

We understand the "profit motive" test would be applied to the borrowings in each accounting period in which the interest expense accrues. Interest deductible under the new rule would be allocated to a Schedule and Case category based on where the income from the investment or activities funded by the borrowings is classified.

It would appear from the Strawman Proposal that taxpayers would be required to determine if the "profit motive" test is satisfied on the drawdown of the loan (day one) and on an ongoing basis. This approach would demand a significant ongoing administrative burden for taxpayers to track the use of funds, and in many instances, may be unworkable. It would also result in further uncertainty over the tax treatment of interest accruing on a loan.

While a loan may initially be applied for a profit generating purpose, it is possible that the purpose for which the funds were applied may change over time. Conversely, funds may be used to purchase a particular asset which would not satisfy the "profit motive" test on day one, but the asset may subsequently be sold and the funds used for a purpose which would satisfy the “profit motive” test.

If the “profit motive” test is an ongoing requirement, it is unclear whether the test must be satisfied throughout an accounting period or at the end of the accounting period. To determine if the “profit motive” test is met, it would be necessary to review the balance sheet to determine how the loan is used. Where the assets of the business are in flux, there may be certain points during the accounting period where the loan is used to support the trade, and at another stage in the accounting period it may be considered that the loan is used to generate Case III income.

The Feedback Statement indicates that interest on borrowings used to acquire share capital of a company would satisfy the “profit motive” test because such an acquisition would generate future dividend income. However, it notes that interest on borrowings used to make a capital contribution or pay a dividend would not be available under the new interest deductibility rule. The policy rationale for disallowing interest on borrowings to fund a capital contribution to a subsidiary, which increases the capital base of the subsidiary and therefore, the capacity of the subsidiary to pay dividends, is unclear to us.

The Feedback Statement acknowledges the existing “wholly and exclusively” test is a long-established principle supported by a body of case law developed over many years. The “wholly and exclusively” test has provided taxpayers with a level of certainty on the tax treatment of interest on their debt where the funds are borrowed for the purposes of the trade. It is our firm view that moving away from a “wholly and exclusively” test to the proposed “profit motive” test for Case I interest, as described in the Strawman Proposal, would add significant uncertainty and greatly increase the administrative burden for taxpayers. It may also lead to increased costs for businesses as *bona fide* Case I deductions for interest that qualify under the current rules may not qualify under the Strawman Proposal.

As taxpayers may not have the relevant records to support the new "profit motive" test, it would be necessary to introduce transitional measures with the "wholly and exclusively" test and the new regime operating in tandem for a significant period.

Given the practical difficulties and concerns with the proposed new interest deductibility rule, our members strongly believe that if the Strawman Proposal is the only potential alternative, it would be preferable to retain the existing interest regime for Case I and Case II trades notwithstanding its current complexity and the fact that this would continue to leave Ireland at a competitive disadvantage.

3.1.2. Alignment of Tax Treatment Between Trading and Passive Interest Income

Under the Strawman Proposal, interest expenses would be allocated to a Schedule and Case and the interest accrued on borrowings would be matched to the Case/Schedule under which the profits or gains arising from the activity/investment supported by the borrowings are taxed. It is proposed that the rules governing Case III losses would be extended to allow Case III losses to be carried forward in a similar manner to the loss rules that apply to Case IV (i.e. available for offset against all future Case III income and not just Case III income relating to foreign trades).

The proposed change to allow Case III losses to be carried forward does not align the tax treatment between trading and passive interest income. In contrast to the position that exists for Case I losses, it would not be possible to offset the Case III losses against non-Case III income earned in the accounting period on a value basis and carry the loss back to the preceding accounting period. There would also be no opportunity to surrender Case III losses by way of group relief. The commercial arrangements which the proposed changes are intended to address are not apparent to us and in our view, it is more likely Case III losses would remain trapped. As a result, we consider the benefit of the proposed changes to the taxation of Case III interest to be extremely limited and will do little to enhance Ireland’s competitive position.

