Deloitte.

Consultation on the Tax Treatment of Interest in Ireland

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Interest Review – Public Consultation
Tax Division
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Government Buildings
Upper Merrion Street
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By email to interestreview@finance.gov.ie

Dear Sirs/Mesdames:

Re: Consultation on the Tax Treatment of Interest in Ireland

We are pleased to submit comments on behalf of Deloitte in response to your 'Consultation on the Tax Treatment of Interest in Ireland' of September 2024. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and we are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact us at 01-417-2200.

Yours sincerely,

____________________	____________________
Daryl Hanberry	**Tom Maguire**
Partner, Head of Tax and Legal	**Tax Partner**

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1. Executive Summary

The ease of access to capital in global markets and the related tax deductibility of interest and financing costs is of critical importance in facilitating Foreign Direct Investment (FDI) and Domestic Direct Investment (DDI) and maintaining Ireland's attractiveness as a location for companies' operations. The Irish corporate tax landscape has been influenced significantly by global tax reform and international tax developments in recent years. The myriad of existing rules that apply to financing, coupled with recent tax developments has resulted in significant uncertainty and complexity for taxpayers. The interest deductibility provisions in our tax law are complex in their own right. When layered on top of each other, it can be difficult to navigate such rules or provide certainty in respect of them. In light of this, we have outlined our key recommendations in respect of the taxation of interest, with a focus on enhancements to existing rules and a move towards a simpler, principle-based regime.

As an overall comment we are of the view EU Directives specifying the treatment of hybrid mismatches and the operation of the Interest Limitation Rule (ILR) are, in our view, representative of best practice internationally. To the extent that domestic rules deviate from such measures we would be of the opinion that these deviations should have a strong underlying policy rationale.

Taxation of interest income

In our view, there is no clear policy rationale that a taxpayer carrying on a business subject to tax on the income, profits or gains under either Case I or Case III should be subject to different treatment regarding the deductibility of interest incurred for the purpose of that business. To this end, our core recommendation is that the computation of Case I and Case III income should be equalised for financing activities . Case III income which is taxed under this new regime would be taxed on an accruals basis with deductions for expenses incurred wholly and exclusively for the business.

Interest deductibility

In our view, existing rules on interest deductibility (including interest as a charge on income) are complex and require enhancement and simplification. Our core recommendation is the adoption of a broader relief for interest to allow taxpayers who incur an interest expense for the purpose of their trade, profession or business to deduct such expense when computing their profits charged to tax. Under our recommended regime, relief for interest expenses incurred (whether in the course of a Case I or Case III activity) would be available as a deduction in the first instance, but with a taxpayer election to treat the interest as a charge on income (where the necessary conditions are met) and thus deductible on a paid basis. In our view the current onerous conditions attaching to section 247 TCA 1997 should be reformed and replaced with rules that are principle based. While we can appreciate that such extensive reform of section 247 TCA 1997 may take time, we would recommend at a minimum that immediate changes are made to the relief as a charge regime to remove the "common director" requirement, to allow for interest relief in the case of mergers by acquisition and to remove specific subsections identified in section 247 TCA 1997 which in our view are surplus to requirements.

In addition to our core recommendation regarding the deductibility of interest and the reforms required, we have outlined a number of other recommendations including:

- Removal of the 80% cap provided for in section 291A TCA 1997.
- Specific enhancements to section 97 TCA 1997 to clarify the availability of a deduction for interest incurred on borrowings to fund the cost of stamp duty and legal fees associated with the purchase of the rental property.
- Amendment to section 105 TCA 1997 to permit interest relief on expenses incurred in the pre letting phase.
- Enhancement of section 552(3) TCA 1997 to permit interest relief on funds borrowed to purchase land.

ATAD Interest limitation Rule

Difficulties can arise in a partnership context in identifying when parties are treated as "acting together" for the purposes of determining association. Accordingly, we would recommend that amendment be made to address these nuances. Alternatively, if the above is not possible then it would be helpful if guidance could consider the approach that we understand has been taken by Luxembourg to provide for safe harbours. In addition, we would note the following:

- The requirement to adhere to the happening of milestones to bring a debt within the meaning of "legacy debt" creates a level of inflexibility which is not required by the Directive. We recommend revision of this policy decision on this basis.
- The large-scale asset definition should be extended to include hydrogen storage facilities, battery storage facilities, grid infrastructure and modernisation, electrification projects, water infrastructure projects, recycling plants, and carbon capture facilities.

Anti-avoidance provisions and other restrictions

In our view, many anti avoidance measures which predate ATAD measures such as the ILR or Anti-Hybrid rules are now surplus to requirement and their repeal is timely. In particular, various subsections within section 130(2)(d) TCA 1997 are now in our view surplus to requirements in light of the introduction of anti-hybrid provisions and widened transfer pricing legislation. We have outlined a number of recommended amendments with respect to section 130(2)(d) TCA 1997 and have suggested repeal and reform of specific subsections to take into account of recent tax developments and to simplify the provisions.

The landscape of international business transactions is increasingly complex, and Ireland's tax framework, particularly in the area of transfer pricing, must adapt to ensure clarity, fairness, and competitiveness. In our view Transfer Pricing documentation for financing arrangements should be considered and streamlined where possible. We also recommend that safe harbours should be provided for simpler financial arrangements to provide enhanced taxpayer certainty but also to bolster the tax code's competitiveness.

Financial Services Transactions

In our view, targeted amendments may be made to section 110 TCA 1997 with respect to the treatment of interest. Adequate anti arbitrage provisions are now provided for in Part 35C TCA 1997; as such section 110(4A) TCA 1997 and consequently section 110(7) TCA 1997 are no longer required and should be repealed. In addition, amendment is recommended to permit a deduction for foreign interest withholding tax (WHT) suffered by a qualifying section 110 company in instances where full relief under Schedule 24 TCA 1997 is not available.

We would recommend various amendments to the bond washing provisions contained in Chapter 1 Part 28 TCA 1997 to reflect our recommended equalisation of the treatment of Case I and Case III activities. We would also recommend a number of targeted amendments to the stock lending and repo provisions contained in Chapter 3 Part 28 TCA 1997. Lastly, in the context of leasing companies, the legislation should be clarified to remove any uncertainty with regards to the assessment of trading status, whereby regard is had to the activity of the company in isolation as opposed to the corporate group in which the company subsists.

Withholding tax

In our opinion, consideration should be given to the redesign of the Interest withholding tax (WHT) regime in Ireland and whether it continues to represent the best manner to ensure taxpayer compliance. An overhaul and redesign of the existing interest WHT regime would look to apply such a tax in cases where there is genuine risk of tax avoidance or reputational damage e.g., payments made to zero or low tax jurisdictions. While extensive repeal of WHT and targeted measures may take some time, we would recommend a number of immediate changes to the regime as it stands. In particular, recent judicial developments now warrant a legislative amendment formalising the Revenue guidance to provide greater clarity for taxpayers with respect to interest payments made to tax transparent entities. In addition, consideration should be given to the repeal of encashment tax as a regime in Ireland in light of the burden created for stockbrokers and financial intermediaries. Where the policy intent is not to repeal the encashment tax provisions, we would recommend that consideration be given to the disapplication of the regime for regulated intermediaries.

Reporting obligations

Simplification must be at the forefront on this review and any changes or new provisions must aim to simplify the tax code and reporting obligations. We would highlight that should our recommendations to repeal certain provisions be applied then certain elements of the Form CT1 would need to be reconsidered as they may become redundant.

The return of interest paid to non-residents under section 891A TCA 1997 represents an additional compliance burden. At present it is unclear as to how the reporting is used or what benefit is being derived from this reporting. Equally it is unclear to us the exact use to which these reports are put and whether they represent a significant measure in facilitating tax compliance or ensuring the prevention of tax avoidance. In the absence of any clear policy reason for this reporting, we would recommend its removal entirely from the legislation.

Other matters for consideration

We have recommended a specific amendment to the treatment of Irish Real Estate Funds (“IREFs”) to take into account the published the Macroprudential Policy Framework for Irish Property Funds recently published by Central Bank of Ireland (“CBI”). Where such recommended changes are not adopted, we have recommended alternative reforms to the existing legislation in section 739LAA TCA 1997 to address the calculation of relief for third party debt.

2. Outline of current legislative provisions

2.1 Taxation of Interest Income

Question 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?

Trading and Badges of Trade

As an overarching comment, an assessment of whether a company is carrying on a trade can present practical difficulties and is a question of fact. Section 3(1) Taxes Consolidation Act 1997 ("TCA 1997") provides that a trade should include "*every trade, manufacture, adventure or concern in the nature of trade*." Court decisions in both Ireland and the UK have expanded on what constitutes trading in a number of instances. While some measure of Revenue guidance is currently available to taxpayers[1] as to the classification of activities as trading, we would be of the view that such guidance is not reflective of certain financing arrangements. Furthermore, it can be difficult to apply the rules in the context of intragroup lending and financing.

The above can create uncertainty for taxpayers who must look to a variety of factors in assessing trading[2]. While advance opinions may be sought on trading status[3], seeking such a ruling is time consuming both for taxpayers and for Revenue. In our view, further and more developed guidance as to what constitutes trading in financial services would be a welcome development for taxpayers.

Core recommendation: Alignment of Case I and Case III treatment for financing activities

The basis for computing taxable profits is markedly different depending on whether the profits are computed based on Case I, Case III or Case IV principles. A financial trader (computing taxable profits under Case I principles) will compute the profits or gains of the trade in accordance with generally accepted accounting practice subject to any adjustment required or authorised by law[4]. Specifically, a trading company is not entitled to relief for any "disbursements or expenses, not being money wholly and exclusively laid out or expended for the purpose of the trade or profession". Interest paid by such financial lenders should also be deductible in computing the taxable Case I profits to the extent that various conditions regarding deductibility are adhered to. A trading financial lender is thus taxed on its net tax adjusted profits.

The above treatment differentiates from the basis of assessment applicable to non-trading companies taxed under either Case III or Case IV principles. Non-trading companies (Case III and Case

[1] Part 02-02-06 - General guidance on the classification of activities as trading.

[2] For example, the number of loans, turnover on the loan book, evidence of chasing bad debts or late interest payments, management of currency risk and other related risks and expertise of the staff/employees carrying out these activities.

[3] Part 02-02-06 - General guidance on the classification of activities as trading., page 6.

[4] Section 76A TCA 1997

IV) are generally taxed on a receipt's basis[5]. However, ignoring applicable tax rates, the most significant difference between the treatment of trading and non-trading companies is in the availability of relief for expenses incurred. For the purposes of ascertaining liability to tax, income or profits chargeable under Case III are deemed to arise from a single source[6]. Income tax under Case III is computed on the full amount of the profits or income arising within the year of assessment[7]. Subject to the exception for investment companies within the remit of section 83 TCA 1997 (who may deduct expenses of management from total profits for corporation tax purposes) the general position under section 70(3) TCA 1997 is that no deductions are currently available in respect of Case III income which arises in the State unlike trading income computed under Case I principles.

Case IV income is to be computed on the full amount of the profits or gains arising in the year of assessment, in accordance with section 74 TCA 1997. It is generally understood that Case IV income is to be taxed on a net basis, as the concept of an annual profit or gain implies an excess of receipts over any expenses incurred in earning those receipts.

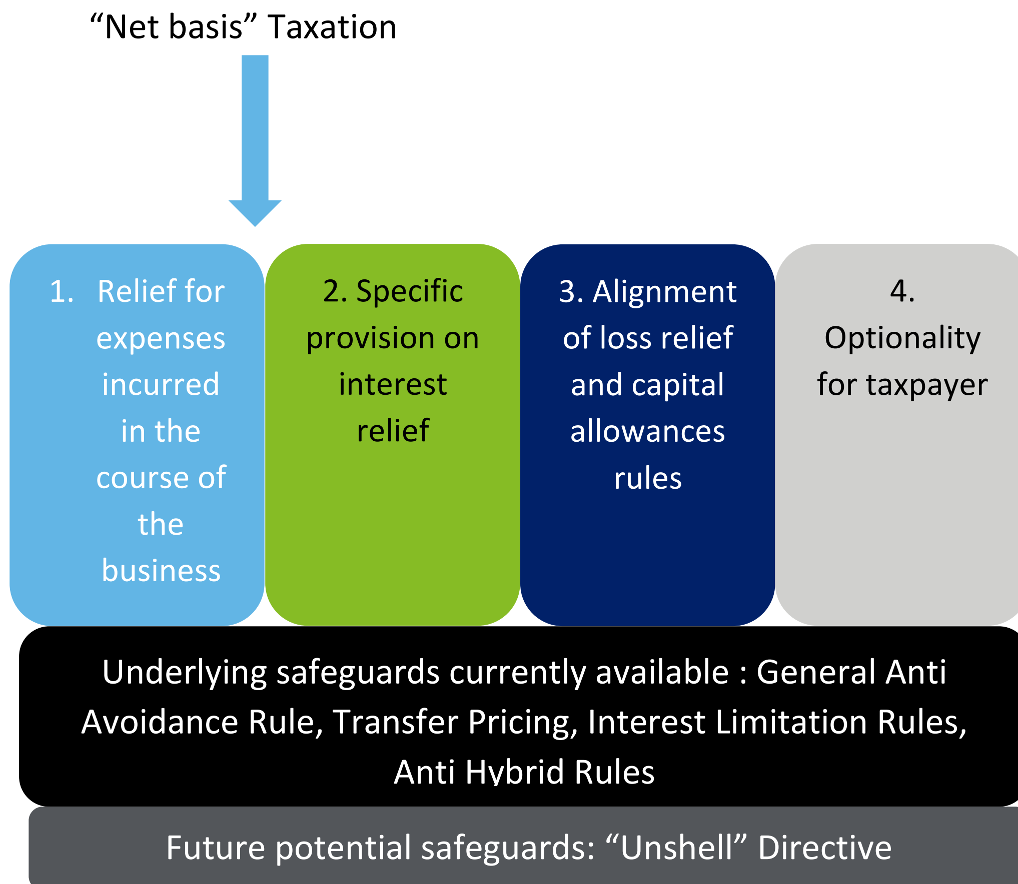
In our view a clear gap in the law exists in terms of the treatment of non-trading companies with Case III income, specifically companies who engage in financing activities, but which are not held to be trading.

We note that existing provisions in Irish law may nevertheless be availed of to obtain tax relief on interest incurred even in a Case III scenario. Specifically, section 247 TCA 1997 provides for interest relief as a charge on income. However, as noted in our response to Question 6, the existing provisions under section 247 TCA 1997 are complex and present numerous practical difficulties. In light of these difficulties, we are not of the view that the current interest as a charge regime is sufficient to bridge the gap in terms of the computation of trading versus non-trading income. Equally, we recognise that the newly enacted section 76E TCA 1997 provides a measure of relief to a Qualifying Financing Company to obtain a deduction for interest paid to an external or third-party financier (external interest), on a loan from that financier where certain conditions are satisfied. However, as noted in our response to Question 9, the provisions of section 76E TCA 1997 require further amendment to ensure that they are expansive enough to bridge the gap in terms of the Case I and Case III basis of taxation.

In our view, there is no policy reason why a company engaged in financing activities, but which is not trading, should be taxed on a gross basis rather than on net profit. Accordingly, we think it necessary to introduce a new, broader legislative regime in respect of financing activities carried on by non-trading lenders. Such a regime would apply Case I computational rules in arriving at taxable profits, with income under the new Case III basis to be taxed on an accrual's basis in line with the accounting treatment.

[5] It was held in *Grey v Tiley* 16 TC 414 that profits or gains within Schedule D Case VI (Case IV in Ireland) arise when they are received, or at least not before they are received.
[6] Section 70(1) TCA 1997.
[7] Section 70(2) TCA 1997.

The core "pillars" of our recommendation are illustrated below:



We have expanded upon the various four pillars to our recommendation below:

i. *"Net basis taxation" – Relief for expenses incurred in the course of the business.*

Under the recommended legislative change, full relief for amounts incurred wholly and exclusively for the purposes of the respective business would be deductible. Such approach would closer align the tax treatment of trading financing activities with non-trading financing activities. To facilitate such a change, amendment to section 70 TCA 1997 would likely be required and reference could be had therein to the provisions of section 81 etc TCA 1997 as needs be.

It should be noted at this juncture that existing rules in Irish tax law already provide for a measure of relief for expenses of management incurred by an investment management company within the scope of section 83 TCA 1997. In our view, our proposed regime to extend relief for expenses incurred during a financing business/non-trading financing activity should not displace the treatment provided for in section 83 TCA 1997 but would stand alongside it. An investment company for the purposes of section 83 TCA 1997 means a company whose business consists wholly or mainly of the making of investments and the principal part of whose income is derived from the making of investments. In our view, while this definition and the meaning of "making of investments" has been addressed by the courts, it may not be sufficiently wide enough to cover certain financing activities which in our view should be taxed on a net basis (e.g., intercompany financing, cash pooling etc).

Such an approach has already been adopted in the context of qualifying companies within the meaning of section 110 TCA 1997 albeit with certain additional measures that are required for securitisation activity. In our view, while not extending as far as section 110 TCA 1997, a legislative

change in line with our recommendation is not therefore without precedent. The approach permitted under section 110 TCA 1997, however, is limited in its applicability and is limited to a business of a specific size carrying on certain qualifying activities; the treatment is therefore limited in application. Notwithstanding this, we are nevertheless of the view that section 110 TCA 1997 remains necessary for encouraging inward investment in Ireland and for promotion of our financial services sector and securitisation regime. Please refer to Question 17 for our views in respect of securitisation entities and the Irish regime in this regard.

ii. "*Net basis taxation" – Specific provision on interest relief*

As a separate pillar to our overall recommendation, we would note that special consideration should be given to the treatment of interest deductibility under this new regime as in our view there are specific enhancements that should be considered separately. In this regard, please refer to our specific recommendations in Question 4.

iii. Alignment of loss relief and capital allowances rules

Care would be needed to ensure that loss relief provisions are reflective of the fact that expense deductions in Case III computations could give rise to losses. Relief for Case III losses currently only exists for "Case III trades" referring to a trade which is carried on abroad. In respect of such trades, relief under section 396(2) TCA 1997 is not available[8]. Losses arising from such a trade may therefore only be carried forward against future profits from the same trade. Accordingly, where the treatment of Case I and Case III activities (other than a foreign trade) are equalized, amendment to the loss relief provisions in TCA 1997 would need to reflect the use of losses arising under Case III and the way in which they may be utilized.

Existing loss relief rules under section 396A TCA 1997 and section 396B TCA 1997 permit the use of relevant trading losses against other relevant trading income in the same period and of the preceding period of a similar length. Such losses may also be used to shelter tax arising on other income and profits of the company in the accounting period in which the loss arises and in the immediately preceding accounting period (i.e., loss relief on a value basis). Where the treatment of Case I and Case III activities are put on an equal footing with respect to the computation of taxable income and allowable losses, existing loss relief provisions would need to be considered to ensure that there is the same flexibility with respect to loss relief applicable to Case III losses arising. Appropriate safeguards may ensure that the Case III loss relief rules are not given greater flexibility than those that already exist for Case I purposes.

Existing capital allowances provisions under Part 9 TCA 1997 would also need to be considered and amended as appropriate to permit relief for capital allowances for non-trading lenders taxable under Case III.

iv. Scope of regime and optionality for taxpayer

In our view, the regime should not be limited to companies that solely carry on financing activities. Instead, we would envisage that the new regime should apply to any companies where all or part of its activities comprise financing activities.

Lastly, we recognise that not all lenders may wish to be within the scope of this new regime and would prefer to remain within the existing Case III regime. For this reason, the new regime should be

[8] see section 396(4) TCA 1997

optional. Taxpayers who accordingly wish to remain within the older regime for Case III purposes would be continuing to be taxed on a receipt's basis with no deduction for expenses, while taxpayers opting to apply the new Case III treatment be taxed on an accrual's basis but with deductions for expenses wholly and exclusively incurred.

Benefits, risks and applicable safeguards

Closer aligned rules regarding the taxation of non-trading financing activities should significantly enhance Ireland's attractiveness as a destination for foreign investment – specifically, multinational groups who have a level of non-trading financing activity may be more likely to centralise that activity in Ireland. The recommended regime would provide certainty and clarity to taxpayers.

Consideration should be given to appropriate transitional measures and a specified time period within which the new regime should apply for upon election.

While we recognise that there may be an initial tax cost as expense relief would naturally reduce taxable profits and therefore tax receipts collected, such an impact should in our view be mitigated in the future by increased activity from companies centralising non-trading financing activity in Ireland. For example, in the case of a non-trading lender earning interest income without relief for expenses incurred, the corporation tax liability expected could easily be higher than its accounting profits before tax under existing provisions applicable to Case III income. Such a company would have to earn significant margins (in excess of 25%) to meet the cost of its corporation tax liability. This renders non-trading financing activity in Ireland economically challenging and acts as a deterrent to future investment. Our proposed regime change would bring additional attractiveness to investors.

Furthermore, we recognise that Ireland's existing trading rules and requirements for substance have been built up over time to ensure that only companies with certain activities can avail of Case I treatment. A key consideration with any legislative change is whether widening expense relief to Case III income streams would undermine this policy objective or encourage the creation of companies with minimal substance to obtain interest relief on Case III income streams. In our view however such risks should be mitigated by the existence of Transfer Pricing rules which require a level of functions, assets and risks to be present in order for a company engaged in financing activities to earn an appropriate level of return. Further, the Interest Limitation Rule and anti-hybrid rules serve as additional protections. The General Anti Avoidance Rule ("GAAR") contained in section 811C TCA 1997 would also, in our view, act to prevent the creation of companies primarily to obtain a tax advantage. Lastly, developments at an EU level are expected to act as a disincentive to the creation of entities with zero or little substance and who perform no actual economic activity. For example, we note that the "Unshell Proposal" is currently under discussion at EU level.

According to the report on tax issues issued during the Belgian presidency, a possible way forward was presented during a meeting of the Working Party on Tax Questions which took place on 11 June 2024; while it remains to be seen what form such measures will take in the future, we note that tax transparency matters have played centre stage in terms of policy developments in recent years (in particular with the introduction of DAC6); it is not inconceivable therefore that enhanced transparency on tax matters would act to mitigate the risks presented by our recommendations.

Related technical considerations

A related consequential amendment would also need to be considered with respect to the operation of the close company surcharge contained in section 440 TCA 1997. Section 440 TCA 1997 provides

for an additional charge of corporation tax on close companies at a rate of 20% of the excess of the aggregate of distributable investment income and distributable estate income over the distributions made for an accounting period[9]. Income of a company for an accounting period means the income as computed in accordance with section 434(4) TCA 1997, specifically after deducting any loss incurred in the accounting period in any trade or profession carried on by the company. Where the treatment of Case I and Case III income is equalised in accordance with our recommendations, the definition of income in accordance with section 434(4) TCA 1997 which is applied for the purpose of the close company surcharge should also be modified.

Other related points and recommendations – Treatment of Deposits held for regulatory capital purposes

Where a company is required by Irish or foreign regulatory authorities, e.g., the Central Bank, to retain a certain level of permanent capital in the business, any deposit interest which derives from the investment of such regulatory capital is assessable under Case I principles. In accordance with Revenue guidance[10], up to 120% of the regulatory capital requirement is permitted to be invested and for the deposit interest to be assessed under Case I principles. Amounts in excess of this are treated and taxed under Case III principles. We can appreciate the need for a reasonable limit on the treatment of such interest in order to prevent the placing of significant balances on deposit purely with a view to obtaining a 12.5% rate tax on income arising. Therefore, we would be of the view that a more reasonable adjustment would be to increase the current limit from 120% to between 150% and 200%. An increase to the limit would allow for the fluctuation of assets that sit underneath a management company.

Question 2

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

We have no specific comment to make with respect to the taxation of non-resident persons. Please refer to our response to Question 23 which addresses a number of points regarding the application of Interest Withholding Tax to non-resident persons.

[9] Section 440(1)(a) TCA 1997

[10] Part 02-02-07 - Deposit Interest - Whether a Trading Receipt

Question 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.

Section 812 TCA 1997 – Section 815 TCA 1997

We would question the need for such provisions given they were enacted at a time which predated the enactment of the Interest Limitation Rule, the anti-hybrids rule, Transfer Pricing and the General Anti-Avoidance Rule. Without prejudice to that point our individual comments follow.

Section 812 TCA 1997 acts to counteract arrangements where a person sells or transfers their right to receive interest or dividends on securities while retaining ownership of the securities. The effect of section 812(2) TCA 1997 is to deem income to be income of the owner of the securities.

The deeming of income required by section 812 TCA 1997 is disapplied where the owner or beneficiary as the case may be is a person carrying on a trade, profession or business, the profits of which are chargeable to income tax or corporation tax computed in accordance with Case I/II of Schedule D (section 812(5)(b) TCA 1997). We would refer the reader to our comments with respect to Question 1 and Question 27, where we have outlined our recommendations regarding a revised regime whereby the treatment of Case I and III income is equalised in the context of financing activities. We would recommend that the exclusion contained under section 812(5) TCA 1997 is widened to also include such companies carrying on such a Case III financing activity.

Section 813 TCA 1997 charges to tax under Case IV certain sums arising from transactions connected with loans or the giving of credit, whether the parties to the relevant transactions are lender and borrower or persons connected with either of them. Section 814 TCA 1997 provides that gains on disposal of a right to receive money stated in a certificate of deposit and arising from assignable deposits that are not otherwise taken into account as a trading receipt, is within the charge to income tax under Case IV Schedule D. We have no comments to make with respect to these sections.

Section 815 TCA 1997 provides that where the owner of a security sells or transfers the security and any interest payable in respect of the security is receivable otherwise than by the owner, the interest payable in respect of the security shall be deemed to have accrued on the date on which the owner acquired the security and the owner shall be chargeable to Case IV on interest accrued from that date to the date on which the security was sold or transferred. Section 815(3)(b) TCA 1997 provides that this treatment shall not apply where the owner is a person carrying on a trade which consists wholly or partly of dealing in securities, the profits of which are chargeable to income tax or corporation tax under Case I of Schedule D. We would refer the reader to our comments with respect to Question 1 and Question 27, where we have outlined our recommendations regarding a revised regime whereby the treatment of Case I and Case III income is equalised. Accordingly, we would recommend that the exclusion contained under section 815(3) TCA 1997 is widened to also include such companies carrying on a financing activity which does not fall within the remit of being a "trade".

As a general comment, section 812(4) TCA 1997 empowers Revenue to ask any person for particulars of securities owned by them to establish whether or not tax had been charged on the interest arising

from those securities or whether the sale proceeds had been charged to tax under Schedule C or Schedule D. Section 959Z TCA 1997 gives the Revenue the right within a prescribed timeframe and subject to limited exceptions to make enquiries to take such actions within their powers as are considered necessary to satisfy themselves as to the accuracy of the tax return submitted. In addition, consideration should be given to the fact that under DAC6 reporting rules, reporting is required in respect of a cross border arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax and where this lower level or exemption from tax is the main benefit or one of the main benefits which a person may reasonably expect to derive from the arrangement[11]. Based on the above factors, we would query whether section 812(4) TCA 1997 is in fact surplus to requirements and would warrant a removal in terms of simplification, as the policy rationale for its retention in section 812 TCA 1997 is not clear.

Section 817B TCA 1997 – Treatment of interest in certain circumstances

We would not recommend any amendment to Section 817B TCA 1997 at this time other than to note that this was brought about pre-ATAD and question its necessity.

2.2 Interest Deductibility

2.2.1 Interest as a trading expense

Question 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.

As a preliminary comment, we would note that elements of the current regime for the tax treatment of interest have their origins in Chapter 3 Finance Act 1974 (“FA 1974”). FA 1974 introduced many of the provisions (e.g. as a charge) we now recognise as being part of the legislation governing the treatment of interest. While many of these sections have undergone significant development since then, it is notable that Dail debates[12] on Finance Bill 1974 focussed heavily on themes of anti-avoidance. It should be remembered that these measures were introduced at a time preceding measures such as Interest Limitation Rules (“ILR”) or Transfer Pricing. While restrictions on relief for interest had a role to play in legislation enacted in 1974, we would question continued usefulness or necessity of certain provisions now.

As outlined in our response to Question 1, the basis for computing taxable profits is markedly different depending on whether the profits are computed based on Case I, Case III or Case IV principles. A trading lender (computing taxable profits under Case I principles) will compute the profits or gains of the trade in accordance with generally accepted accounting practice subject to any adjustment required or authorised by law. If a taxpayer, who is in business but is not considered to

[11] See Chapter 3A of Part 33 TCA 1997.

[12] Finance Bill, 1974: Second Stage. – Dáil Éireann (20th Dáil) – Tuesday, 9 Jul 1974 – Houses of the Oireachtas

be trading, has incurred an interest expense for the purpose of income or profits chargeable under Case III, no relief will generally be available for such expense under Case III principles.[13] Relief may be available under section 247 TCA 1997 or section 76E TCA 1997.

In our view, there is no clear policy rationale that a taxpayer carrying on a business subject to tax on the income, profits or gains under either Case I or Case III should be subject to different treatment regarding the deductibility of interest incurred for the purpose of that business. In Question 1, we presented our overall view that the treatment of Case I and Case III income should be equalised for financing activities. In accordance with our response at section 3.1, we recommended that relief for expenses incurred in the course of a business be permitted. However, we would note that relief for interest is a more complex matter. Specifically, if interest relief for Case III were reliant on section 81(2)(a) TCA 1997 to permit relief for expenses wholly and exclusively for the business then it raises the question as to how interest as a charge under section 247 TCA 1997 would be treated considering that loans drawn down under the latter section may arguably fall within the remit of "for the business" of a Case III lender.

To address these complexities, we would recommend that interest relief under our proposed regime be carved out and addressed separately by the inclusion of a new provision applicable to both Case I and Case III activities (for example, a new section 81D TCA 1997 or similar). We suggest that taxpayers, who incur an interest expense for the purpose of their trade, profession or business (i.e., non-trading lending/financing activities as outlined in Question 1,) are allowed to deduct such expense when computing their profits charged to tax. This should apply irrespective of whether the profits are chargeable under Case I or Case III.

In addition, consideration must be given to the relief available under the existing interest as a charge regime and how this relief interacts with any new provision recommended above. We have outlined our comments and recommendations with respect to the interest as a charge regime in part 2.2.3 to this document. With respect to any new regime for deductibility, we are of the view that companies should still be permitted to opt to claim relief in this manner as it has beneficial features which are of use in many commercial settings (such as acquisitions funded by debt and the ability to surrender section 247 TCA 1997 interest as a charge to loss group companies). Accordingly, the new "section 81D TCA 1997" would provide for interest relief as a deduction as the default or starting position, but companies may opt in a later subsection to apply relief as a charge on a paid basis where the respective conditions are met. Please refer to part 2.2.3 of this document for our specific recommendations and enhancements to the interest as a charge regime which would form part of the new regime for interest relief.

We can of course appreciate the need to ensure consistency in terms of whether an expense is treated as an expense deduction (and thus forming part of the trading or business losses for a company) or whether, where the conditions apply that it is treated as a charge on income (and is thus treated as relieving total profits in a given year). Accordingly, we do not think it unreasonable for taxpayers to decide which manner of relief is to be applied for a particular term i.e., it should not be possible for a company to apply deduction treatment in one year and interest as a charge treatment (where the conditions apply) in another. This would naturally result in an element of tracking required by taxpayers to identify the correct treatment to be adopted for each interest

[13] Section 70 TCA 1997

expense booked in the accounts, but such an exercise already exists whereby taxpayers must assess the relief available on their expenses as part of their yearly tax compliance process.

In our view, the widening of rules relating to interest relief should not give rise to additional tax avoidance risks or the increased risk of base erosion. The ILR and Transfer Pricing rules act as a safeguard in this regard to ensure that excessive interest deductions are not permitted, while GAAR under section 811C TCA 1997 and other related anti avoidance measures (e.g., anti-hybrid provisions) are in our view sufficient to prevent abuses.

Other relevant matters relevant to interest deductibility

Section 291A(6) TCA 1997 provides that the aggregate amount for an accounting period of allowances to be made to a company[14] and any interest incurred in connection with the provision of a specified intangible asset shall not exceed 80% of the amount of the trading income of the relevant trade carried on by the company in question. As outlined in our response to Question 12, when considering the interaction between this cap and the 30% EBITDA restriction applied by the ILR, this brings significant complexity of administration to Irish companies carrying on "relevant activities" within the meaning of section 291A(5) TCA 1997.

We would, therefore, recommend the removal of the 80% cap provided for in section 291A TCA 1997 overall. Please refer to Question 12 where this point has been addressed further in the context of the ILR.

2.2.2 Interest as a deduction against rental income

Question 5

Are there any aspect of relief 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.

Section 97(2)(e) TCA 1997 – Deductions with respect to interest

In our experience certain shortcomings exist in section 97(2)(e) TCA 1997, which provides for a deduction in respect of interest on borrowed money employed in the purchase, improvement or repair of the premises which is rented. Interest on a loan used to refinance a loan or a replacement loan used to purchase, improve, or repair a premises would not be technically deductible. In addition, certain financing costs such as arrangement fees would not be technically deductible as "interest". While Revenue Statement of Practice[15] addresses the treatment of swap arrangements, in our view, interest on refinancing should be specifically covered in section 97(2)(e) TCA 1997 as an allowable deduction. On this matter, we refer to our comments on the meaning of "interest" and our recommendations in response to Question 27.

[14] Under section 284 TCA 1997 as applied by section 291A TCA 1997

[15] Revenue Statement of Practice CT/1/91 – Tax Treatment of Payments under swap agreements. This specifically provides that "Where swap arrangements involving a regular exchange of payments are entered into for bona fide commercial purposes in respect of an interest flow which is allowable as a deduction in arriving at the profits or gains assessable under Case V of Schedule D, the receipts and payments may be treated respectively as income or expenses proper to the computation of Case V profits or gains or losses providing this approach is consistently applied. Also, see Revenue manual 04-06-21.

In addition, consideration should be given to clarifying in legislation for a full deduction in respect of interest incurred on borrowings to fund the cost of stamp duty and legal fees associated with the purchase of the rental property.

Section 97(2A) – section (2F) TCA 1997 inclusive

These subsections act to limit the interest relief in the context of money borrowed to fund the purchase, improvement or repair of a residential premises. The aforementioned subsections are disapplied by section 97(2G) TCA 1997 in relation to interest which accrues on or after 1 January 2002. Full deductibility for certain interest expenses incurred with respect to a residential premises is provided for by subsection (2G). However, subsection (2G) applies "*other than from the spouse or civil partner of the person chargeable"* thus interest on borrowings used to purchase a rented residential premises from the individual's spouse or civil partner is not an allowable deduction. Absent a change in policy to remove the denial of interest in respect of transactions between spouses, we recommend reviewing the legislation here to repeal unnecessary provisions as they relate to interest which accrues in respect of money borrowed to fund the purchase, from persons other than a spouse or civil partner, improvement or repair of the residential property.

Section 97(2J) TCA 1997

Section 97(2J) TCA 1997 operates a sliding scale restriction of interest relief for residential premises as follows:

- Interest accrued from 1 April 2009- 31 December 2016: 75%
- Interest accrued from 1 January 2017 – 31 December 2017: 80%
- Interest accrued from 1 January 2018 – 31 December 2018: 85%

Subsection 2J(c) removes the sliding scale so full relief applies for interest accrued on or after 1 January 2019. While this is subject to subsection 2G which denies a deduction for interest where the residential premises is purchased from the individual's spouse or civil partner, we recommend reviewing the legislation to remove any unnecessary provisions with the view of simplifying the law.

Section 97(2K) TCA 1997

In accordance with section 97(2K) TCA 1997 a chargeable person who lets residential property under a qualifying lease for a period of three years to tenants in receipt of social housing supports may deduct all of the interest accruing during that three-year period when computing the taxable rents from the property in question. The deduction will be computed as if the relevant interest for the specified period accrued on the day immediately following the end of the specified period.

"Specified period" in this case has its own definition and means a continuous period of three years commencing on or after 1 January 2016 but not later than 31 December 2019. The latest possible specified period in this case therefore will run from 1 January 2020 onwards, so the period will run until 31 December 2022. In addition, the reasons for retaining such a subsection given that no restrictions apply to interest accrued on or after 1 January 2019 would appear to be surplus to requirements.

In terms of legislative change therefore it would appear appropriate to repeal section 97(2K) TCA 1997 to simplify the legislation as claims for interest under this subsection have ceased to have effect from 1 January 2023. However, we would also see this subsection as an opportunity to incentivise further landlords to provide social housing. Where the policy intent is to encourage this kind of

activity, it may be appropriate to adapt the subsection to provide an increased deduction, perhaps equal to 120% of the interest actually incurred. This “super deduction” for interest would be subject to anti avoidance provisions with an appropriate clawback of tax relief claimed for landlords who fail to meet the required conditions.

Pre-letting expenditure

Section 105 TCA 1997 applies to interest on borrowed money employed in the purchase, improvement or repair of a premises and provides that no deduction shall be allowed in respect of those premises for a period before the date on which the premises are first occupied by a lessee. Interest expenses incurred prior to the letting of a premises are therefore not deductible.