Where borrowings are used to invest in a foreign subsidiary, dividends received from that subsidiary are subject to tax under Case III but may qualify for a participation exemption. This means the Case III interest deduction would be of no value unless the company has other Case III income.

The proposed approach could be regarded as favouring investments in foreign subsidiaries over Irish subsidiaries because any interest charged on borrowings used to acquire share capital in an Irish resident company may only be offset against franked investment income meaning the interest deduction would be worthless.

In such circumstances, the interest deduction would create a Schedule F loss, which is effectively trapped, as the loss may be carried forward but there would be no possibility for the company to obtain value for such a loss. If it is acceptable in principle that interest on borrowings used to acquire share capital in a company should be deductible, it would seem illogical that it would not be possible to obtain value for such a deduction.

We believe that the Case III loss rules should be amended to more closely align with the loss rules and group relief provisions for Case I and Case II. At a minimum, it should be possible to obtain loss relief on a value basis for losses attributable to such interest on a current year basis and to surrender such losses by way of group relief.

The Feedback Statement notes that respondents to the previous consultation asked for consideration to be given to removing Ireland’s schedular tax system and different corporation tax rates. The Feedback Statement does not consider these issues noting that the trading and non-trading distinction is relevant beyond interest income.

We believe that the trading and non-trading distinction between the 12.5% trading rate and passive 25% rate is a key driver in creating unnecessary complexity within the Irish corporation tax code, which businesses do not have to contend with in other tax systems. We urge policymakers to consider this matter, particularly as the Pillar Two global minimum effective tax rate of 15% has now been implemented for large in-scope MNEs.

Aligning to a single headline corporation tax rate of 12.5% (for trading and non-trading income) would help Ireland to maintain a clear and stable taxation policy and increase Ireland's attractiveness as a location for FDI in a rapidly changing global environment.

Debt which is subsequently released

Section 87 TCA 1997 provides that where a deduction in respect of any debt has been allowed in the computation of the profits or gains of a trade or profession, and that debt is subsequently released, the amount of debt released is treated as a receipt of the trade or profession arising in the period in which the release takes place. As this section is currently confined to circumstances where the deduction has been taken in computing the profits or gains of a trade or profession, the Feedback Statement notes that consideration would need to be given to amending this provision if the new interest deductibility rule was introduced.

The amended provision would presumably necessitate the allocation of debt between different schedules and consideration of whether the "profit motive" test has been satisfied. In the absence of a provision allowing any allocation to be made on a just and reasonable basis, the requirement would likely be an administratively burdensome exercise and may in some cases be unworkable.

It would be important that the release of the interest obligation would not be treated as a receipt of interest for the purposes of the TCA 1997. This approach, which would be similar to the position adopted in the section 831B

TCA 1997 exception to the close company surcharge, would be necessary to prevent the release of the interest obligation coming within the scope of the close company surcharge provisions in section 440 TCA 1997.

Operating expenses

We welcome the proposal that interest income taxable under Schedule D Case III and IV would be taxed on a net basis under the reformed regime, with a deduction allowed for interest expense on borrowings which are on-lent to generate passive interest income. Subject to the principles in section 81 TCA 1997, consideration should be given to further enhancing this proposal by permitting a deduction for other costs associated with operating the company.

The treatment of foreign exchange movements, which are currently subject to capital gains tax, should also be considered. In our view, it would be reasonable to ignore foreign exchange movements when the taxpayer borrows and on-lends in its functional currency.

3.2. International Guardrails

3.2.1. Transfer Pricing

The Strawman Proposal envisages that the transfer pricing rules would be extended to medium-sized enterprises with effect from the same date as the application of the proposed new interest deductibility rule. The transfer pricing provisions contained in section 25A and Part 35A TCA 1997 do not currently apply to small and medium-sized entities (SMEs). While legislation has been in place for the application of transfer pricing rules to SMEs since the rules were reformed in Finance Act 2019, this legislation is subject to a commencement order by the Minister for Finance. Notably, the decision to make this legislation subject to a commencement order was taken following detailed consideration of this issue as part of the Department's 2019 Public Consultation on Ireland's Transfer Pricing Rules.