Section 97A TCA 1997 provides, notwithstanding section 105 TCA 1997, for a deduction of up to €10,000 in respect of expenditure incurred on a vacant premises that would otherwise not be an allowable deduction under section 97 TCA 1997. The limit is a marked difference in treatment compared to that of pre trading expenses contained in section 82 TCA 1997, and the rationale for such difference is questionable especially in the context of interest expenses. In particular, it would not be uncommon for refurbishment on a residential property to take longer than one year including completion of full fit outs. It is entirely possible that interest expenses may be incurred by a landlord prior to the property being in fit state for habitation. Given the timeline involved in construction and fit out projects, interest on loans to fund such projects by their nature is expected to accrue in a pre-letting stage.

We can appreciate the rationale for the cap in section 97A TCA 1997 and the allowance of pre letting expenses in this context as a measure to encourage landlords to bring vacant properties back onto the rental market. However, in the context of interest expenses incurred by the landlord, the cap in section 97A TCA 1997 creates practical difficulties. If the intention behind section 105 TCA 1997 is to prohibit a chargeable person from deducting interest prior to letting out a premises, we are of the view that interest expenses being incurred with no prospect of rental income would be untenable and would not arise in the normal course of business, especially where third party funding is being sought.

We would recommend that this is addressed by a two-pronged approach: the retention and therefore extension of section 97A TCA 1997 so that it applies to expenditure incurred in periods from 1 January 2027[16] and the amendment of section 105 TCA 1997 such that interest incurred in the pre letting stage is deductible. This would provide full interest relief for the pre letting phase, while retaining the incentive for landlords to bring vacant premises back to the market to obtain relief for other expenses.

In addition, the need to amend section 105 TCA 1997 is underlined by the technical difficulties when one considers the interaction between Case V activities and section 835E TCA 1997.

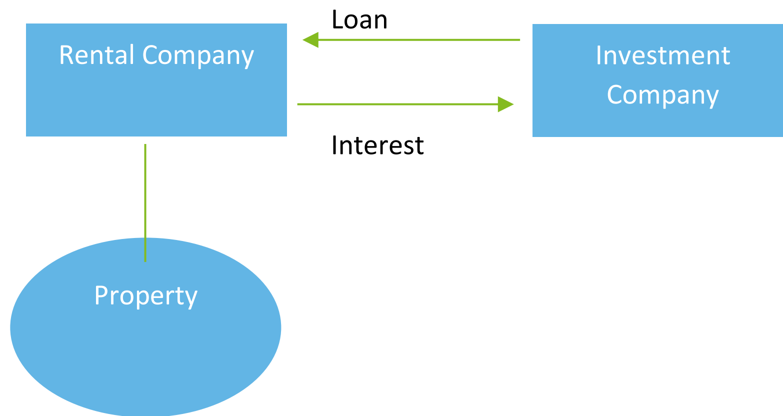
Interest expenses, Case V companies and section 835E TCA 1997

There is an inconsistency in policy dealing with the deductibility of interest in respects of rental properties and certain other payments chargeable under Case V Schedule D and their treatment for Case I or II Schedule D. In our experience such inconsistency gives rise to issues in applying the

[16] Section 97A(2) TCA 1997 as amended by FA2024 s35

modification of basic rules on transfer pricing for arrangements between qualifying persons in accordance with section 835E TCA 1997, as detailed further below.

Take for example the below:



In the above example, Rental Company and Investment Company are members of the same corporate group and are both Irish tax resident companies. For bona fide commercial reasons, Rental Company holds all Irish property interests for the group and borrows funds from Investment Company to purchase a property which is then let to a third party. Both Rental Company and Investment Company had corresponding accounting year ends of 31 December 2024. All of the interest accruing in the period ended 31 December 2024 is paid by Rental Company to Investment Company in the period, but the tenants in the Property did not take possession until June 2024 and therefore a portion of the interest expense incurred by the Rental Co was pre letting in nature and thus not deductible for Case V purposes. Interest income received by Investment Company is directly taken into account in computing the amount of Investment Company's profits or gains or losses that are chargeable to Case III of Schedule D.

Section 835E(3) TCA 1997 operates to disapply section 835C TCA 1997 in computing the amount of profits or gains or losses arising to the eligible person from the arrangement for the chargeable period where specific conditions are met. In particular:

(a) A supplier or acquirer is chargeable to tax for a chargeable period under Schedule D other than Case I or II in respect of the profits, gains or losses arising from that arrangement (referred to as the eligible person), and
(b) The supplier and the acquirer are both qualifying persons in relation to that arrangement for the chargeable period of the eligible person.

It is point (b) which is at issue here.

The definition of qualifying person spans section 835E(1) and (2) TCA 1997 and largely means a person resident in the State who is a supplier or an acquirer in relation to an arrangement who is chargeable to income tax or corporation tax, other than under Case I/II in the case of the supplier. It does not include a section 110 company.

The supplier in this instance (being Investment Company as the supplier of the loan) is chargeable to corporation tax under Case III in respect of the interest paid by Rental Co; therefore, the Investment Company is treated as a qualifying person for the purpose of section 835E TCA 1997, a finding which is relatively unproblematic.

However, in order for the Rental Company to be a qualifying person (the acquirer in relation to the arrangement), section 835E(2)(b)(i) TCA 1997 requires the consideration payable to be "directly taken into account in computing the amount of profits or gains or losses of the acquirer that are chargeable to income tax or corporation tax under Schedule D for the chargeable period". While the interest incurred at the point in time during which a tenant has taken possession is deductible in full for Rental Company, such interest is not deductible (or at best is partly deductible under section 97A TCA 1997) as a pre letting expense.

Section 835E TCA 1997 does not distinguish between elements of the consideration payable to identify deductible versus non-deductible expenses and speaks only to "the consideration payable" as a single amount. It follows that where the interest is not deductible in part, that the consideration payable is not "taken into account" within the context of section 835E TCA 1997. This creates difficulties for taxpayers, as it brings doubt regarding the ability of groups to avail of the domestic Transfer Pricing exclusion provided for under section 835E TCA 1997. In our opinion, such an outcome cannot have been intended by the legislature as the rationale for section 835E TCA 1997 is to disapply transfer pricing rules in the context of purely domestic arrangements. In our view, such an outcome can be remedied through amendment to section 105 TCA 1997 to permit relief for interest incurred in the pre letting phase as outlined in our earlier recommendations.

2.2.3 Interest as a charge

Question 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 adverse consequences of same.

Question 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.

As noted in our comments at part 2.2.1 of this document, we are of the view that the interest regime in Ireland needs to be enhanced through the insertion of a new section addressing relief for interest expenses. Specifically, a new provision should firstly give relief for amounts incurred for both Case I and Case III activities, while a later subsection should permit taxpayers to opt to claim interest as a charge on income where certain conditions are met.

The conditions attaching to relief under the current section 247 TCA 1997 are, in our view, overly onerous. Various amendments made since the first introduction of many of the provisions in FA 1974, particularly in Finance Act 2006 ("FA 2006") and Finance Act 2011 ("FA 2011") have rendered the section relatively difficult to apply in practice. The Transfer Pricing rules, the ILR and Controlled Foreign Company rules did not exist when section 247 TCA 1997 was originally introduced. With

these rules now in place, many of the reasons associated with the complexity of section 247 TCA 1997 are no longer necessary.

In our view the current onerous conditions attaching to section 247 TCA 1997 should be reformed and replaced with rules that are principle based so that relief is allowable if the interest is laid out or expended for the purposes of the trade or business concerned. This new legislation should provide the taxpayer with the option to elect to treat the interest expense as a charge on income (see our comments in response to Question 4 whereby interest relief as a deduction would be the default or starting position with an option for the taxpayer to elect for relief as a charge). Should relief for interest as a charge be opted for then this would mean that the taxpayer would claim relief for the interest when paid against the total profits of the trade or business. The rules contained in section 243 or section 243A/243B TCA 1997 as appropriate would be applicable.

The taxpayer could be required to elect on their tax return for the respective chargeable periods in which the loan is drawn down with that election applying for the appropriate duration. Should such optionality be considered it will also be necessary to consider consequential amendments to other provisions of the Tax Code, particularly the charges on income provisions contained in section 243, section 243A and section 243B TCA 1997.

Where complete overhaul of the existing section 247 TCA 1997 requirements is not favoured, we would at a minimum suggest the amendments set out hereunder to make the legislation more workable. Please note that our comments below are without prejudice to the generality of our overall recommendation that section 247 TCA 1997 be replaced with a principle-based rule.

Section 247(2) TCA 1997 – specific use of monies defrayed

Several conditions must be satisfied at the time the proceeds of the loan are defrayed in accordance with section 247(2) TCA 1997. This subsection provides that section 247 TCA 1997 relief is to apply to a loan to a company to defray money applied for specified purposes being:

a. In acquiring any part of the ordinary share capital of a company meeting certain conditions[17],
b. In lending to a company referred to in (a) where the monies are used wholly and exclusively for specified purposes[18];
c. In lending to a company where the monies are used wholly and exclusively by a company connected with that company;
d. In lending to a company whose business consists wholly or mainly of holding stocks, shares or securities in a trading company indirectly through or more intermediate holding companies and the monies are on lent to, and used by, a company connected with that company; or

[17] A trading company, a company whose income consists wholly or mainly from Irish rental profits, a holding company whose business consists wholly or mainly of the holding of stocks, securities or shares directly in trading or rental companies, or a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies

[18] In the case of a trading company, for the purposes its trade. In the case of a company whose income consists wholly or mainly of Irish rental profits, in the purchase, improvement or repair to premises to which the profits relate. In the case of a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities directly in such trading or rental companies, as the case may be, for the purposes of holding such stock, shares or securities in such trading or rental companies. In the case of a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company indirectly or through one or more intermediate holding companies, for the purposes of acquiring and holding such stock, shares or securities in a trading company or trading companies indirectly through one or more intermediate holding companies.

e. In paying off another loan which was applied in the acquisition of ordinary shares or in the on lending in the circumstances outlined above.

Firstly, we would note that the conditions outlined in ss2 have expanded considerably since the consolidation process in TCA 1997. The first consolidated iteration of such conditions is reproduced below to illustrate this point:

(2) This section shall apply to a loan to a company (in this section and in section 249(1) referred to as ''the investing company'') to defray money applied—

(a) in acquiring any part of the ordinary share capital of—

(i) a company which exists wholly or mainly for the purpose of carrying on a trade or trades or a company whose income consists wholly or mainly of profits or gains chargeable under Case V of Schedule D, or

(ii) a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a company referred to in subparagraph (i),

(b) in lending to a company referred to in paragraph (a) money which is used wholly and exclusively for the purposes of the trade or business of the company or of a connected company, or

(c) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (on the assumption, if the loan was free of interest, that it carried interest)[19]

As is illustrated above, successive amendments to section 247 TCA 1997 have expanded upon the conditions contained in ss2 considerably, most notably by section 24 Finance Act 2017 ("FA2017") which took effect for a loan made on or after 19 October 2017. The amendments serve to provide relief where a company indirectly holds shares via one or more intermediate holding companies, and in accordance with the explanatory memorandum to FA2017 the changes reflect the administrative practice adopted by Revenue.

While these changes put on a legislative footing the administrative practice, we would note that the inclusion of intermediate holding companies as part of section 247 TCA 1997 does not go far enough in addressing the wide range of potential routes to acquisition favoured by corporate groups. In the context of US acquisitions and investment in Ireland, a commonly understood preferred structure is that of a merger whereby the acquiring company would merge with the target company. However, the provisions of section 247 TCA 1997 are such that it is not possible to engage in a merger and retain relief under section 247 TCA 1997. Such an outcome arises notwithstanding the Revenue confirmation that the acquisition of ordinary shares through a court approved scheme of arrangement pursuant to Chapter 1 of Part 9 of the Companies Act 2014 will not preclude satisfaction of the requirement that money is defrayed in the acquisition of ordinary share capital[20].

As an overarching comment, we cannot see the policy rationale for the continued imposition of specific conditions as to the use of the monies in such a restrictive manner. The treatment of interest falling under section 247 TCA 1997 and the conditions to be met before relief is available differs substantially with the requirements and conditions to be met for interest treated as a trading

[19] Taxes Consolidation Act 1997 – No. 39 of 1997 – Houses of the Oireachtas
[20] Part 08-02-01 - Charges on income for Corporation Tax purposes at para 3.2.3

expense in accordance with section 81 TCA 1997, notwithstanding both provisions are subject to the Interest Limitation Rule (ILR). While we can appreciate that the above situations are not exactly like for like (as section 247 interest may be used to reduce all taxable income including income taxed at 25% rather than being limited to trading income taxable at 12.5%), it is difficult to see the policy rationale for the overly complex conditions in section 247 TCA 1997 which have built up over time.

Prior to the introduction of BEPS and Transfer Pricing measures, such restrictive provisions may be arguably necessary to ensure that corporate groups do not introduce excessive interest relief either at the level of a Holding company or via debt push down with the effect that the tax base in Ireland could be eroded. However, with Transfer Pricing provisions, anti-hybrid provisions and the ILR, we see no policy rationale for the continued imposition of these conditions.

Regard may be had to the treatment of interest in the UK in a manner similar to that contained in section 442(5) of Corporation Tax Act 2009. Under this section, interest paid by a company must be disallowed if the purpose of paying it fails an unallowable purpose test i.e., the purpose is one which is not amongst the business or other commercial purposes of the company. Hence, if the main or one of the main purposes of being party to a debt and paying interest is "tax avoidance" then this is an unallowable purpose, and the corresponding interest is denied as a deduction for corporation tax purposes.

Qualifying Loan conditions

Section 247(3) TCA 1997 provides that a loan will be a qualifying loan where specific conditions are met. These conditions are unnecessarily complex in our view:

- When the interest is paid the investing company must have a material interest[21] in the company.
- During the period from the application of the loan to the time when the interest was paid, at least one director of the investing company must also have been a director of the investee company,
- During the period from the application of the loan to the time when interest was paid, the investing company must not have recovered any capital or deemed to recover any capital from the company or from a connected company. The recovery of capital rules outlined in section 249 TCA 1997 are considered further in our submission in response to question 8.

In particular, the "common director" requirement that exists in section 247(3)(b) TCA 1997 should be removed given that this poses an administrative burden without an easily discernible policy rationale for allowing a deduction for interest as a charge.

Section 247(4B) – (4D) TCA 1997

Section 247(4B) TCA 1997 provides that where a company provides funds to another company and that other company uses the funds to acquire specified intangible assets for the purposes of section 291A TCA 1997, there will be a restriction on the amount of the interest deductible. The interest deductible in this respect cannot exceed the amount of interest that would be deductible in the hands of the other company (i.e., the 80% cap in section 291A TCA 1997 applies). Section 247(4C) TCA 1997 relates to ss(4B) and provides that any excess interest that has not been relieved due to the above restriction will be carried forward to the next accounting period. Section 247(4D) TCA 1997

[21] Defined in S247(1) TCA 1997 as the beneficial ownership of, or the ability to control, directly or indirectly, more than 5% of the ordinary share capital of the company.

provides for an apportionment of amounts where the corresponding accounting period of the investing company and the other company do not coincide and applies for the purpose of computing any restriction required under section 247(4B) TCA 1997.

In this regard we refer to our response to Question 4, where we recommend the removal of the 80% cap in assessing the level of relief under section 291A TCA 1997. It follows that the removal of an 80% cap on section 291A TCA 1997 would render subsections 4B, 4C and 4D unnecessary. However, transitional measures would be needed to ensure that excess and unrelieved interest carried forward is not lost.

Section 247 (4A) & (4E) TCA 1997

Section 247(4E) TCA 1997 broadly denies relief in respect of interest on intra group loan used to finance the purchase of certain assets from another group company. Similarly, the anti–avoidance rules in section 247(4A) TCA 1997 and section 840A TCA 1997 deny interest relief on loans from connected parties which are used, or which are ultimately used, to finance asset acquisitions from connected parties. The purpose of all these rules is to prevent the Irish tax base from being eroded. In our view, the ILR and Transfer Pricing rules should be sufficient to prevent excessive base erosion and therefore consideration should be given to removing these provisions.

If the policy intention is to retain the current section 247 TCA 1997 then we ask that our comments set out above are considered with the aim that the section is simplified.

2.2.4 Recovery of capital

Question 8

Are there any aspects ofc the provisions in section 249 which could be simplified or are no longer required? Please explain, noting both the benefits and adverse consequences of same.

Where, after the application of the loan proceeds, the investing company recovers an amount of capital from the company concerned or from a connected company or is deemed to recover an amount of capital from the company concerned, without using it to reduce the loan to which section 247 TCA 1997 applies, the company is treated as having repaid the borrowings to the extent of the capital recovered. This means that the investing company is denied relief in respect of the interest on that part of the loan which corresponds to the capital recovered or deemed to be recovered. Under these rules, certain routine and common bona fide transactions such as repaying intragroup debt, sales, liquidations or internal restructurings can result in denial of interest relief.

For example, section 249(2)(aa) TCA 1997 deals with situations where the company invested in is a holding company within the meaning of section 247(2)(a)(iii), (iv) or (v) TCA 1997 and that holding company has recovered capital from one of its subsidiaries. Section 247(2)(a)(iii) TCA 1997 deals with a company acquiring ordinary share capital of another company and that company's business consists wholly/mainly of holding of stocks/securities/shares in a third company which exists wholly or mainly for the purpose of carrying on a trade/trades. Ss2(a)(iv) provides for a company acquiring the ordinary share capital of another company who holds a trading company indirectly through an intermediate holding company or companies. Ss2(a)(v) deals with a company acquiring another company whose business consists wholly/mainly of holding stocks etc directly in a rental company.

In such cases, broadly the investing company is deemed to have recovered capital where the holding company invested in has recovered capital from its subsidiaries and that capital recovered is not applied by the holding company:

- to repay any loan or part of loan made to it by the investing company
- the redemption, repayment of purchase of any of its ordinary share capital acquired by the investing company
- acquiring share capital or lending in accordance with section 247(2)(a) or (b) TCA 1997
- in repaying a qualifying loan under section 247 TCA 1997

In accordance with section 249(2)(aa)(ii) TCA 1997 such holding company is treated as having recovered capital where:

- it receives consideration for sale of any part of the other company,
- Other company repays a loan or advance from that company other than a specified loan
- it receives consideration for assigning any debt due

Under these current recovery of capital rules certain routine bona fide transactions such as repaying intra–group debt or internal restructurings can result in denial of interest relief.

If the rules for relief for interest as a charge are reformed and replaced with rules that are principle based so that relief is allowable if the interest is incurred and paid for the purposes of the trade or business concerned, the complexities associated with section 249 TCA 1997 should be relieved. If the legislature saw it necessary then grandfathering of the recovery of capital rules could be brought about to ensure that they only apply to previous loans drawn down under older section 247 TCA 1997 rules (prior to the adoption of a principle-based approach) and ensure that recovery of capital rules do not apply to new loan arrangements entered into under the principle-based approach to be adopted. We would argue that such an approach would not be in the interests of bringing simplification to the respective legislative provisions.

If policy is to retain the current rules, in addition to our recommendations in response to question 7, we recommend at a minimum that a simpler test to permit bona fide reorganisations carried out for commercial reasons and is not part of any scheme or arrangement the main purpose of which is the avoidance of tax be introduced.

2.2.5 Interest paid by certain qualifying financing companies.

Question 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 or same.

We note the intent behind section 76E TCA 1997 as introduced into law by FA No 2 2023 as being to provide for interest relief in the context of intercompany financing to subsidiaries for a qualifying business purpose[22]. As previously outlined in our response to Question 1 and Question 4, we

[22] See the explanatory memorandum to Finance Bill No 2 2023 as enacted (accessible here)

recommend that the treatment of Case I and Case III income be equalised and a general provision be put in place permitting a tax deduction for all taxpayers in respect of interest incurred wholly and exclusively for a trade, profession or business. Where such a regime is adopted, section 76E TCA 1997 could be repealed.

Without prejudice to the generality of the above, we have outlined a number of technical issues contained within section 76E TCA 1997.

Draw down of external vs intercompany debt

Section 76E(4) TCA 1997 permits a qualifying financing company to deduct the amount of external interest paid by that company in that chargeable period "as has arisen to such portion of the external loan that is, in accordance with subsection (6), matched with that relevant loan."

External interest is defined in section 76E(1) TCA 1997 as meaning the amount of interest payable on an external loan, while an external loan itself has the following specific definition:

> "*external loan", subject to subsection (11), in respect of a company, means a loan from a person who—*
>
> > *(a)does not have the beneficial ownership of, or the ability to control, directly or through the medium of a connected company or connected companies or by any other indirect means, more than 5 per cent of the ordinary share capital of the company, and*
> > *(b)is not an associated enterprise of the company;*

Accordingly, the interest available for relief is restricted to solely third-party debt, and no deduction applies for interest paid on foot of related party debt. The rationale for excluding related party debt in this manner is not clear to us. Where relief has been restricted solely to third party debt with a view to ensuring excessive interest deductions are not created by intercompany lending, we would point to the ILR contained in Part 35D TCA 1997 which acts to restrict interest relief on all lending, irrespective of whether drawn down from a third party or intragroup.

Referring to the definition of "external loan" noted above, "control" is to be construed in accordance with section 432 TCA 1997. Section 432(2) TCA 1997 is of relevance here, providing as follows:

(2) For the purposes of this Part, a person shall be taken to have control of a company if such person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if such person possesses or is entitled to acquire—

> *(a)the greater part of the share capital or issued share capital of the company or of the voting power in the company,*
>
> *(b)such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without regard to any rights which such person or any other person has as a loan creditor), entitle such person to receive the greater part of the amount so distributed, or*
>
> *(c)such rights as would, in the event of the winding up of the company or in any other circumstances, entitle such person to receive the greater part of the assets of the company which would then be available for distribution among the participators.*

While a loan may be drawn down from a third-party lender, the inclusion of the word "control" in the definition of external loan for the purposes of section 76E TCA 1997 does not take into account common financing provisions entered into by such lenders. In particular, a common scenario whereby a third-party lender may look to create a charge over the shares of the company could result in the third-party lender being treated as having "control" and thus treat the loan as falling outside the definition of "external loan". Such an outcome cannot, in our view, have been intended by the legislature and acts to limit the applicability of section 76E TCA 1997 to normal financing arrangements.

Definition of qualifying financing company

Section 76E(1) TCA 1997 provides that a qualifying financing company is to be defined as meaning a company that –

> (a) holds a direct ownership of 75 per cent or more of the ordinary share capital of one or more than one qualifying subsidiary, or intermediate holding company, as the case may be,
>
> (b)borrows money for the purpose of on-lending that money by way of the making of relevant loans to one or more than one qualifying subsidiary, or indirect qualifying subsidiary, as the case may be, and
>
> (c)apart from activities ancillary to those specified in subparagraphs (a) and (b), carries on no other activities;

The requirement for a qualifying financing company to carry on "no other activities" apart from the activities noted at (a) and (b) or ancillary to those activities is, in our view, overly restrictive. While we can appreciate that the intention may be to ensure that relief under section 76E TCA 1997 is not drafted in an overly broad fashion, the definition of "qualifying financing company" is such that a company may be denied relief unnecessarily. To be treated as a qualifying financing company, the company in question must firstly hold a direct ownership of 75% or more in a qualifying subsidiary and also borrow money for the purpose of on lending to one or more of those qualifying subsidiaries. Where other activities are carried on, the company is not treated as a qualifying financing company. This can give rise to an unintended consequence where the company in question has a direct ownership in other companies below the 75% threshold, even where no lending is made to such entities. Take for example Company A, who holds a 100% direct ownership in Company B and a 50% direct ownership in Company C. Company A on lends to Company B who for the purposes of section 76E TCA 1997 is treated as a "qualifying subsidiary". However, Company A does not lend any funds to Company C and provides no management company type services to Company C (i.e., Company A purely acts as a 50% holding company to Company C in the period and performs no other activity in this regard). Notwithstanding this fact pattern, the definition of qualifying financing company means that Company A cannot avail of the treatment under section 76E TCA 1997. Any relief under section 76E TCA 1997 is therefore not available to Company A even where all other requirements are met.

In our view, such a restriction is not required, and limits the overall usefulness of section 76E TCA 1997 as a relieving measure.

Lastly, we would be of the view that a reference to required ownership of 75% or more would appear too high. Our recommendation is that the ownership threshold is reduced to the standard required for consolidation for accounting purposes.

Definition of "qualifying subsidiary"

Section 76E(1) TCA 1997 defines a "qualifying subsidiary" in respect of a qualifying financing company as meaning a company –

a. *That exists wholly or mainly for the purpose of carrying on a trade or trades,*
b. *That is –*
   i. *Tax resident in a Member State or an EEA State, or*
   ii. *Regarded as resident in a territory under arrangements having force of law by virtue of section 826(1) made with the government of that territory,*
   and
c. *In which a qualifying financing company holds a direct ownership of 75% or more of the ordinary share capital of the company.*

It is the requirement under (c) above which we would consider to be unnecessarily narrow, particularly as it refers to "direct" ownership. This follows on from comments made earlier regarding qualifying financing companies. The inclusion of the word "direct" means that a qualifying financing company cannot on lend to sub-subsidiaries further down a group structure, notwithstanding that such entities may meet the other criteria to be considered a qualifying subsidiary. The policy rationale for limiting the applicability of section 76E TCA 1997 to direct subsidiaries as opposed to including indirect subsidiaries is unclear to us and should be amended.

2.2.6 Interest as a deduction against capital gains

Question 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.

Generally, interest on borrowings to acquire an asset is not an allowable deduction in calculating the chargeable gains or allowable losses on disposal of such asset. The one exception to this is contained in section 552(3)(a) TCA 1997. This section provides that where there is expenditure "on the construction of any building, structure or works" and interest is incurred on borrowings used to fund such expenditure which has been "charged to capital", the interest expense may be an allowable deduction (allowed as part of the base cost) for CGT purposes.

The issue which arises is the extent to which a company may obtain tax relief for interest on the acquisition of a property or piece of land, as section 552(3) TCA 1997 is prescriptive in that the interest must arise on a loan on the construction phase only. In our view, interest incurred on funds borrowed to purchase the property or land should also be deductible under section 552(3) TCA 1997 from a policy perspective. We can appreciate that an amendment to section 552(3) TCA 1997 to permit a deduction for interest incurred by a company on borrowed money used to purchase land may have a knock-on effect in terms of capital gains tax receipts by the Exchequer. However, such an amendment could encourage more companies to engage in purchases of land and buildings with a view to renovation and onward sale of developed assets. By facilitating a deduction for interest on borrowed money used to fund the acquisition of land and where such interest is capitalised to the

company's accounts, such an amendment would make the purchase of potentially previously unused land and buildings enhancement to same and onward sale more attractive to a greater range of companies.

Question 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?

As outlined in our responses to Question 4 and to Question 27, we are of the view that a broader, more general approach to interest relief should be considered. Such a general, broad approach would allow a tax deduction for all taxpayers, irrespective of whether they are trading or non-trading in respect of interest incurred for the purpose of a business.

2.3 ATAD Interest Limitation Rule

Question 12

Are there any aspects of the ILR which could be enhanced or simplified, within the confines of ATAD? Please explain, nothing both the benefits and any adverse consequences of same.

Question 13

When implementing ATAD, Ireland made policy choices, based on preexisting 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 a 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 the 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 be removed or simplified? Please explain, noting both the benefits and any adverse consequences of same.

Overall comments – Recent European Commission evaluation of the Anti-Tax Avoidance Directive ("ATAD")[23]

As a general comment, we would draw attention to the response delivered on behalf of the Deloitte firms[24] across Europe to the recent ATAD evaluation carried out by the European Commission[25]. While the review addressed various elements beyond the ILR, we would reiterate our views in relation to the below:

- Adjustment of the ILR to the interest environment: The interest rate environment has changed in recent years, with debt financing becoming increasingly costly for many companies. This raises the overall question as to the continued appropriateness of the 30% limit on interest restriction currently imposed by Part 35D TCA 1997 and ATAD. We would reiterate our call on the EU Commission to adjust the benchmark ratios to the changing interest rate environment by increasing these ratios to take into account interest rate growth.
- Earnings before tax, depreciation and amortisation ("EBITDA"): The operation of the ILR rests on the calculation of EBITDA using a prescribed formula; EBITDA in the context of Part 35D TCA 1997 therefore departs from accounting concepts of EBITDA and excludes exempt income. Given the introduction of the Participation exemption on foreign dividends from 1 January 2025[26], the removal of dividend income from EBITDA for ILR purposes is expected to negatively impact on headquartered entities in Ireland in receipt of foreign dividend income within the remit of this participation exemption. From an economic point of view, the exclusion of exempt income does not appear justified. Indeed, the ILR looks to establish a limit to what, reasonably, an entity should assume as debt based on its ability to generate income, irrespective of whether the income received by the entity is taxable or exempt.

We appreciate that the Irish legislature is constrained by the provisions of the Directive and is thus restricted from making changes to the prescribed 30% limit. We would nevertheless reiterate our view that the aforementioned limit should be reconsidered and would recommend that the Department of Finance bear this in mind for any future negotiation or revisions to the Directive discussed at EU level. With respect to the second point above, Article 4.1 of ATAD refers to EBITDA in much simpler terms (taxpayer's earnings before interest, tax, depreciation and amortisation) and is therefore silent as to whether the earnings are to be exempt or taxable. It should be possible for the definition of EBITDA contained in law[27] to be revised to take into account exempt income and in particular foreign dividends which now fall under the participation exemption.

Associated enterprises

The operation of certain aspects of the ILR (for example the Group Ratio[28] and Equity Ratio[29]) require the identification of transactions with "associated enterprises", relevant in particular in the context of a Single Company Worldwide Group[30]. For the purpose of the Group ratio and Equity ratio rules,

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[23] Council Directive (EU) 2016/11641 of 12 July 2016, as amended by Council Directive (EU) 2017/9522 of 29 May 2017
[24] Accessible here
[25] European Commission Call for Evidence on the Evaluation of Council Directive (EU) 2016/11641 of 12 July 2016, as amended by Council Directive (EU) 2017/9522 of 29 May 2017
[26] Section 831B TCA 1997
[27] Section 835AAB(5) TCA 1997
[28] Section 835AAG TCA 1997
[29] Section 835AAI TCA 1997
[30] See section 835AAY TCA 1997

the definition of an associated enterprise has the same meaning as it has in Part 35C TCA 1997, other than in Chapters 2, 3 and 8 of that Part and in the application of that Part to hybrid entities. In this regard, two enterprises are to be treated as "associated enterprises[31]" where:

a. One enterprise (directly or indirectly) possesses or is beneficially entitled to not less than 25% of the issued share capital of the other (or in the case of an entity without share capital, not less than a 25% interest in the ownership rights of the other);
b. One enterprise (directly or indirectly) is entitled to exercise not less than 25% of the voting power in the other (where the enterprise is an entity);
c. One enterprise (directly or indirectly) holds such rights as would entitle it (directly or indirectly) to receive not less than 25% of the profits of the other if the whole of its profits were distributed (or, where other enterprise is not a company, holds such rights as would entitle it, directly or indirectly to not less than a 25% share in the profits of the other);
d. Both enterprises are associated (under any of the above tests) with the same third enterprise;
e. Both enterprises are entities that are included in the same consolidated group for financial accounting purposes (or would be so included if financial statements were prepared under International Accounting Standards), or
f. One enterprise has significant influence in the management of the other enterprise.

Section 835AA(3) TCA 1997 is notable, in that where an enterprise "acts together" with another enterprise with respect to voting rights, share ownership rights or similar ownership rights it is treated as possessing, holding or being entitled to the rights of the other enterprise. The rights and powers are therefore aggregated in the case of enterprises acting together, a phrase which causes some difficulty with respect of the operation of the ILR. The phrase "acts together" is not defined further in Part 35C TCA 1997, while ATAD2[32] is similarly silent on the matter in Article 1(2) as follows:

"a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person".

Revenue guidance on the matter[33] looks to the BEPS Action 2 report, noting that for the acting together test to apply, each case must be considered on its own merits and is a question of fact. All factors should be taken into account such as the particulars of the legal arrangement between the parties, the materiality of the arrangement and the specific terms of the investment mandate.

Notwithstanding the Revenue guidance on the matter, a particular issue has arisen with respect to the attribution of rights and powers to members of partnerships as distinct from shareholders of companies when construing "associated enterprises" for interest limitation rule purposes (also relevant for the application of the anti-hybrid rules). Where a partnership (generally a limited partnership) is a significant investor in a company (e.g., a target company for a private equity fund) or a company formed to hold further portfolio investments, an assessment must be undertaken to

[31] See section 835AA(2) TCA 1997
[32] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries
[33] See Revenue guidance on the matter here, at Part 7.1.2.

determine whether any of the partners are "associated" with that company for the purposes of the above rules.

Revenue guidance on this matter[34] notes that where an enterprise (partner) directly or indirectly, possesses or is beneficially entitled to not less than 25% of the ownership rights, voting power or rights to profits in an Irish partnership that enterprise (partner) and the Irish partnership shall be "associated enterprises" in respect of each other. As an Irish partnership does not have separate legal personality, it cannot itself own assets. Irish partnership property is instead held by the partners as tenants in common. Under Irish partnership law, partners are not legally entitled individually to exercise proprietary rights over any of the partnership assets but rather they are collectively entitled to each and every asset of the partnership, in which each of them has an undivided share. Therefore, in applying the "associated enterprises" test where an Irish partnership holds a subsidiary entity (or entities) it is necessary to look through the partnership to the partners when examining the ownership rights, voting rights and/or rights to profits in that subsidiary entity. It follows that where a partnership holds an investment of 25 per cent or more in a subsidiary entity each partner and the subsidiary entity shall be regarded as "associated enterprises" in respect of each other.

The BEPS Action 2 report in particular states that the purpose of the "acting together" requirement is to prevent taxpayers from avoiding the related party or control group requirements by transferring their voting interest or equity interests to another person, who continues to act under their direction in relation to those interests. Although Irish law might regard all partners in a partnership as having an undivided share in all the partnership property, it is not necessary for that to result in each of the partners being treated as owning all of the assets for the above rules to be effective. This seems to be a disproportionate burden to impose where a "substantial risk of avoiding taxation" (see Recital 12 ATAD2) has not been identified.

The acting together provisions would imply that where there are two investors in an Irish entity acting together with respect to that Irish entity, this would lead to them being associated vis-à-vis the Irish entity. However, in a partnership context, and specifically in the context of a limited partnership, we submit that the rules regarding associated enterprises need to be amended in the context of the ILR (and by extension the anti-hybrid rules). We would note that this amendment has already taken place in the context of reverse hybrid entities at section 835AVA(2)(c) TCA 1997 which specifies that two entities will not be treated as acting together with respect to voting rights, share ownership rights or similar ownership rights solely because they are partners in a partnership. We would recommend a similar amendment be made to address the point with respect to association in the context of the ILR.

Alternatively, if the above is not possible then it would be helpful if guidance could consider the approach that we understand has been taken by Luxembourg to provide for safe harbours. Luxembourg tax law (Article 168ter of the Luxembourg Income Tax Law) is understood to provide a safe harbour rule according to which an investor (an individual or an entity) that directly or indirectly owns less than 10% of the shares or units in an investment fund and that is entitled to less than 10% of the fund's profits is considered not to act together with other investors, unless there is evidence to the contrary.

[34] See Revenue guidance on the matter here, at Part 3.5.1

Application of the legacy debt exemption

Section 835AAB(3) TCA 1997 reduces the net interest equivalent (and thus exceeding borrowing costs subject to the appropriate restriction, if applicable) by the amount of any legacy debt incurred by the relevant entity. Interest incurred in respect of legacy debt is therefore excluded from the scope of the ILR.

Section 835AAB(1) TCA 1997 defines "legacy debt" as follows:

> *"legacy debt" means a debt the terms of which were agreed before 17 June 2016, together with any contract entered into before or after that date with the sole purpose of eliminating or reducing interest rate risk on that debt, but where the terms of that debt include provision for an amount of principal not yet drawn down at that date, such principal shall only be considered an agreed term of that debt to the extent the lender is legally obliged to make available such amounts upon the happening of milestones as set out in the terms agreed before 17 June 2016*

The above definition of legacy debt permits the use of rolling credit facilities but only where debt is provided upon the happening of milestones, defined in section 835AAB(1) TCA 1997 as meaning "a pre-determined deliverable or project phase defined in the terms of a debt, connected with the drawdown of principal, but does not include a call by the borrower for drawdown of principal."

The mechanism for the drawing down of debt in this manner is not reflective of the reality of many corporate financing arrangements; in many cases a credit arrangement may not refer to milestones or project phases but instead debt will be drawn down based on the individual needs of the borrower. The requirement to adhere to the happening of milestones to bring a debt within the meaning of "legacy debt", in our opinion, creates a level of inflexibility which is not required by the Directive. We would recommend revision of this policy decision on this basis.