The Feedback Statement states that in the context of the proposed new interest regime, medium-sized enterprises may present a material risk of corporate tax base erosion in the absence of appropriate guardrails, such as transfer pricing rules. We do not believe that the proposed new interest deductibility regime would present a material risk of corporate tax base erosion which justifies the extension of the transfer pricing rules to medium-sized entities. Such an extension would impose a substantial administrative and compliance burden on these companies. Rather than being overburdened with additional compliance requirements, SMEs should be supported as they seek to expand in Ireland and overseas.

As the extension of transfer pricing rules to medium-sized entities would not be confined to transactions involving the provision of finance, we believe this issue would be better addressed as part of a separate consultation rather than as part of the reform of the interest deductibility regime. This would allow for full consideration of the potential impact of such a substantial change for medium-sized entities.

The introduction of transfer pricing rules for medium-sized entities would make Ireland less competitive compared with the UK which applies an exemption from transfer pricing for SMEs. It is worth noting that following a consultation by the HMRC in 2025 on the potential extension of transfer pricing rules to SMEs, the UK Government decided not to proceed with the proposal. Explaining the rationale for this decision, the UK Government stated that it is "*backing firms to start, scale, and stay in the UK*" and that "*avoiding imposing additional administrative burdens on SMEs at this time, the government will continue to monitor the tax at risk and keep all tax policy under review.*"[2]

[2] https://www.gov.uk/government/consultations/transfer-pricing-scope-and-documentation/outcome/transfer-pricing-scope-and-documentation-summary-of-responses

3.2.2. Enhancements of the ILR

Changing the operation of the €3 million *de minimis* threshold

Under the current rules, the ILR includes a *de minimis* exemption for Irish companies with net interest expenses of less than €3 million. The €3 million threshold applies on a per company basis. Where members of a group have elected to form an interest group for the purposes of the ILR, the *de minimis* €3 million threshold applies to the interest group, as a whole, and not to each individual company.

Under the Strawman Proposal, the rules governing the €3 million *de minimis* threshold would be amended to allow the first €3 million of exceeding borrowing costs to be excluded from the ILR, rather than imposing the ILR on all net interest expense where the threshold is breached, as is currently the case. We welcome this proposal to remove the restrictive cliff edge effect of the *de minimis* threshold and believe it would be beneficial for some companies.

Introducing a €6 million *de minimis* threshold on a worldwide group basis

The Feedback Statement indicates that as the €3 million *de minimis* threshold applies on a per company or per interest group basis, this may provide an opportunity for the "fragmentation" of group debt amongst member companies. To prevent potential abuse of the *de minimis* relief, it is proposed to apply a €6 million *de minimis* threshold on a worldwide group basis.

We consider that the proposed new €6 million worldwide group threshold would be very restrictive for large groups with multiple Irish entities in the group. It would also increase the administrative burden associated with the ILR, in particular, where companies have not elected into an interest group.

As this group-based threshold is not required under ATAD, which forms the basis for the Irish ILR, introducing such a provision unilaterally has the potential to make Ireland uncompetitive compared with the ILR regimes in other EU Member States.

There are many valid commercial reasons, including the demands of third-party lenders or investors, why debt may be fragmented. Our members have indicated to us that they have not experienced the artificial fragmentation of debt by groups to avail of the €3 million *de minimis* on a per entity basis.

Indeed, they have questioned whether the cost of fragmenting the group to secure an interest deduction of €3 million would be worthwhile given the numerous other factors which would need to be considered, including the establishment and ongoing compliance costs, as well as commercial considerations.

Notably, ATAD includes a general anti-abuse rule which can be used by Member States to tackle any arrangements which have not been put in place for valid commercial reasons and do not reflect economic reality. Ireland was not required to introduce legislation to implement the ATAD general anti-abuse rule as it already had a robust general anti-abuse rule (GAAR).

The GAAR can already be used by Revenue to tackle any perceived artificial fragmentation of debt. We believe it would be more appropriate to use this tool to tackle such perceived behaviour rather than introducing another group threshold, which would make the ILR in Ireland more restrictive and cumbersome to operate than what applies in other EU Member States. It would reduce the attractiveness of Ireland as a location for investment compared with its European counterparts.

Furthermore, it must be borne in mind that the reason why stakeholders have continued to seek reform of the Irish interest deductibility rules is because the ATAD ILR was layered on top of pre-existing targeted robust rules in the TCA 1997 governing the deductibility of interest. These robust rules were in place

for many years before the introduction of the ILR and must still be satisfied before the ILR even becomes relevant.
It must also be recalled that the Government's stated position when ATAD was agreed in 2016 was that Ireland's pre-existing interest deductibility rules were at least equally effective as the ATAD ILR. In this context, we would question the rationale for the introduction of a new €6 million threshold.

We understand that there is an ongoing review of ATAD at EU level and that a Tax Omnibus Directive, which is intended to simplify several EU Directives including ATAD, is expected to be published by the European Commission in the first half of 2026. It is important that Ireland does act pre-emptively to legislate for changes that have not yet been adopted at EU level, in particular where such changes would likely reduce the country's attractiveness as an investment location.

Extending the period to elect into an ILR interest group

The proposal to amend the legislation underpinning the ILR to allow a company to form an interest group, where an election is made within a period of two years after the end of the accounting period to which the election first relates, is helpful. Consideration should be given to extending the time-period to make the election to four years to align with the four-year time limit. This would allow taxpayers more time to assess the merits of electing into an interest group. To ensure that the extended timeline to allow a company to elect into an interest group operates as intended, consequential amendments would be necessary to the timelines for making the group and equity election ratios.

3.3. Section 247 TCA 1997

3.3.1. Transitional Provisions of Section 247 TCA 1997

The Strawman Proposal envisages that sections 247 and 249 TCA 1997 would be retained on an election basis to allow companies to continue to avail of the flexibility of relief for interest as non-trade charges where the conditions of section 247 are met. Taxpayers would have to elect to continue to apply section 247 on a loan-by-loan basis and this would be an irrevocable election in respect of each loan.

It would be preferable if taxpayers would be required to elect into any new interest deductibility regime to ensure that section 247 relief would continue to apply to a loan unless the taxpayer has elected out of its application.

The Strawman Proposal notes that a rule would be required to provide for the treatment of accrued but unpaid interest in respect of a loan to which section 247 applied at the date the new interest deductibility rule commences, where an election is not made to continue to apply section 247 to that loan.

It is proposed that where a company has accrued interest on a loan which would have qualified for relief under section 247 on a paid basis and the new interest deductibility rule applies to such existing loan (because the taxpayer has elected not to apply section 247) then the accrued interest would continue to fall within the remit of section 247 when it is paid, and any interest accrued after the application of the new interest deductibility rules to the borrowings would fall within the new interest deductibility rule. It would be important to clarify in these circumstances that it would not be necessary for a taxpayer to continue to satisfy all the conditions of section 247 where they have transitioned into the new interest deductibility regime.

Consideration must also be given to the position of a taxpayer who accrues interest on a section 247 loan in Year 1 (on which relief is available on a paid basis) but in Year 2 opts not to continue to apply section 247 treatment and instead, applies the new interest deductibility rules on which relief is available on an accruals basis. In such a scenario, future payments of interest may be made in respect of both the balance of accrued section 247 interest and the interest accrued under the new regime.

In such cases, the taxpayer should be entitled to allocate the interest payment made either against the balance of accrued section 247 interest from prior years, or against the current year interest expense subject to the new interest deductibility rules on an accrual basis. The transitional rules should not require such interest be deemed to be made against earlier periods in priority to later periods.