Interaction with section 291A TCA 1997

Section 291A(6) TCA 1997 provides that the aggregate amount for an accounting period of allowances to be made to a company[35] and any interest incurred in connection with the provision of a specified intangible asset shall not exceed 80% of the amount of the trading income of the relevant trade carried on by the company in question. Accordingly, while interest incurred on the acquisition of specified intangible assets is deductible for the company in question, it is subject to the 80% restriction provided by in section 291A(6) TCA 1997. The interest, which is treated as deductible, in turn forms part of the "deductible interest equivalent"[36] in assessing the quantum of any disallowable amount under Part 35D TCA 1997. Accordingly, interest which has already been subject to an 80% cap in assessing its deductibility is subjected to a further restriction by the application of the ILR. This leaves Irish companies carrying on "relevant activities" within the meaning of section 291A(5) TCA 1997 in an unenviable position.

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[35] Under section 284 TCA 1997 as applied by section 291A TCA 1997

[36] See section 835AY(1) TCA 1997

We would, therefore, recommend the removal of the 80% cap provided for in section 291A TCA 1997 overall. While the removal of the 80% cap would result in greater amounts of interest relief available in connection with the acquisition of specified assets, the operation of the ILR would nevertheless act as a safeguard to prevent excessive interest deductions from being claimed by companies. We would also be of the view that removal of the 80% cap would represent a simplification of the law and would make Ireland more attractive to companies acquiring specified intangible assets and would overall assist in the development of a knowledge economy.

Long Term Public Infrastructure Exemption

As previously outlined in our pre-Budget submission[37], Ireland needs to achieve a 51% reduction in overall greenhouse gas emissions by 2030 compared to 2018 levels, and to reach net zero emissions by 2050. While our pre-Budget submission outlined a range of options to achieve these targets, amendments to the long-term public infrastructure exemption in particular should be considered as a step in the right direction.

In the calculation of relevant profit or loss (and in turn, deductible interest equivalent) for the purposes of the ILR, provision is made to exclude income or expenses directly connected with a "qualifying long term infrastructure project". A long-term infrastructure project is defined as a project to provide, upgrade, operate or maintain a large-scale asset. While a variety of developments and projects are included within the definition of a "large scale asset", notably this includes "an installation generating energy from renewable sources". In our view, such a definition is too narrow and does not address the underlying need to promote and enhance sustainability initiatives within Ireland. Initiatives and projects that should be included within the definition include:

- Hydrogen storage facilities
- Battery storage facilities
- Grid infrastructure and modernisation,
- Electrification projects,
- Water infrastructure projects,
- Recycling plants, and
- Carbon capture facilities.

Consideration should be given to the expansion of the large-scale asset definition to include the above projects, with a view to contributing to Ireland's overall sustainability.

[37] Accessible here

2.4 Anti Avoidance provisions and other restrictions

2.4.1 Targeted Anti Avoidance Rules

Question 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 254 TCA 1997
We can appreciate the intention behind section 254 TCA 1997 is to discourage the diversion of business assets to personal use and the creation of interest expenses within companies with a view to reducing the taxable profits of same. However, we would note that this section was introduced in its original form in 1974 as an early anti base erosion measure at a time preceding the ILR. Where this section is repealed (as in our view it should be), the operation of the ILR is such that any potential risks (i.e., increased interest relief) would arguably be mitigated.

Where a policy decision is taken to retain section 254 TCA 1997, we would suggest that it should only apply where the arrangement (i.e., the withdrawal of capital followed by the insertion of a loan or any combination of steps resulting in same) is done with the main purpose, or one of the main purposes of, avoidance of tax. In addition, we note that the existing 5-year rule is overly inflexible and does not take into account the fact that the ongoing capital requirements of business has fluctuated considerably – external forces such as cost of living challenges, the COVID19 pandemic and the conflict in Ukraine can all have impacts on a company's capital available for use. It is entirely possible that a person could withdraw capital from a business at a time when the business is projected to perform well, but in the succeeding 5 years encounter a challenging market requiring debt funding to ensure survival and continued trading. The 5-year rule should therefore be shortened to a period of no more than 12 months.

Section 817A TCA 1997
In our view, section 817A TCA 1997 is outdated considering the general anti avoidance rule in section 811C TCA 1997 and should be removed.

Section 817C TCA 1997
This section predated the anti-hybrid rules as well as the ILR and consideration should be given to its removal.

Section 840A TCA 1997
Section 840A TCA 1997 denies a deduction for interest payable on intragroup borrowings to purchase certain types of assets from a connected company. In our view, there is no valid policy reason why a company which has incurred interest which is wholly and exclusively for the trade or business cannot take a deduction for the interest expense. Therefore, we suggest repealing section 840A TCA 1997. We note that section 840A TCA 1997 was introduced as an anti-base erosion

measure prior to the introduction of the ILR. Where section 840A TCA 1997 is repealed, we would expect the ILR to operate to ensure that interest relief is restricted appropriately.

2.4.2 Interest treated as a distribution

Question 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 TCA 1997 dates back to section 84 Corporation Tax Act 1976 and was introduced a time when the concept of corporation tax was newly formed within Irish tax law. Section 130(2) TCA 1997 outlines what is meant by "distribution" and in this regard sets out the instances in which interest is to be recharacterized as such. In assessing the recharacterization required by section 130(2) TCA 1997 we would note as an overall comment that this review presents the opportunity to modernise and streamline the legislation while removing unnecessary provisions. Such modernisation, in our view, can be accomplished while still ensuring protection of the tax base for the Exchequer.

Section 130(2)(d)(ii) TCA 1997

Interest payments on any loan which is convertible directly or indirectly into shares in the company where the shares are not quoted on a recognised stock exchange are deemed to be distributions under section 130(2)(d)(ii) TCA 1997. The intent behind the recharacterization of such interest as a distribution is to prevent equity investments from being treated as debt with a view to obtaining an interest deduction for the payer in the absence of income taxation thereon for the recipient.

These protections to the tax base were introduced initially into law in section 84 Corporation Tax Act 1976, at a time when anti hybrid rules were not available to remedy such mismatches. The introduction of anti-hybrid provisions into Irish law in Finance Act 2019 ("FA 2019") has, in our view, made remedial action under section 130(2)(d)(ii) TCA 1997 redundant. In particular, section 835AJ TCA 1997 provides that a financial instrument deduction without inclusion mismatch shall arise where it would be reasonable to consider that:

a. there is, or but for the section would be, a deduction in the payer territory without a corresponding income inclusion in the payee territory, and
b. the satisfaction of (a) is attributable to the differences between domestic tax and foreign tax in the characterisation of a financial instrument or a payment made under a financial instrument.

Where a financial instrument mismatch arises, section 835AJ TCA 1997 acts to deny the payer a deduction for the payment made (where Ireland is the payer territory). In light of the effect of the anti-hybrid provisions, we would recommend that section 130(2)(d)(ii) TCA 1997 is removed.

Section 845C TCA 1997 limits the application of section 130(2)(ii) TCA 1997 such that an Additional Tier 1 instrument is to be regarded as a debt instrument and thus payments under same are to be treated as interest and not a distribution. We would not recommend the removal or repeal of section

845C TCA 1997. While section 845C TCA 1997 is, in practice, narrowly applied it remains necessary for financial institutions and should not be removed.

Section 130(2)(d)(iii)(I) TCA 1997
Section 130(2)(d)(iii)(I) TCA 1997 treats as a distribution any interest or other distribution out of the assets of the company in respect of securities of the company where the securities are those under which consideration given by the company for the use of the principal secured is *"to any extent dependent on the results of the company's business or any part of the company's business".* It should be noted that many genuine third-party lenders look for a profit participating element when lending to companies. As such interest is not deductible, this then results in an additional tax cost for the borrower. We would recommend that consideration is given to disapplying this provision where the lender and borrower are unconnected. Where such an amendment is affected, we would not envisage a significant risk posed to the Exchequer as a result of same. Instead, such an amendment would enable existing and future financing arrangements between third parties to proceed in a manner more beneficial to the borrower and would enhance the financing landscape in Ireland.

Section 130(2)(d)(iii)(II) TCA 1997
Section 130(2)(d)(iii)(II) TCA 1997 treats as a distribution any interest or other distribution out of assets of the company in respect of securities of the company where the securities are securities under which the consideration so given represents *"more than a reasonable commercial return for the use of the principal".* In the context of lending between associated persons, section 835C(2)(a) TCA 1997 acts to limit the amount of consideration payable by an acquirer where the consideration payable under the arrangement exceeds an arm's length amount. This would necessarily operate to therefore limit the quantum of interest payable on a loan between associated persons such that the interest taken into account in computing the taxable profits of the borrower would be restricted. In practice, it would be infrequent to encounter a significant number of securities where the consideration represents more than a reasonable commercial return; we would therefore recommend removal of this subsection.

Section 130(2)(d)(iv) TCA 1997
Section 130(2)(d)(iv) TCA 1997 deems certain interest payments to be distributions. This treatment applies to interest in respect of securities which are issued by an Irish company and held by a company not resident in the State, where:

i. the company which issued the securities is a 75% subsidiary of the other company
ii. both companies are 75% subsidiaries of a third non-resident company, or
iii. except where at least 90% of the ordinary share capital of the company which issued the securities is directly owned by an Irish resident company, both the company which issued the securities and the non-resident company are 75% subsidiaries of a third Irish-resident company.

The types of relationship outlined by (i) to (ii) inclusive envisage, at the very least, a 75% relationship to be in point. In the absence of such a provision, prior to the introduction of the anti-hybrid rules it would have been conceivable that an Irish company could pay interest in respect of a security to obtain a deduction in Ireland while the payment on the security with equity features would be treated as a distribution in the hands of the recipient and would not be taxable. As noted in our

comments on section 130(2)(d)(ii) TCA 1997, such a mismatch outcome is now readily caught by the rules contained in Part 35C TCA 1997. The position is also bolstered by the fact that the hybrid rules in general apply to a transaction giving rise to a mismatch outcome between associated enterprises[38]. The test for association in this regard (section 835AA TCA 1997) looks to a relationship of not less than 25%; in our view therefore the hybrid rules are more expansive in addressing mismatches to be remedied.

We recommend the removal of Section 130(2)(d)(iv), and to instead replace it with a simpler section which permits the taxpayer to make an election to treat the interest as a distribution where certain conditions are met (i.e., an opt-in option). We would recommend this opt in provision as we are cognisant that outright removal of section 130(2)(d)(iv) TCA 1997 in its entirety could have unintended consequences for taxpayers depending on the terms of relevant double tax agreements. Revenue notes for guidance[39] address this point and note that *"This section* [section 452 TCA 97] *allows such interest to escape the ambit of section 130(2)(d)(iv) if a 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. In some cases, because of the circumstances of the company and/or terms of a double taxation agreement, it may be more advantageous to the company to accept the application of S130(2)(d)(iv). Therefore, the application of the section is at the option of the company."*

Lastly, we would note that section 130(2B) TCA 1997 disapplies section 130(2)(d)(iv) TCA 1997 treatment in the context of payments made to an EU Member State or to the UK. Where section 130(2)(d)(iv) TCA 1997 is amended in line with our recommendations, we would also note that a consequential amendment to section 130(2B) TCA 1997 may be necessary.

Where our recommended amendments are made, consideration must be given to whether negative consequences or tax risks are likely to arise. We have already outlined that any potential risks from amendment of the identified subsections are addressed elsewhere in TCA 1997 (namely through anti hybrid provisions and/or Transfer Pricing rules). We would not therefore envisage any risks or potential for base erosion on foot of our recommended changes.

We can appreciate the rationale and policy preference to ensure that payments to low or zero tax territories are limited and are addressed by defensive measures. In this regard, our recommended changes should not affect the operation of section 817V TCA 1997 which acts to remove exemptions from interest withholding tax where payments are made to a "*specified territory*."[40] In addition, we would refer to the ILR which we have addressed as part of this consultation response which acts to limit the relief for net interest expenses in line with 30% of the taxpayer or group EBITDA. Lastly, Transfer pricing provisions will also apply to provide that where payments made are in excess of an arm's length amount, then the profit/gains of the acquirer in the arrangement are to be modified to reflect the arm's length amount (section S835C(2)(a) TCA 1997). Widening of transfer pricing rules in FA 2019 to include non-trading transactions further provides a safeguard against companies making excessive interest payments to a foreign associate with a view to eroding the Irish tax base.

[38] See section 835AI(b)(i) TCA 1997
[39] Part 14 – TCA Notes for Guidance FA 2023, p. 3.
[40] According to section 817U TCA 1997, "specified territory" means a territory, other than a relevant Member State, which is a listed territory or a zero-tax territory.

The recommended amendments to section 130 TCA 1997 would in our view lead to a more streamlined system for interest deductibility and would remove a layer of complexity for taxpayers. The corresponding amendments to sections 452, 452A and 845A TCA 1997 (as noted below) would also allow for the streamlining of the Form CT1 and remove some of the administrative burden currently faced by taxpayers.

Elections

A number of elections may be availed of to disapply the treatment outlined in section 130 TCA 1997.

The company may make an election under section 452 TCA 1997 to have certain yearly interest detailed in section 130(2)(d)(iv) TCA 1997 treated as not being a distribution and therefore tax deductible in the normal way as a trading expense. Equally, section 452A TCA 1997 enables a company that is paying interest to other group companies to have section 130(2)(d)(iv) TCA 1997 disapplied in certain circumstances. Lastly, section 845A TCA 1997 also allows interest paid by banks to their foreign parents and other associated companies (which would be recharacterized as a distribution under section 130(2)(d)(iv) TCA 1997) not so to be treated. Where section 130(2)(d)(iv) TCA 1997 is replaced with an optional regime, the elections under section 452, 452A and 845A TCA 1997 could be removed from the tax regime, to be replaced with a simpler election mechanism for companies still wishing to retain distribution treatment for their interest payments.

Section 133 TCA 1997 and section 134 TCA 1997

Section 133 TCA 1997 limits the instances in which interest can be treated as an exempt distribution in the hands of the recipient. Section 133(2) TCA 1997 specifies that any interest or other distribution which –

a. *is paid out of assets of a company to another company within the charge to corporation tax, and*
b. *is so paid in respect of a security within subparagraph (ii), (iii)(I) or (v) of section 130(2)(d),*

shall not be treated as a distribution.

Section 134 TCA 1997 operates in a similar manner, with section 134(2) TCA 1997 containing the same legislative references to section 130 TCA 1997 as noted above.

As previously noted, we have recommended the removal of section 130(2)(d)(ii) and (iii)(I) TCA 1997. Where such amendments are adopted, section 133(2) TCA 1997 and section 134(2) TCA 1997 should be subject to amendment to remove the legislative references noted above at (b).

2.4.3 Other interest restrictions

Question 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.

Section 291A TCA 1997 and Part 35D TCA 1997
We would reiterate our previous comments with respect to the interaction between section 291A TCA 1997 and the ILR provisions contained in Part 35D TCA 1997 and recommend that amendment be made to section 291A(6) TCA 1997 to remove the restriction currently placed on the deductibility of interest incurred on the acquisition of such specified intangible assets.

Section 437 TCA 1997
We would not recommend any changes to this section at this time.

Part 35A TCA1997 – Transfer Pricing

Application of OECD Transfer Pricing Guidelines and related Revenue guidance

The landscape of international business transactions is increasingly complex, and Ireland's tax framework, particularly in the area of transfer pricing, must adapt to ensure clarity, fairness and competitiveness.

Section 835C TCA 1997 provides the foundation for transfer pricing in Ireland. It sets out the basic rules on transfer pricing, requiring the consideration payable or receivable by the acquirer or supplier respectively to be computed in line with an "arm's length amount". This arm's length amount is determined by identifying the actual commercial or financial relations between the supplier and the acquirer and applying the transfer pricing method set out in the "transfer pricing guidelines" that is, in the circumstances, the most appropriate so as to determine the arm's length amount of consideration for the identified arrangement[41]. The transfer pricing guidelines in question refer to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 20 January 2022[42] (the "OECD TPG 2022").

In assessing, for example, the rate of return applicable to a financing arrangement regard is to available comparable arrangements such that the taxpayer can assess how a particular arrangement might be priced. This involves the use of specific databases and resources to support the analysis undertaken. Many taxpayers in Ireland who are involved in financing arrangements have adopted differing (but reasonable) views as to the type of databases used to determine debt capacity and applicable interest rates when advancing or receiving debt financing.

In addition, Revenue's guidance references the debt-to-equity ratio as a key metric, which may create the perception that Revenue places primary emphasis on this ratio in assessing whether such arrangements are appropriately priced. However, we believe that the debt-to-equity ratio is not always the most relevant metric. Various industries rely on other ratios more commonly used to determine the debt capacity of a borrowing company. For example, in an asset acquisition context,

[41] Section 835C(4) TCA 1997.
[42] Section 835D TCA 1997.

loan-to-value ratios may be more pertinent, while metrics like interest cover or debt-to-EBITDA are often used to assess serviceability in other scenarios.

It is also important to recognize that there are instances where an exclusive focus on the financial position of the borrowing company in isolation may not provide a complete picture. In cases such as a holding company that borrows funds and holds equity interests in one or more subsidiaries, the financial position of the investments and underlying subsidiaries should also be taken into account. These broader considerations can provide a more accurate reflection of the borrowing entity's capacity to service debt. Applying a rigid focus on debt-to-equity ratios fails to account for such industry-specific practices and transactional nuances, introducing unnecessary complexity and potentially deterring investment in areas such as aircraft leasing, where Ireland is a global leader

Simplification of documentation requirements for financial arrangements

Transfer Pricing documentation in the context of financing arrangements should be considered and streamlined where possible.

Under existing Irish legislation, a relevant person is required to have available the required supporting documentation outlining details of the arrangement and the appropriate arm’s length pricing[43].

While this requirement would appear relatively simple, a pressing issue lies in the comparability analysis required for outbound loans from Ireland to associated foreign entities. In our experience, the level of detail required by Revenue on the selected comparables to demonstrate the appropriate level of consideration receivable by the Irish lender can place a significant administrative burden on taxpayers, creating inconsistencies that complicate compliance. This can affect Ireland's appeal as a hub for global financing activities.

Another concern is the lack of clarity on recurring documentation requirements. For example, where a loan arrangement is entered into in 2022, and the required analysis is carried out to conclude on the interest rate applicable, such analysis is expected to be reflected in the required Transfer Pricing documentation. However, it is unclear what level of analysis is required in future years to support the pricing adopted i.e., are full reviews of comparables etc required on an annual basis or what level of analysis is required to be carried on for inclusion within the Local File.