Such an approach would be necessary to maintain the continued flexibility for interest relief as a charge currently provided under section 247 TCA 1997. It would also ensure that relief on a transitional basis would be equalised with relief available on loans where the taxpayer has opted to retain section 247 treatment.

3.3.2. Simplification Measures for Section 247 TCA 1997

The Strawman proposal outlines that section 247 provisions would be simplified by removing the common director requirement and the requirement to flow money through the bank account of intermediate group entities, where funds are used by connected companies. No amendments have been proposed to the recovery of capital provisions in section 249.

While we welcome the proposed amendments, they do not represent meaningful simplification of section 247 TCA 1997. 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 are now 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.

Considering 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. In our submission in response to the public consultation on the Tax Treatment of Interest in Ireland in January 2025, we outlined several provisions which should be amended, including:

a. 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 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.

b. 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.

c. 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. This 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.

d. Given the protection afforded by section 817A TCA 1997, we consider that the specific anti-avoidance provision in section 247(2B) is unnecessary and should be removed.

e. 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.

f. 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 needs to be reconsidered.

g. 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.

h. 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.

3.4. Miscellaneous Items

3.4.1. Simplification Measures for Section 130 TCA 1997

It is proposed in the Feedback Statement that section 130(2)(d)(iv) TCA 1997 and its related provisions would be simplified such that distribution treatment would only be applied under section 130(2)(d)(iv) to interest on securities issued by a company and held by a 75% associated company, where the interest is not paid *"in the ordinary course of a trade"* and the lender is not resident in an EU Member State or double tax treaty jurisdiction.

We welcome the proposal to simplify section 130 TCA 1997, however, the intended scope of the amendments is unclear. For example, it would be helpful to clarify whether policymakers intend for section 130(2)(d)(iv) to no longer apply to any Case I interest paid to EU or treaty resident 75% related companies, meaning no election under section 452 TCA 1997 would be required in such cases.

Sections 452A and 845A TCA 1997 provide for elections to override the distribution treatment under section 130(2)(d)(iv) in certain circumstances and are not limited in application to interest paid to EU or double tax treaty jurisdictions. If section 130(2)(d)(iv) is amended as proposed, it would be crucial to retain the ability for a company to make an election under section 452A or 845A TCA 1997, as appropriate, where interest is paid to a non-EU or non-double tax treaty jurisdiction.

The use of different terminology in the new interest deductibility rule and the proposed amendment to section 130(2)(d)(iv) adds further confusion and complexity. On the one hand, the Strawman Proposal refers to re-drafting section 130(2)(d)(iv) so that it would apply where the interest is not paid "*in the ordinary course of a trade*". On the other hand, the text used in paragraph 5.2 of the Feedback Statement to describe the parameters of the new interest deductibility rule is that *"interest would be deductible where it is incurred in* *respect of borrowings used to fund activities or investments with the intention of directly generating profits or gains*".

3.4.2. Repeal of Section 76E TCA 1997

Section 76E TCA 1997 permits certain intermediary financing companies, known as Qualifying Financing Companies (QFCs), to obtain a deduction for interest paid in certain circumstances. Under the Strawman Proposal, section 76E would be repealed given the overlap between that section and what the new interest deductibility rule would cover.

Subject to the concerns we have outlined in paragraph 3.1 above on the proposed new interest deductibility rule, the repeal of section 76E would be largely welcome as the the very restrictive nature of section 76E means the interest relief available under that provision only applies to exceptionally limited circumstances.

Notably, section 76E financing companies are specifically excluded from the provisions of section 840A TCA 1997. If section 76E is repealed, provision should be made for financing companies within a new interest deductibility regime to also be excluded from section 840A.

If it is decided not to proceed with the new interest deductibility rule then section 76E should be amended to broaden its scope, rather than repealing it. In our submission in response to the public consultation on the Tax Treatment of Interest in Ireland in January 2025, we outlined several amendments to section 76E which are needed to enhance the attractiveness of QFC regime for multinational groups considering locating their treasury operations here, including:

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, relief for external interest should not be withdrawn from a QFC in such circumstances, in our view.