Safe Harbours for Financing arrangements

In our view, safe harbours should be provided for simpler financial arrangements. The introduction of such a safe harbour would not be without precedent, as existing Revenue practice[44] is to accept a mark-up of 5% of the cost base in the context of low value intra group services. Such a markup is applicable without requiring a taxpayer to provide a benchmarking analysis on the basis that performing such an analysis may be “too resource intensive”. In our view, a similar safe harbour for simple and immaterial financing arrangements would be reasonable. Failure to make provision for

[43] See section 835G TCA 1997
[44] See Part 35A-01-03 - Guidelines On Low Value Intra-Group Services

such a safe harbour represents a challenge to Ireland’s competitiveness in comparison to other jurisdictions. In particular accordingly to article 39-1, 3° of the French Tax Code (FTC), interest paid or accrued in relation to loans from direct shareholders is subject to a maximum interest rate limitation corresponding to the average floating rate on bank loans with maturities exceeding two years. A debtor’s maximum deductible tax rate for a particular fiscal year is based on the four quarterly average floating rates determined during the debtor's fiscal year. Similarly, Swiss tax law provides for safe harbour interest rates for intercompany loans and advances denominated in Swiss francs as well as in foreign currencies.

We would accordingly recommend the introduction of similar safe harbour rules for financing arrangements under Irish Transfer Pricing rules both to provide enhanced taxpayer certainty but also to bolster the competitiveness of the Irish tax regime in attracting inward investment and growth in financing activities here.

Section 835E TCA 1997

We would refer the reader to our previous comments made at part 2.2.2 of this document where we outlined our concerns with respect to the operation of section 835E TCA 1997 in the context of Case V pre-letting expenses.

Part 35C TCA 1997 – Anti Hybrid Rules

We have no comments to make on Part 35C TCA 1997 in the context of interest at this time. We would, however, reiterate our comments at Part 2.3. of this document with respect to the concept of “acting together” and the challenges this poses in applying the anti-hybrid rules in practice.

2.5 Financial Services Transactions

2.5.1 Securitisation vehicles

Question 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.

Section 110(4) TCA 1997 and treatment of interest as distribution

Section 110(4) TCA 1997 provides that any interest or other distribution which is paid out of the assets of a qualifying company to another person and is so paid in respect of a security referred to in section 130(2)(d)(iii) TCA 1997 shall not be recharacterized as a distribution. In our opinion this treatment aligns with the intended effect of the legislation and ensures the continued deductibility of interest payments made by securitization vehicles. Accordingly, we would not recommend any changes in this regard. However, we would refer the reader to our earlier recommendations with

respect to interest which is referred to in section 130(2)(d)(iii) TCA 1997. Where the aforementioned section is subject to amendment, we would envisage a consequential amendment would accordingly be required to section 110(4) TCA 1997 to allow for same.

Section 110(4A) TCA 1997 – Anti arbitrage provisions

Section 110(4A)(b) TCA 1997 addresses instances where interest is paid to a person other than:

a. A person who is resident in the State or, if not so resident, is otherwise within the charge to corporation tax in the State in respect of the interest or other distribution, or
b. A person (not being a specified person) who is a pension fund, government body or other person resident in a relevant territory[45] who, under the laws of that territory, is exempted from tax which generally applies to profits, income or gains in that territory.

Where the above arises, section 110(4) TCA 1997 shall apply only to so much interest or other distribution –

a. As under the laws of a relevant territory, is subject, without any reduction computed by reference to the amount of such interest or other distribution to a tax which generally applies to profits, income or gains received in that territory, by persons, or sources outside that territory, or
a. As is a payment from which tax has been deducted at the standard rate in force at the time of the payment in accordance with section 246(2) TCA 1997

Section 110(4A)(c) TCA 1997 further provides that notwithstanding the above, section 110(4) TCA 1997 shall only apply in the case of a payment in respect of a specified instrument *other than* an instrument where the qualifying company was in possession, or aware, of information which could reasonably be taken to indicate that the payment would not be subject to tax in a relevant territory. Section 110(4A)(c) TCA 1997 specifically refers to payments made to a "specified person".

In particular, the definition of "specified person" in relation to a qualifying company means –

a. A company which directly or indirectly –
i. Controls the qualifying company,
ii. Is controlled by the qualifying company, or
iii. Is controlled by a third company which also directly or indirectly controls the qualifying company, or
b. A person, or persons, who are connected with each other –

(i) from whom assets were acquired, or

ii.to whom the qualifying companies has made loans or advances, or

iia. to whom loans or advances held by the qualifying company were made, or

iii.with whom the qualifying company has entered into specified agreements,

where the aggregate value of such assets, loans, advances or agreements represents not less than 75 per cent of the aggregate value of the qualifying assets of the qualifying company.

[45] "relevant territory" has the same meaning as in section 246 TCA 1997 and means an EU Member State other than the State or a treaty country.

The meaning of control in the context of a qualifying company is outlined in section 110(7) TCA 1997, referring to ownership or powers conferred by the company's constitution or documents regulating that company. Section 110(7)(b) TCA 1997 extends the meaning of control to where a person has "significant influence" over the company and has a direct or indirect 20% ownership in the company. "Significant influence" is defined in section 110(1) TCA 1997 as a person with the ability to participate in the financial and operating decisions of a company.

The remedial action in such a case is to disapply section 110(4) TCA 1997, recharacterize the interest as a distribution and thus deny tax relief or the payment made. Section 110(4A) TCA 1997 operates a form of anti-arbitrage rule to prevent instances whereby a payer could obtain a deduction without a corresponding income inclusion on the recipient side. The restriction on deductibility arises in the context of payments made to connected persons but also to persons who are not connected but are tax exempt in any event.

Turning to Part 35C TCA 1997, the application of many hybrid mismatch rules is primarily predicated on transactions that give rise to mismatch outcomes between entities that are associated enterprises[46]. For the purpose of Part 35C TCA 1997, section 835AA(2) TCA 1997 provides as follows:

(2) In this Part, two enterprises shall be "associated enterprises" in respect of each other –

(a) if one enterprise, directly or indirectly, possesses or is beneficially entitled to –
- *i. where the other enterprise is an entity having share capital, not less than 25 per cent of the issued share capital of the other enterprise, or*
- *ii. where the other enterprise is an entity not having share capital, an interest of not less than 25 per cent of the ownership rights in the other enterprise,*

(b) if one enterprise, directly or indirectly, is entitled to exercise not less than 25 per cent of the voting power in the other enterprise, where that other enterprise is an entity,

(c) if one enterprise (in this paragraph referred to as the "first- mentioned enterprise"), directly or indirectly, holds such rights as would—
- *i. where the other enterprise is a company, if the whole of the profits of that other enterprise were distributed, entitle the first- mentioned enterprise, directly or indirectly, to receive 25 per cent or more of the profits so distributed, or*
- *ii. where the other enterprise is an entity other than a company, if the share of the profits of that other enterprise to which the first- mentioned enterprise is entitled, directly or indirectly, is 25 per cent or more,*

(d) where there is another enterprise in respect of which the two enterprises are, in accordance with paragraph (a), (b) or (c), an associated enterprise,

(e) where both enterprises –
- *i. are entities, and*
- *ii. are part of the same consolidated group for financial accounting purposes,*

(f) where both enterprises –
- *i. are entities, and*
- *ii. would, if consolidated financial statements were prepared under international accounting standards, be part of the same consolidated group for financial accounting purposes*

(g) where one enterprise has significant influence in the management of the other enterprise.

[46] See S835AC, S835AE, S835AI, S835AK and S835AR TCA 1997

Section 835AX TCA 1997 explain that the anti-hybrid provisions will apply "*after all provisions of the Tax Acts and the Capital Gains Tax Acts, other than section 811C and Part 35D* [being the ILR]." Therefor the anti-hybrid rules will apply in any event after the application of section 110 (4A) TCA 1997. In comparing section 110(7) TCA 1997 and section 835AA(2) TCA 1997, it is clear that there is an element of overlap such that payments made by a qualifying company to a specified person would very likely be caught within Part 35C TCA 1997 as a transaction between entities that are associated enterprises. In light of the transposition of the anti-hybrid provisions contained in ATADII[47] into Irish law in Part 35C TCA 1997 and this overlap, it is necessary to consider whether section 110(4A) TCA 1997 remains necessary.

We can appreciate the rationale for such a provision at the time of its introduction[48] which predated the introduction of anti-hybrid rules into Irish law. However, in our view adequate anti arbitrage provisions are now provided for in Part 35C TCA 1997; as such section 110(4A) TCA 1997 and consequently section 110(7) TCA 1997 are no longer required and should be repealed.

Interest WHT and deduction for foreign taxes

While not strictly aligned with the Interest WHT regime in Ireland, we would note that a separate issue arises with respect to the inability of a qualifying company under section 110 TCA 1997 to claim a deduction for foreign taxes suffered. This is particularly of relevance in the context of interest WHT suffered on income received by the company, and amendments to section 81 TCA 1997 in FA 2019 have become a critical area for the sector. Section 81(2)(p) TCA 1997 provides that no deduction shall be permitted in respect of any taxes on income. The issue of deductibility of foreign taxes under section 81 TCA 1997 has been the subject of a number of Tax Appeal Commission ("TAC") Determinations in recent years[49], but given the FA 2019 amendments to section 81 TCA 1997, these determinations are of limited assistance with respect to future claims to treat excess foreign tax suffered as an expense under section 81 TCA 1997.

The inability to deduct certain foreign tax suffered is detrimental to the securitization vehicle and the regime overall as it renders the respective investment uneconomic. This creates a significant competitiveness issue for Ireland in the financial services sector. In our view the unintended consequence associated with foreign interest WHT in the context of securitization vehicles should be remedied to ensure that the regime achieves its aims of being tax neutral. Amendments could be made to either section 81 TCA 1997 or to section 110 TCA 1997 to clarify and put beyond doubt the availability of a deduction for foreign interest WHT suffered to the extent that a deduction would not create a loss for the company i.e., the deduction should be to bring the qualifying company back to tax neutral status but would go no further.

[47] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries
[48] See section 40(3) FA 2011
[49] See 47TACD2024, 02TACD2018 and 128TACD2023 (deductibility of royalty WHT) and 08TACD2019 (deductibility of foreign WHT on dividends)

2.5.2 Bond Washing – Chapter 1 of Part 28 TCA 1997

Question 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.

We would refer the reader to our responses to Question 2 with respect to section 815 TCA 1997 and the taxation of income deemed to arise on the sale of securities. With respect to the specified sections within Chapter 1 of Part 28 TCA 1997, we would make the following comments and recommendations.

Section 749 TCA 1997 provides that where a buyer is a dealer in securities, the purchase price of any securities acquired is reduced by the accrued interest element included in that price. In the absence of section 749 TCA 1997 (and by extension Schedule 21 TCA 1997), the sale of a security ex div which was acquired cum div could in theory generate an artificial loss. While we can appreciate the rationale for such a provision, we would note that section 749 TCA 1997 does not apply in certain trading contexts[50] would recommend that this exemption be extended to include companies who are carrying on a financing business but are not engaged in a Case I trade. In line with our previous recommendations at Question 1/Question 27 to closer align the treatment of trading and non-trading financing activity, such an amendment would equalize the position for companies in terms of the purchase and sale of securities.

With respect to the above recommendation, we can appreciate the inherent risk with such an amendment as it could potentially permit a broader range of companies to engage in what would otherwise be regarded as “bond washing” which section 815 TCA 1997 endeavours to prevent. To combat such a risk, consideration could be given to making the exception for companies engaging in a financing business subject to the requirement that the activity should be carried on for bona fide commercial purposes and not for the main purpose (or one of the main purposes) of the avoidance of tax.

We have no comments to make with respect to section 750 TCA 1997.

Section 751 TCA 1997 addresses the treatment of traders other than dealers in securities. Specifically, where a person has sustained a loss in any trade, profession, or employment, that person is entitled under section 381 TCA 1997 to make a claim for relief. The equivalent loss provision for corporation tax may be found in section 396 TCA 1997. Section 751(1) TCA 1997 acts to modify the application of both section 381 TCA 1997 and section 396 TCA 1997 to disregard interest computed under the bond washing provisions (i.e., interest computed under Schedule 21 TCA 1997). The effect of section 751 TCA 1997 ensures that the interest cannot be used in a loss relief claim, in line with the intent of the overall bond washing rules in Chapter 1 of Part 28 TCA 1997. In line with

[50] See S749(2A) TCA 1997 – S749(1) TCA 1997 is disapplied in relation to short term purchases of overseas securities where the securities are purchased by a dealer in the ordinary course of their trade, the interest payable is brought into account as a trading receipt in computing the dealers profits for the chargeable period and the dealer elects in writing that credit for any foreign tax on interest which might otherwise be due is not allowed. Subsection 1 is also disapplied for a chargeable period in relation to short term purchases of Irish Government securities if those securities are purchased by a dealer in the ordinary course of the dealer’s trade and the interest payable in respect of all such securities is brought in as a trading receipt in computing the dealers’ profits for the chargeable period.

our recommendation in Question 1/Question 27 to closer align the treatment of trading and non-trading income of financing activities (and thus loss relief), a corresponding amendment would be required at section 751 TCA 1997 to also provide that in the context of a company carrying on a financing business other than that falling within the remit of section 749 TCA 1997, any claim for loss relief should also disregard interest computed in accordance with Schedule 21 TCA 1997. Such an amendment would, in our view, align the treatment of trading and non-trading companies engaging in financing activities.

Section 751A TCA 1997 addresses the case of a financial trader who exchanges shares held as trading stock for other shares, providing a deferral of tax liability under income tax and corporation tax similar to that provided for under section 584 TCA 1997 whereby liability is deferred until such time as the replacement shares are disposed of. The tax treatment applied under section 751A(4) and (5) TCA 1997 applies in relation to any shares to which a person carrying on a business consisting of dealing in securities is entitled and which are such that profit on their sale would form part of the trading profits of that business. The application of the tax treatment is therefore applied solely to persons who are treated as trading in securities. In line with our recommendation in Question 1/Question 27 to closer align the treatment of trading and non-trading income of financing activities, a corresponding amendment should be considered to section 751A TCA 1997 to apply the tax treatment in this section to companies carrying on a business of dealing in securities but which are such that a profit on their sale would form part of the business (and not solely the "trading" profits of that business).

2.5.3 Stock lending and repo transactions – Chapter 3 of Part 28 TCA 1997

Question 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.

We would note that with effect for financial transactions entered into on or after 1 January 2020[51], legislative provisions in Chapter 3 Part 28 TCA 1997 apply to outline the tax treatment of stock lending and repo transactions and to put on a legislative footing Revenue guidance[52] on the matter. Our comments below therefore relate to these changes brought about by section 34 FA 2019.

As outlined in our comments below, future amendment to the existing provisions in Chapter 3 Part 28 TCA 1997 may be desirable. As an interim measure, we understand that certain matters may be addressed in Revenue guidance. As of the most recent meeting of the TALC Direct and Capital Taxes Subcommittee[53], we note that the draft guidance (TDM Part 04-06-13) has not yet been released. In the absence of clarity provided via Revenue guidance, we are of the view that the technical points we have noted below with respect to stock lending and repos remain valid and we would bring them to the Department's attention as an area for attention.

[51] See S34 FA 2019

[52] See Revenue eBrief No 199/21 of 27 October 2021. See also: Tax Briefing Issue 17 of 1995, Tax Briefing Issue 36 of 1999 and Revenue Information Leaflet of April 2000.

[53] 28 November 2024

Section 753A TCA 1997 - Definition of "financial transaction"

The definition of "financial transaction" is subject to a requirement that "it is reasonable to consider that the transaction, and all associated agreements, arrangements or transactions, are equivalent to a transaction or agreement for the lending of money, or money's worth, at interest". This is essentially a boundary condition for the application of the rules. In our experience, including this may exclude a significant proportion of stock lending transactions from the ambit of the rules. These are transactions which would be within the ambit of Revenue's current practice. As noted above, while repo transactions will generally equate to the borrowing and lending of money at interest, this is less commonly so for stock loans. Accordingly, we are concerned that the legislation may not apply to a significant quantum of the transactions which it is intended to cover.

Section 753A TCA 1997 - Definition of "manufactured payment"

In commercial terms, a manufactured 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. These are not custody or nominee arrangements, when a "stock seller" transfers securities to a "stock buyer", it has no control over what happens to the securities and whether or not any subsequent income payments are received by the "stock buyer". The definition of "manufactured payment" in section 753A TCA 1997 means a payment by a stock buyer to a stock seller, whether directly or indirectly, to reimburse that stock seller for any distribution or interest arising or accruing to the stock buyer as a consequence of the transfer of the qualifying securities as part of a financial transaction.

We submit that this would mean that the provisions would not apply to most stock lending/repo transactions as the "stock seller" could not establish that the "stock buyer" had held onto the securities and received the actual interest/dividend from the issuer.

Stock lending and repo transactions are generally undertaken using standard GMRA[54]/GMSLA[55] documentation which permit the "stock buyer" to freely deal in the securities. In particular, in equity markets where the "stock buyer" may be shorting the stock, providing additional market liquidity or hedging derivative transactions, it would likely have made arrangements to dispose of the securities before acquiring them from the "stock seller". Even if Irish "stock sellers" sought to change the underlying documentation, additional regulatory issues might arise as to the ability of "stock buyers" to confirm what securities they hold at any point in time to other market participants. In our experience, what is important is to ensure the nexus of the payment to the transaction and the particular securities. We would suggest that the following would better suit the aims of the legislation:

"manufactured payment" means 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.

Section 753B TCA 1997 and section 753C TCA 1997 – Treatment of income/gains arising

Section 753B(2) TCA 1997 requires that in applying the Tax Acts and Capital Gains Tax Acts to a financial transaction, regard shall be had to the substance of the financial transaction rather than its legal form. With respect to the treatment of manufactured payments, section 753B(2)(c) TCA 1997

[54] Global Master Repurchase Agreement
[55] Global Master Securities Lending Agreement

provides that any manufactured payment shall be deductible in accordance with section 753C(2) and (3) TCA 1997 and charged to tax in accordance with section 753C(5) and (6) TCA 1997. In our view, the separation of the treatment of the manufactured payments from the overall computation of the profit creates an overall issue with respect to the operation of section 753B TCA 1997 in that this will not meet the stated requirement that regard be had to the substance rather than the legal form of the transactions. (In this regard, we note that it seems necessary to construe proposed section 753B(2)(c) TCA 1997 as meaning that the "manufactured payment" is excluded from the computation of "any income, profits or gains" and relievable only ("shall") in accordance with section 753C TCA 1997)

A concern arises in the context of situations where the "stock buyer", while liable to make a "manufactured payment", is not in receipt of the corresponding "specified amount", i.e., the "real" distribution or interest. This would arise in situations where the "stock buyer" had disposed of the securities but remained liable to make the manufactured payment. Principally, this would arise where the "stock buyer" has shorted the stock (in which case it receives nothing) or where it has entered into a further stock loan or repo (in which case it receives a "manufactured payment" from another party).

Accordingly, the "stock buyer" would not be in receipt of the "corresponding specified amount" and would thus obtain no relief for the manufactured payment which it makes (section 753C(3)(c) TCA 1997). This would be a penal result and not in accordance with the stated intent of the legislation.

Where the "stock buyer" is in receipt of a manufactured payment and coincidentally subject to an obligation to make a manufactured payment, we would expect section 753C(5) TCA 1997 to assist in arguing that the manufactured payment to be made may be offset by the manufactured payment received.

In relation to the situation arising where neither a "real" dividend/interest nor a manufactured payment is received by the "stock buyer" who remains subject to an obligation to make a "manufactured payment", we propose that section 753B(2)(c) TCA 1997 could be a supplemented by a provision in the following terms:

> *(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.*

The effect of this provisions would be to ensure that the profit arising takes account of all components of the stock buyer's cashflows and that it would thus be taxed on the substance of the transaction.

In the case of short selling in particular, we would note that such transactions would generally be undertaken only in the context of the financial trade of a bank or securities trader. The expense for any manufactured payments is incurred wholly and exclusively in the context of the trade and it would be expected that any Irish "stock seller" in receipt of such a manufactured payment would bring it into account for the purposes of corporation tax where applicable.

Section 753F TCA 1997 - Record keeping and information

In our opinion, the record keeping requirements contained in section 753F TCA 1997 are unduly onerous and we would welcome an opportunity to discuss these with a view to understanding what information provisions are required. In general, transactions of this nature will be undertaken by

regulated bodies and we would hope that the records required by the relevant regulatory bodies would suffice.

In general, neither stock lending nor repo transactions would be regarded as the disposal or acquisition of the underlying securities in the underlying financial records of the institutions concerned. The substance of the transactions for accounting purposes is that the securities, notwithstanding the transfer of legal title, remain the property of the institution. Accordingly, we are concerned that the accounting and record keeping systems maintained by our clients and other taxpayers would not be designed to easily produce the information in the manner suggested in the draft statute.

In the cases of pension funds and investment funds in particular, the management of the depot of securities would generally be outsourced to a custodian or prime broker who would have a general authority to enter into securities financing transactions on behalf of their clients. Clearly adequate books and records would be kept in respect of the individual transactions to the standards required by the relevant regulators. However, the underlying agreements may not require the service provider to report in the manner anticipated by the draft legislation. Accordingly, we would request that these provisions are reconsidered. Whatever record-keeping as is required should be deferred until such time as taxpayers can update their systems and their related service contracts to ensure that the information can be collated efficiently.

Other matters

The definition of “equivalent stock” relies on the Stamp Duties Consolidation Act 1999 definition which is probably adequate in relation to equities. However, for debt securities, it is not uncommon for the parties to a repo to agree to settle the repo by a transfer of securities similar to those which were the subject of the initial transfer. This is especially the case in the context of GC repo where the parties are concerned with the value rather than the specific type of the securities (unlike the case with equities in a company which do not have similar characteristics). We recommend that the definition of “equivalent stock” be extended to encompass “similar securities” (as opposed to “identical type” as used in SDCA 1999) as might be agreed in substitution for the original securities. As an alternative, the proposals could be adapted to allow the treatment to apply until the point at which it “becomes apparent” that the original securities will not be retransferred.

2.5.4 Section 845 and 846 TCA 1997

Question 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.

We have no comments to make with respect to section 845 TCA 1997 or section 846 TCA 1997.

2.5.5 Leasing companies

Question 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.

Trading status of operating lessors

Whether or not an operating lessor is treated as trading or not for tax purposes is an area of particular uncertainty for many taxpayers, specifically those in engaged in aircraft leasing. In general, the question as to whether an entity is carrying on a trade is dependent on the facts and circumstances. With respect to certain business models, there may be a commercial requirement that a leased asset be acquired and held in a special purpose vehicle. This "ringfencing" of the leased asset is necessary to provide required security to a financier or to provide legal protection in the case of bankruptcy or litigation in connection with the leased asset held. Historically, it was accepted that a special purpose company could be treated as carrying on a trade even where they only hold one leased asset or lease e.g. where a special purpose vehicle is held within an active leasing group (i.e., with other special purpose vehicles also holding their own leased asset) then it was accepted that each individual vehicle is to be treated as if it were carrying on a trade. Such an approach was reflective of the commercial reality encountered by such groups and the legal, financial and risk related requirements associated with holding leased assets in this manner.

Updates to the Revenue Tax and Duty Manual Part 02-02-06[56] explains the distinction between trading and investment activities in the context of a group structure as follows (with underlining included for emphasis):

"Where a company seeking trading status is a member of a group and another group company or companies have an involvement in the conduct of the particular trade, Revenue would need to be satisfied as to the role of the various companies. <u>In particular, the company seeking trading status in respect of an activity must establish that it carries on sufficient activity to be trading.</u> Evidence in relation to the levels of authority and responsibility across the group will clarify where the real decision-making lies, and information in relation to the deployment of assets and personnel will clarify the business activities carried on by each company. An explanation of the commercial reasoning and the business objectives behind a particular group structure will be helpful in understanding the underlying strategic business purpose and the value added by the applicant company."

A revised approach with regards to the assessment of trading status, whereby regard is had to the activity of the company in isolation casts doubt on the historic approach whereby an operating lessor would be held within an active leasing group. This has created significant uncertainty for taxpayers in this area and consideration should be given to providing greater clarity in legislation.

Finance Leases – operation of section 76D TCA 1997 and section 299 TCA 1997

We would note as a preliminary remark that section 76D TCA 1997 was extensively amended by FA No 2 2023[57] to cover the taxation of finance and operating leases. Section 299 TCA 1997 was also the

[56] Part 02-02-06 - General guidance on the classification of activities as trading.
[57] See section 39(a)

subject of extensive amendment in FA No 2 2023. On this basis, it may be later in 2025 by the time the impact of such changes can be definitively assessed by taxpayers and practitioners with a view to determining whether further amendment or enhancement of the treatment of finance leases is required.

As an overall remark however, the legislative history behind section 299 TCA 1997 is complex given the number of amendments made to this section over the years. If we were to take a high level, holistic view of the treatment, in our opinion the ideal approach would be to permit a finance lessor to be taxed on their interest margin per the accounts in line with the treatment adopted for hire purchase agreements. On the lessee side, consideration should be given to claiming a deduction for the amount booked the accounts. Such an approach would not be unreasonable under IFRS16 which requires an expense for the interest and amortisation portion and as such an accounts-based approach would appear logical. However, as the most recent changes to section 299 TCA 1997 still require time to embed into Irish law, any wholesale changes to legislation at this stage may be premature. We do, however, see merit in considering the treatment of leases and the future of the leasing industry in Ireland as a future action item for the Department and would welcome a consultation on this topic in the near future.

2.5.6 Specified Financial Transactions – Part 8A TCA 1997

Question 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.

The application of Part 8A TCA 1997 in the context of "Murabaha" arrangements is one commonly encountered within the financial services space, providing a form of cost-plus financing on deferred payment terms. Section 267O(1) TCA 1997 treats a "credit return[58]" as if it were interest paid or payable on a loan made by the finance undertaking to the borrower, or a security issued by a borrower to a finance undertaking; such credit return is therefore brought within to charge to tax in the same manner as interest, notwithstanding the fact that under Islamic financing arrangements no interest is permitted to be charged. The "finance undertaking" in question takes a specific definition from section 267N(1) TCA 1997 referring to a finance company or a financial institution. "Finance company" is further defined in the aforementioned section as meaning –

"a company whose income consists wholly or mainly of either or both of the following –

(a) income from the leasing of machinery or plant, and
(b) income from the carrying on of specified financial transactions".

"Financial institution" takes on the definition contained in section 891B TCA 1997, meaning –

(a) a person who holds or has held a licence under section 9 or an authorisation granted under section 9A of the Central Bank Act 1971, or a person who holds or has held a licence or other similar authorisation under the law of an EEA state, other than the State, which corresponds to a licence granted under the said section 9,

[58] Within the meaning of S267N(1) TCA 1997

(aa)an agent appointed by the National Treasury Management Agency to carry out certain functions of the National Treasury Management Agency in relation to State savings products, or

(b) a person referred to in section 7(4) of the Central Bank Act 1971

(c) ....[59]

In order for an arrangement to fall within the remit of section 267O TCA 1997 therefore for the return to be treated as interest for tax purposes, the lender in question must satisfy the requisite conditions to be treated as a finance undertaking. While in many transactions this causes no issues, complications can arise where the terms of the financing require the arrangement to be Sharia compliant not only on the asset side but also on the liability side. For example, it would not be uncommon for a special purpose vehicle to be financed via loans from investors (as opposed to either a finance company or a financial institution); in such cases the lending inward (i.e., the liability side) would not be viewed as Shari's compliant notwithstanding the fact that the outward lending from the special purpose vehicle (i.e., the asset side) would be compliant. This can create difficulties in obtaining finance for these vehicles and thus the legislation would not appear fit for purpose. We would recommend that amendment be considered to Part 8A TCA 1997 in this regard.

2.6 Withholding Tax

2.6.1 Interest Withholding Tax

Question 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.

Overall comments on Interest Withholding Tax (IWT) regime in Ireland

Based on the latest available OECD data, rates of IWT vary across EU Member States with 12 out of 27 states not imposing WHT on interest payments (refer to Appendix I to this document for a table outlining the applicable rates and source of the data). Of the Member States imposing WHT on interest payments, the average rate applicable across these 15 states is circa 20.8%; Ireland's rate of 20% would not therefore appear to be an outlier in this regard.

However, we would draw attention to the fact that Member States such as the Netherlands and Luxembourg do not impose an IWT on payments made, arguably to foster a more competitive environment for financing activities and to attract multinational enterprises. In terms of future policy decisions, it should be kept in mind that these Member States represent a significant competitor to Ireland in attracting financing type activities. Where the policy desire is to have a positive business environment to attract and retain financing type activities within the economy, it is vital that any IWT regime is reflective of same and is not out of step with our nearest competitors.

[59] Deleted by Finance (No2) Act 2023, with effect from 18 December 2023

Failing to adjust Ireland's approach could have significant consequences. It risks undermining Ireland's attractiveness as a hub for international financing activities, potentially driving businesses to relocate to competitor jurisdictions with more favourable tax environments. This could lead to lost economic opportunities, reduced foreign investment, and an erosion of Ireland's position as a leader in global sectors like aircraft leasing.

As a long-term recommendation, serious consideration should be given to the design of the IWT regime in Ireland and whether it continues to represent the best manner to ensure taxpayer compliance. Consideration should be given to whether monitoring of compliance with existing IWT provisions constitutes value for money compared to Exchequer receipts year on year. In our view, it would be preferable to repeal the existing IWT regime and instead look to apply IWT in cases where there is genuine risk of tax avoidance or reputational damage i.e., payments made to zero or low tax jurisdictions or in cases of where the main or one of the main benefits of a transaction is the avoidance of tax..

To enhance the regime’s efficiency and predictability, a legislative framework which would involve a targeted application should be considered by, for example, identifying categories of payments that pose the highest risk of non-compliance and explicitly targeting these for IWT application. In addition, a review of exemptions and an enhanced alignment with outbound payment rules by integrating outbound payment rules to focus IWT obligations on payments to jurisdictions with high risks of tax base erosion or profit shifting would be appropriate. This should enhance legislative clarity, ensuring taxpayers are not unnecessarily burdened.

Updating the IWT framework would deliver significant benefits including economic competitiveness, as simplified legislation would reinforce Ireland’s position as a hub for global financing and investment, particularly in sectors like aircraft leasing and structured finance. Clearer rules would reduce the likelihood of disputes. Targeted IWT policies would demonstrate Ireland’s commitment to OECD tax transparency principles, strengthening its global reputation.

The application of the Outbound Payments measures contained in Chapter 5 of Part 33 TCA 1997 act to address payments made to a “specified territory” meaning a territory other than a Member State which is a listed territory or a zero-tax territory. In addition, the anti-hybrid rules contained in Part 35C TCA 1997 operate to prevent deduction non-inclusion mismatch outcomes from arising, whereby a payer may obtain a deduction for a payment made without a corresponding inclusion for tax purposes in the hands of the recipient. As a general point, mandatory reporting of cross border arrangements under Chapter 3A of Part 33 TCA 1997 (“DAC6[60]”) require the disclosure of arrangements bearing certain hallmarks, in particular deductible cross border payments made to specified recipients in a zero-tax jurisdiction or to certain non-cooperative jurisdictions[61]. It is our expectation therefore that the BEPS measures introduced in recent years, coupled with increased transparency provisions such as DAC6 act to ensure that payments made to non-residents are capable of being addressed to identify those payments where a risk of tax avoidance may be present.

As this would constitute a significant change in the law and would likely be a multi-year project, we would recommend continuous stakeholder engagement and consultation on any potential changes prior to any legislative amendments are presented in the Finance Bill.

[60] Transposing Council Directive (EU) 2018/822 of 25 May 2018 into law
[61] Hallmark Category C

Without prejudice to our overall recommendation on the IWT regime in Ireland, we would note a number of concerns with the existing provisions which require consideration by the Department in the short to medium term.

Section 246 TCA 1997

Section 246(2) TCA 1997 provides for the application of IWT to the payment of yearly interest[62] charged with tax under Schedule D and paid by a company either to a person whose usual abode is in the State[63], or by any person to another person whose usual place of abode is outside the State.

The application of IWT, governed by section 246(2) TCA 1997, has evolved significantly over the years. While the original legislation provided for eight exemptions, it now encompasses over two dozen. This represents a significant proliferation in terms of the exemptions, and while extending the relief from IWT obligations is welcome for taxpayers, this kind of legislative development over successive years has created a section which can be difficult to navigate. It is imperative to modernise this framework, ensuring both clarity and alignment with contemporary tax policy objectives.

Lengthy and intricate provisions increase compliance costs and administrative burdens, particularly for multinational entities engaged in cross-border financing arrangements. This complexity undermines Ireland's reputation as a business-friendly jurisdiction and risks discouraging foreign direct investment.

While our overall recommendation with respect to IWT is one of extensive repeal and targeted measures, we appreciate that this may take some time. In the interim therefore we would recommend amendment to section 246 TCA 1997 to address the issue of payments made to tax transparency entities, detailed further below.

Payments to tax transparent entities

Section 246(3)(ccc) and section 246(3)(h) TCA 1997 provides that IWT is not to be deducted from payments made where the recipient is, by virtue of the law of a relevant territory, resident for the purposes of tax in a relevant territory. A relevant territory means a Member State of the European Communities other than the Republic of Ireland or a territory with which Ireland has a double tax treaty.

An unusual outcome arises in the case of payments made to certain legal forms, specifically US LLCs given that an LLC is not separately taxed for US purposes, but tax is levied on the members of the LLC as if they receive the money directly. Recent case law[64] in the area of tax residence and particularly the tax residence of US LLCs has found that such bodies are not "resident" for the purposes of a treaty. As an aside, we recommend that the provisions at issue in that recent case-law be amended to deal with the fact pattern at issue therein.

We note that Revenue guidance on the matter[65] addresses this point and permits the taxpayer to "look through" to the ultimate recipients of the interest to apply an exemption from WHT.

Government and certain other securities

Section 36 TCA 1997 to section 41 TCA 1997 inclusive provide for various exemptions from IWT in respect of Government and other public securities. Please refer to our responses to Question 25 in

[62] The characteristics of yearly interest were described in *CIR v Duncan Hay* 8 TC 686.
[63] Otherwise than when paid in a fiduciary or representative capacity
[64] *Revenue Commissioners v Susquehanna International & Ors* [2024] IEHC 569.
[65] See Revenue Tax Briefing Issue 55, April 2004

this document, where we have made the overall recommendation to amend the relevant encashment tax provisions. Accordingly, the exemptions required under section 36 TCA 1997 – section 41 TCA 1997 would no longer be required.

Section 64 TCA 1997 – Interest on quoted Eurobonds

In our view, the exemption contained within section 64 TCA 1997 is favourable and should be retained. We would note, however, that a relatively minor amendment to section 64 TCA 1997 should be considered to enhance the exemption and its effectiveness. In accordance with section 64(2) TCA 1997, IWT shall not apply where a number of conditions are met including where the quoted Eurobond on which the interest is paid is held through a recognised clearing system (where the payment is made by or through a person in the State[66]). A recognised clearing system is defined in section 246A(2) TCA 1997. However, where the person by or through whom the payment is made is not in the State, there is no equivalent requirement to hold the Eurobond in a recognised clearing system. In our view, there is no clear policy rationale for differentiating between paying agents within the State and those outside the State, and the additional requirement imposed on domestic paying agents for the quoted Eurobond to be held in a recognised clearing system would not appear to provide any additional protection for the Exchequer or to remedy any potential tax avoidance which may arise. The requirement to hold the Eurobond through a recognised clearing system should be removed. In our view, the treatment of foreign and domestic paying agents should be equalised by amendment to section 64(2) TCA 1997 to remove the requirement to hold the quoted Eurobond in a recognised clearing system in accordance with section 64(2)(b)(i) TCA 1997.

Section 246A TCA 1997 – Interest in respect of wholesale debt instruments

In our view, the exemption contained in section 246A TCA 1997 is favourable and should be retained. We would note however that in accordance with section 246A(1) TCA 1997, a "commercial paper" for the purpose of the exemption contains a number of specific conditions including that it matures within 2 years. This effectively places a time limit on the exemption which otherwise would run indefinitely. In our view there is no clear policy rationale for such a limit and the exemption should continue to be available to the extent that all other conditions in the definition of "commercial paper" continue to be met at each interest payment date or due date.

Section 845 TCA 1997 – Treatment of additional tier one instruments

We would not recommend any changes to the above section.

Future changes to the WHT regime – Impact of the FASTER Directive

The EU's FASTER initiative aims to harmonize withholding tax relief procedures and introduce a digital tax residence certificate, addressing significant inefficiencies in current cross-border investment frameworks. As noted in the preamble to the proposal, cumbersome WHT procedures discourage cross border investment, especially by retail investors and remain a barrier to a well-functioning EU capital market and are prone to risk of fraud or abuse[67].

Ireland stands to benefit from embracing these streamlined measures. The introduction of a digital tax residence certificate and uniform WHT relief mechanisms would reduce administrative burdens, enhance transparency, and improve the appeal of Ireland as a destination for cross-border investments. However, while these proposals are promising, their implementation must be carefully

[66] See section 64(2)(b) TCA 1997

[67] See Article 4 of the proposed Directive.

tailored through a national public consultation to address the specific transposition of any Directive into national law to ensure that any provisions do not give rise to unintended consequences.