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 reconsidered.

Transitional Provisions

The Feedback Statement notes that transitional provisions would be required to provide for the treatment of accrued but unpaid interest that would have been eligible for relief on a paid basis under section 76E TCA 1997. It is proposed that:

- where a company has accrued interest on a loan which would have qualified for relief under section 76E on a paid basis had it been paid,
- the new interest deductibility rule applies to such borrowings (because section 76E no longer applies), and
- no relief has been previously granted in respect of that interest;

then relief under section 76E for the interest expense would be granted when it is paid, and any interest accrued after the commencement of the new interest deductibility rules would fall within the new regime.

It would be important to clarify that where accrued but unpaid interest arises, relief under section 76E for the interest expense would be granted when it is paid where the conditions of section 76E were satisfied at the time that the interest was accrued.

3.5. Taxation of Interest Income

3.5.1. Basis of Assessment & Transitional Provisions

Under the Strawman Proposal, the basis of assessment for Schedule D Case III and Case IV for both income tax and corporation tax purposes would be amended to provide that interest income chargeable to tax under Case III and Case IV of Schedule D would be computed on an accruals basis. The amendment would apply to interest income and interest income equivalents but not to other income chargeable to tax under Schedule D Case III or Case IV.

Consideration should be given to allowing companies to opt to apply the accruals basis of assessment on an election basis. Some companies, that are not in scope of Case I, wish to tax interest income on an accruals basis so that they can offset interest income against interest expense on an accruals basis under Case III. In contrast, our members are very concerned that this proposed change will have an adverse impact for some taxpayers as it will mean that they would be required to account for tax on interest before they receive it.

For example, start-up or scaling companies often raise funds by borrowing from angel investors. In many cases, interest on these loans is rolled up for many years on the basis that the investor will be paid when the company has reached a point where it has sufficient cashflow to pay the interest due. Up to now, such arrangements were not problematic from a tax perspective as the interest income was taxed on a paid basis. Under the Strawman Proposal, investors would be taxed going forward on an annual basis even where there is no realistic prospect of interest being paid for several years.

For corporate investors, this issue is particularly significant as preliminary corporation tax would need to be paid based on estimated accrued interest amounts that have not been received. In some cases, the venture may fail and the interest may never be paid. In those cases, bad debt relief would be worthless if the investor does not have another source of Case III/Case IV income, and they would have paid tax on income they never received.

Under the transitional provisions, it is proposed that investors in such companies would now be taxed over a five-year period on the interest which has already accrued on a loan. This means that investors would be taxed on income they have not received. Depending on the circumstances, such a measure could have a very significant impact on an investor’s cashflow. In our view, imposing such a rule on existing loan arrangements would be inequitable, as clearly an investor would not have agreed to such terms had they known they would be required to pay tax on income they have not received.

SMEs often experience difficulties in obtaining finance from banks and are therefore more reliant on alternative sources of finance. Our members believe a move to an accruals basis is likely to have a damaging effect on access to capital for start-up or scaling companies. In many cases, such companies do not have the necessary cashflow to pay interest as it falls due and investors will not enter arrangements where they will be taxed on income they have not received.

The rationale for the move to an accruals basis of assessment, as outlined in the Strawman Proposal, is unclear. In our view, there are already sufficient protections in the tax code to address concerns policymakers may have regarding any potential for tax leakage. For example, section 437 TCA 1997 addresses excessive interest payments by a close company to directors and associates and section 817C TCA 1997 restricts the deductibility of interest in the case of interest payable by a person to a connected person in certain circumstances.

Consideration must also be given to the impact of the proposed move to the accruals basis on Deposit Interest Retention Tax (DIRT). Currently, DIRT is withheld from a customer’s interest at the point of payment. Under the accruals basis, deposit holders would be required to account for tax on interest earned but not yet received.