Member States will be required to transpose the Directive into law by 31 December 2028 with the rules to have effect from 1 January 2030. In our view, this should give sufficient time to carry out a sufficiently detailed public consultation process of any new legislation to be enacted in future Finance Bills. It should also give sufficient time for amendments, enhancements and simplifications to the existing IWT regime in Ireland (per our recommendations above) to be considered and implemented.

2.6.2 Deposit Interest Retention Tax – Chapter 4 of Part 8

Question 24

Are there any aspects of the DIRT provisions which could be enhanced, or simplified? Please explain, nothing the benefits and any adverse consequences of same.

The current rate of deposit Interest Retention Tax (DIRT) is 33% which is deducted at source from deposit interest earned by Irish resident individuals. This is the final liability to income tax however PRSI may arise on deposit interest earned. Irish resident companies are exempt from DIRT.

We note that the Commission of Taxation and Welfare in their 2022 report[68] recommended that deposit interest should instead be subject to the marginal rate of income tax together with USC and PRSI and that this should be collected at source under a mechanism similar to the real time reporting system currently in place for PAYE. We note that this recommendation by the Commission of Taxation and Welfare is as a result of their mandate to consider options for reform on the balance of tax of earned income, consumption and wealth. We would not be in favour of such a policy. Should the recommendation that deposit interest be subject to the marginal rate of income tax, rather than a fixed 33% rate, form part of policy, we are of the view that the cost of implementing a system to collect the tax at source may result in significant cost and resources, particularly given the current low levels of deposit interest rates in Ireland over the last number of years.

Furthermore, the recommendations by the Commission to apply real time reporting similar to PAYE would require each individual with a bank account to provide their annual tax credit certificate to ensure the tax is correctly applied and may result in PAYE individuals being required to file tax returns to obtain refunds/pay further tax where DIRT is incorrectly applied.

If DIRT were instead to be collected via self-assessment, it could result in a significant number of individuals being brought within the self-assessment system to account for DIRT on small amounts of deposit interest, which in turn could result in non-compliance and a reduced collection of DIRT.

[68] Commission on Taxation and Welfare (2022) *Report of the Commission on Taxation and Welfare.*

2.6.3 Encashment Tax

Question 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.

Encashment tax rules require a "chargeable person" in accordance with Schedule 2 TCA 1997 who makes a payment of dividends to deduct and account for income tax at a rate of 25% from the payment. In the context of encashment tax, "dividends" means any interest, annuities, dividends or shares of annuities.

The relevant provisions at issue are:

- Section 17 TCA 1997
- Section 32 – section 51 TCA 1997 (as respects public revenue dividends – assessed under Schedule C)
- Section 60 TCA 1997 – section 63 TCA 1997 (foreign dividends – assessed under Schedule D)
- Schedule 2, Parts 1-5, TCA 1997 (provisions for the mechanism by which encashment tax is to be assessed, charged and paid)

The operation of encashment tax is carried out by the chargeable person as defined in Schedule 2 TCA 1997, referring to:

a. a person who is entrusted with the payment of any dividends which are payable to any persons in the State out of any public revenue,
b. a person in the State who is entrusted with the payment of any dividends to which Chapter 2 of Part 4 applies,
c. a banker or other person who obtains the payment of any dividends in such circumstances that the dividends are chargeable to income tax under Schedule C, or in the case of dividends to which Chapter 2 of Part 4 applies, Schedule D,
d. a banker in the State who sells or otherwise realises coupons in such a manner that the proceeds of the sale or realisation are chargeable to income tax under Schedule C, or in the case of dividends to which Chapter 2 of Part 4 applies, under Schedule D,
e. a dealer in coupons in the State who purchases coupons in such manner that the price paid on the purchase is chargeable to income tax under Schedule C or in the case of dividends to which Chapter 2 of Part 4 applies, under Schedule D.

In terms of UK equivalency, it is notable that the above provisions were previously included within various sections of the Income and Corporation Taxes Act 1988 but have been repealed since 1996. We would accordingly question whether encashment tax imposes a burden on stockbrokers and other regulated financial intermediaries in a manner which puts such service providers in Ireland at a competitive disadvantage to similar enterprises in the UK.

In terms of the treatment of the income in the hands of the ultimate recipient, such amounts are taxed on a gross basis with a corresponding credit for tax withheld, in a manner similar to other WHT regimes within Irish law. It is our understanding the underlying reason d'etre for the continued existence of encashment tax in Irish law is to facilitate tax compliance and to ensure that a measure of tax is received by the Exchequer on income; while the expectation is that all individuals in receipt of income will accurately include gross amounts in their annual tax returns, encashment tax operates

as a backstop but this creates a burden for stockbrokers and financial intermediaries. Accordingly, consideration should be given to the repeal of encashment tax as a regime in Ireland as is the case in the UK.

Where the policy intent is not to repeal the encashment tax provisions, we would recommend that consideration be given to the disapplication of the regime for regulated intermediaries[69]. Where reporting and facilitation of tax compliance upon such a change presents a challenge, we would note that alternative mechanisms could be employed to ensure continued transparency. For example, Council DAC2 - CRS[70] requires Irish financial institutions to report details of account holders that are not tax resident in Ireland or the US. Under AEOI[71] Revenue then receives details of accounts held by Irish tax residents with Financial Institutions under participating jurisdictions.

2.7 Reporting Obligations

Question 26

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

Section 36(3) TCA 1997 – Government securities

To the extent that encashment tax is amended in line with our recommendations in response to Question 25, reporting requirements under section 36(3) TCA 1997 are expected to be no longer required.

Form CT1 – Simplification measures

As a general comment, the tax compliance process for many taxpayers in recent years has grown exponentially and has become significantly more complex. One measure of the increasing complexity and level of information now required can be seen in the length of the corporation tax return (Form CT1) to be filed by companies in respect of their corporation tax liability. For accounting periods ending in 2023, the Form CT1 requires the completion of 48 pages. For comparison, the Form CT1 for accounting periods ending in 2016 requires the completion of 35 pages. While the additional reporting elements are driven by the rapid pace of change in recent years, in our experience the Form CT1 has become cumbersome and requires simplification. This simplification is not limited solely to interest and should in our view form part of a separate review. However, one element of the Form CT1 which in our view could be removed in due course is the election required under section 452 TCA 1997. As noted in our response to Question 15, the repeal of section 130(2)(d)(iv) TCA 1997 would also facilitate the repeal of section 452 TCA 1997; as such the election in the Form CT1 would be surplus to requirements and could be removed.

[69] Banks, stockbrokers etc

[70] Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

[71] Automatic Exchange of Information

The Outbound Payment Rules contained in Chapter 5 of Part 33 TCA 1997 are relevant in the context of payments to an entity (or PE of an entity) resident in a "specified territory". Specified territory in this context refers to a territory other than Ireland with is a listed territory[72] or a zero-tax territory. Section 817Y TCA 1997 requires the reporting of such payments, specifically requiring the following details be provided:

i. The amount of the payment or distribution,
ii. The amount of tax withheld on the payment or distribution, and
iii. The territory where the entity or permanent establishment is resident or situated, as the case may be.

Reporting of such payments or distributions to non-cooperative jurisdictions is already required within the Form CT1 and has applied from 2019 onwards. Specifically, a taxpayer is required to tick the box to confirm where a transaction of paying royalties, interest or dividends has been entered into, but further information is not required. In our view, the reporting requirements under section 817Y TCA 1997 should displace the currently required reporting within the Form CT1 i.e., new reporting requirements in section 817Y TCA 1997 should not be "layered" on top of existing requirements in place since 2019.

While not strictly related to the treatment of interest, the requirement to disclose details of the amount of a distribution made, the dividend WHT applied to same and the territory of the recipient is arguably already reflected in the related DWT returns filed by a company during the accounting period. Consideration should be given to facilitating a pre-population of disclosures required under S817Y TCA 1997 in the Form CT1 to take into account information already available to Revenue via the previous DWT returns filed.

Section 64(3) TCA 1997 – Reporting under Quoted Eurobond Exemption

We note that section 64(3) TCA 1997 places a requirement on the person paying the interest to provide Revenue with details of the payment within a period of 12 months. The reporting obligation arises only in the context of section 64(2)(b) TCA 1997 (payment by or through a person in the State and the quoted Eurobond is held in a recognised clearing system[73] or the person who is the beneficial owner of the quoted Eurobond and who is beneficially entitled to the interest is not resident in the State and has made a declaration of the kind mentioned in section 64(7) TCA 1997)[74].

As previously noted in our response to Question 23, we are of the view that section 64 TCA 1997 should be amended to equalize the treatment of paying agents regardless of their residence. Where section 64(2)(b)(i) TCA 1997 is removed but section 64(2)(b)(ii) TCA 1997 is retained, the person beneficially entitled to the interest will be required to make a declaration as noted above. Further reporting requirements are therefore, in our view, unnecessary and should give way to the repeal of section 64(3) TCA 1997.

Section 891A TCA 1997 – Returns of interest paid to non-residents

As an overall point, in our experience the return of interest paid to non-residents under section 891A TCA 1997 represents an additional compliance burden. This takes place as a letter outside of the Form CT1, and at present it is unclear as to how the reporting is used.

[72] See section 817U(2) TCA 1997 which links the meaning of listed territory with that contained in section 835YA TCA 1997 (jurisdiction listed as being non-cooperative for tax purposes)
[73] Section 64(2)(b)(i) TCA 1997
[74] Section 64(2)(b)(ii) TCA 1997

Section 891A TCA 1997 applies to every relevant person[75] who pays "relevant interest" in a chargeable period. Relevant interest in the context of section 891A TCA 1997 means interest to which section 246(2) TCA 1997 does not apply only by virtue of section 246(3)(h) TCA 1997. Accordingly, the reporting obligation under section 891A TCA 1997 applies to interest within is paid to in the ordinary course of a trade or business carried on by a person to a company:

i. Which is resident in a relevant territory and that relevant territory[76] imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or
ii. Where the interest is exempt from tax under the terms of the double tax treaty between Ireland and the relevant territory.

The policy rationale for the reporting requirement contained in section 891A TCA 1997 is unclear to us. Equally it is unclear to us the exact use to which these reports are put and whether they represent a significant measure in facilitating tax compliance or ensuring the prevention of tax avoidance. In the absence of any clear policy reason for this reporting, we would recommend its removal entirely from the legislation.

3. Broader Policy Considerations and other matters

Question 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.

The ease of access to capital in global markets and the related tax deductibility of interest and financing costs is of critical importance in facilitating Foreign Direct Investment and Domestic Direct Investment and maintaining Ireland's attractiveness as a location for companies' operations.

As outlined in the body of this document and in response to the earlier questions, restrictive rules pertaining to interest relief have their origins in FA 1974 at a time before significant BEPS measures and related anti avoidance provisions were the norm in the tax landscape. However, given the range of legislative change that the tax world has seen in recent years, the direction of travel is one towards harmonised anti avoidance and transparency laws. While tax developments in prior decades can be described as siloed and territorial in nature, more recent developments have recognised the need for greater change internationally and have looked to move the dial with global rather than local measures. Measures such as the Anti-Tax Avoidance Directive, anti BEPS measures, the Multilateral Convention, enhanced tax transparency measures and the OECD Transfer Pricing

[75] Relevant person in section 891A TCA 1997 takes the same meaning as that contained in section 246 TCA 1997, referring to a company or an investment undertaking.
[76] Meaning an EU Member State (other than the State) or treaty country

Guidance has modernised Ireland’s tax system. In our view, historic measures and restrictions created in the absence of these modern rules need to be revisited to avoid overly cumbersome legislation. EU Directives specifying the treatment of hybrid mismatches and the operation of the ILR are, in our view, representative of best practice internationally; to the extent that domestic rules deviate from such measures we would be of the opinion that these deviations should have a strong underlying policy rationale.

Our general view, as outlined in our response to Question 1 is we cannot see any policy rationale for the differing treatment between Case I and Case III financing activities. As such, we would recommend the closer alignment between these two cases in terms of the computation of taxable income. Our recommended approach to allowing deductions for expenses incurred wholly and exclusively for the purpose of a trade, profession or business and the associated amendment to loss relief rules presents, in our view, a simple mechanism for achieving this equalisation. Such an amendment puts Ireland on a closer footing with other EU Member States who make no distinction between trading and passive income. For example, no distinction is made between trading and passive income for the purposes of the tax codes of Luxembourg, Germany or the Netherlands.

The simplification of interest relief as outlined in our response to Question 4 is also, in our view, an essential component of modernising and simplifying Ireland’s approach to interest. An approach whereby regard is had primarily to the company’s financial statements and appropriate safeguards are applied (business purpose test, transfer pricing, ILR and specific/general anti avoidance) would not render Ireland an outlier in the EU on the taxation of interest. Luxembourg’s tax code for example allows for a relatively simple mechanism for assessing deductibility whereby regard is had to the amounts booked to the financial statements, modified by transfer pricing rules to permit a deduction only for arm's length amounts, and ultimately subject to the Anti hybrid rules and ILR. Furthermore, deductibility is based on an overarching business abuse provision, a form of general anti avoidance similar to that contained in ATAD1. A similar approach is adopted in the context of Germany and the Netherlands.

In addition to the above, a simplification of section 247 TCA 1997 and interest as a charge relief is urgently needed within Irish law. As outlined in our response to Questions 6 and 7, the rules on interest relief under section 247 TCA 1997 are extremely complex and can in some cases act as a disincentive to investment. Furthermore, they can act as a disincentive to post acquisition restructurings or group structure rationalisations and are no longer fit for purpose. In comparing the regime currently in place in Irish law with our EU counterparts, it is fair to say that we are an outlier in terms of complexity, as debt push down rules similar to section 247 TCA 1997 in the Netherlands are in practice easier to apply and do not provide for the same stringent rules as are present in Irish Law.

In our view, adverse consequences associated with our proposals outlined with respect to the deductibility of interest are mitigated by the use of best-in-class rules such as anti-hybrid provisions, ILR and Transfer Pricing. The benefits associated with our proposals are likely to be significant by contrast and represent a step change in the way in which financing activities are treated in Ireland.

Other relevant matters

Treatment of IREFs

Section 30 FA 2019 introduced rules to provide a charge to income tax for part of or all of certain interest expenses of an Irish Real Estate Fund ("IREF"). In short, an IREF will be deemed to have received an amount of income that is chargeable to income tax under Case IV of Schedule D and taxable at a rate of 20% in specific circumstances. In particular, the deemed income arises where the aggregate of any debt incurred by the IREF in respect of monies borrowed by, or advanced to the IREF ("specified debt") exceeds 50% of the aggregate of such costs of its assets as would have been allowable as base cost for capital gains tax purposes ("relevant costs"). Such excess is referred to as "excess specified debt", while the aggregate of (a) interest, discount, premium, fees and hedging costs of debt finance and finance leases and (b) the costs and expenses of arranging same, in each case where taken into account in arriving at the profits of the IREF, are "property financing costs", and the portion of the property financing costs as relates to the excess specified debt when apportioned rateably across all specified debt is deemed to be income. The deemed income is treated as arising in the year of assessment in which the relevant accounting period ends, and there is no ability to offset the amount by any loss, deficit, expense or allowance.

The rules were introduced to counteract instances where the IREF was deemed to have significant levels of debt exceeding 50% of the cost of the IREF assets. In November 2022, the Central Bank of Ireland ("CBI") published its Macroprudential Policy Framework for Irish Property Funds which introduced a limit of 60% to the ratio of debt over total assets of Irish property funds. As a result, IREFs are now subject to two sets of rules with respect to leverage limits, one set by the CBI and the other in tax law. Accordingly, we recommend consideration is given to removing the charge to income tax as leverage limits are governed by CBI regulation or, if more acceptable from a policy perspective, consideration be given to removing the balance sheet component (i.e., the 50% test referenced above) in order to simplify the calculations.

If the above change is not adopted, a number of alternative reforms may be considered.

i. Third party debt thresholds

The above treatment operates subject to section 739L TCA 1997 which provides that where some or all of the specified debt relates to third party debt, the amount of deemed income on which the IREF is charged to income tax shall be reduced by the amount of deemed income that would have been charged to income tax under the provisions had the specified debt consisted solely of the relevant third-party debt (the "third-party debt reduction"). The formula by which relief for third party debt is given only provides relief where the 50% threshold is breached when preparing the calculation using third party debt only. The associated calculations required to assess whether this has been breached are cumbersome; in our view, the calculation under section 739LAA TCA 1997 should be simplified to allow exclude third party debt and associated interest.

ii. Third party debt relief

The definition of third-party debt relief prevents such debt from being regarded as such in scenarios where the property was acquired by an associate corporate entity for a short period while the IREF was being incorporated and awaiting authorisation. We recommend that section 739LAA TCA 1997 is amended to allow for relief for third-party debt in situations where properties are acquired from a connected party in situations such as those illustrated above.

Appendix I- Summary of domestic withholding tax rates applicable across EU Member States

Country	Dividends	Interest	Royalties	Technical fees
Austria	25.00	0.00	20.00	20.00
Belgium	30.00	30.00	30.00	0.00
Bulgaria	5.00	10.00	10.00	10.00
Croatia	10.00	15.00	15.00	15.00
Cyprus	0.00	0.00	0.00	
Czechia	35.00	35.00	35.00	35.00
Denmark	27.00	22.00	22.00	0.00
Estonia	0.00	0.00	10.00	10.00
Finland	20.00	0.00	20.00	0.00
France	25.00	0.00	25.00	25.00
Germany	25.00	0.00	15.00	0.00
Greece	5.00	15.00	20.00	20.00
Hungary	0.00	0.00	0.00	0.00
Ireland	25.00	20.00	20.00	0.00
Italy	26.00	26.00	30.00	0.00
Latvia	0.00	0.00	0.00	20.00
Lithuania	15.00	10.00	10.00	0.00
Luxembourg	15.00	0.00	0.00	0.00
Malta	0.00	0.00	0.00	0.00
Netherlands	15.00	0.00	0.00	0.00
Poland	19.00	20.00	20.00	20.00
Portugal	25.00	25.00	25.00	25.00
Romania	8.00	16.00	16.00	16.00
Slovak Republic	35.00	35.00	35.00	35.00
Slovenia	15.00	15.00	15.00	0.00
Spain	19.00	19.00	24.00	24.00
Sweden	30.00	0.00	0.00	0.00

Source: OECD Data Explorer • Standard withholding tax rates - Corporate tax statistics last accessed 26 November 2024