This would introduce significant complexity and place an unnecessary compliance burden on deposit holders. It would mean that many deposit holders may be required to register for income tax and file an income tax return to account for tax on interest they have not yet received and which will ultimately be subject to DIRT. Once the interest is paid net of DIRT by the bank, the deposit holder would need to seek a refund of the tax overpaid. Such a scenario would be illogical and we strongly urge that it is reconsidered.

3.5.2. Double Taxation

The Feedback Statement notes that under an accruals basis of assessment, foreign source interest income may be assessed under Case III and chargeable to Irish tax in an earlier period than the period in which any foreign tax in respect of that income is paid.

To address the timing difference between the period in which interest income would be liable to tax in Ireland and in the foreign jurisdiction, it is proposed that relief for foreign tax on interest income may be provided in the period in which the foreign interest income is accrued, by allowing the tax return for that period to be amended when the foreign tax has ultimately been suffered.

This approach would mean that taxpayers would have to regularly amend their tax returns to avail of double tax relief where foreign tax is suffered in a different period from when the interest income is accrued. It would create an unnecessary ongoing administrative burden which would be contrary to the objective of simplifying the taxation of interest.

Furthermore, as it is proposed that the normal statutory time limits would apply, foreign tax credit would be denied in certain circumstances. This is because it is not unusual for commercial arrangements to provide for the roll up of interest with one interest payment being made at the end of the loan-term. As a credit for foreign withholding tax cannot be claimed until the withholding tax is paid, depending on the duration of the loan the taxpayer could be denied relief for the withholding tax because of the application of the statutory time limit. Denying relief for double taxation would place unnecessary additional costs on taxpayers and does not align with the objective of ensuring that Ireland's tax system for interest is fair.

For example, an Irish resident company makes a 10-year loan to an entity in a foreign jurisdiction with all the interest payable in Year 10. Under the Strawman Proposal, the company must account for tax each year on the interest income accrued in Years 1 to 10. When the interest is paid in Year 10, the foreign jurisdiction would apply withholding tax to the payment. However, as the company would not be able to apply for double taxation relief on the foreign withholding tax until after the interest is paid in Year 10, due to the operation of the four-year time limit, the company would be denied double taxation relief for the foreign tax attributable to the interest income accrued for Years 1 to 6.

The proposed approach that double tax relief would only be permitted when interest is received is contrary to the position outlined in the Commentary to the OECD Model Tax Convention. Paragraph 32.8 of the Commentary to Articles 23A and 23B of the OECD Model Tax Convention[3] provides that

[3] OECD (2019), Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing. http://dx.doi.org/10.1787/g2g972ee, C(23)-18, Paragraph 32.8 F. Timing Mismatch -

double taxation relief must be given by the State of residence even if the State of source taxes it in an earlier or later year.

An alternative approach which could be considered by policymakers is for the taxpayer to make a claim for double taxation relief in the same period that the interest income is accrued in respect of the foreign tax which is expected to be suffered. This would help reduce the compliance burden by removing the need for a taxpayer to amend their tax returns once the interest payment has been received and the foreign tax withheld. It would also help to ensure that a claim for double taxation relief would not be denied due to the operation of the four-year time limit.

3.6. Taxation and Deduction of Interest Equivalents

Under the Strawman Proposal, the scope of interest deductibility would be widened to include “interest equivalent” amounts. The meaning of interest equivalents as it would apply for the new interest deductibility rule would also apply for the purposes of the taxation of interest income.

It would be important to ensure that in widening the scope of interest deductibility to include “interest equivalent” amounts, that interest equivalent amounts would not come within the scope of the interest withholding tax provisions in section 246 TCA 1997.

Foreign exchange gains and losses and amounts arising under hedging arrangements can give rise to complexity in applying the ILR. Further consideration is necessary to address the uncertainty and complexity arising in such cases prior to widening the definition of interest.