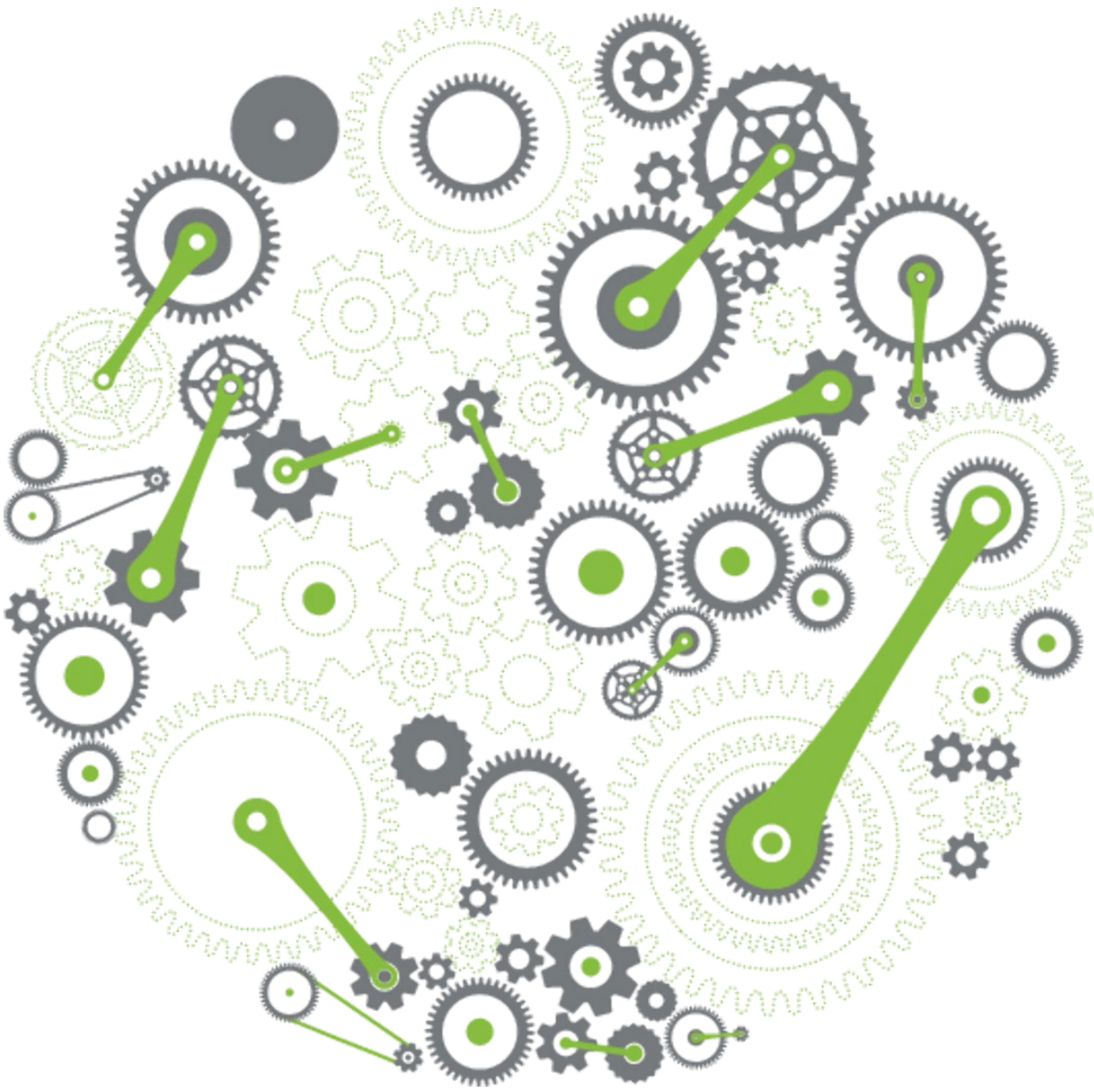

Phase One of Reform of Ireland’s Taxation Regime for Interest

Feedback Statement: Strawman Proposal

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16 January 2026

Interest Review – Feedback Statement
Business and International Tax Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2 D02 R583

By email to interestreview@finance.gov.ie

Dear Sirs/Mesdames:

Re: Feedback statement on Phase One of Ireland's Taxation Regime for Interest

We are pleased to submit comments on behalf of Deloitte in response to your 'Feedback Statement: Strawman Proposal" of 21 November 2025. 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**

Contents

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, and we would therefore overall welcome a move to a principle-based approach. In our view, simplification of the existing tax treatment for interest is required as a matter of priority, with a focus on removing uncertainty for taxpayers. As part of an ongoing focus on simplification, the EU Commission has stated its aims to simplify EU policies and reduced administrative burdens to boost competitiveness and growth.

In advance of Ireland's Presidency of the EU in the coming months, any future changes to the Irish tax treatment of interest must in our view give particular consideration to the overall theme of simplification with the Tax Omnibus package forming part of the EU Commission's commitment to reduce administrative burdens by 25% for all businesses and 35% for SMEs[1].

Bearing in mind the overall theme of simplification and taxpayer certainty, we would note a number of technical and practical recommendations with respect to the Strawman proposals.

New Interest Deductibility Rule for Corporation Tax

The "profit motive" test as proposed for the new interest deductibility rule would appear to take a "purpose based" approach, requiring not only the identification of the purpose of the borrowings but whether that purpose has in fact been adhered to throughout the accounting period in which a deduction is sought. We would have an overall concern that such a purpose-based approach would constitute a departure away from the well-established principles with respect to interest deductibility based on section 81 TCA 1997 and the dicta in the Irish Supreme Cout decision of *Ringmahon*[2]. Secondly, we would query whether the step regarding a direct link between the borrowings and the generation of profits or gains is in fact required, and how this would interact with existing "wholly and exclusively" type principles. In our view, case law in the area would suggest that the "wholly and exclusively" principle brings with it an implicit intention to earn income from a business or property. Such principles would be equally applicable to the making of profits or gains from activities not within the realm of trading and as such a requirement to explicitly refer to an intention to "directly" generate profits or gains as part of a new interest deductibility test would appear unnecessary.

The Strawman proposal notes that Case III loss relief rules are expected to remain as currently legislated for, but that Case III losses that cannot be used in an accounting period would be carried forward in a similar manner to Case IV losses. In our view, such an approach would likely lead to a measure of inflexibility with respect to the new regime on interest deductibility and would not serve to equalise the treatment between trading and passive interest income. Where the treatment of Case I and Case III activities are put on an equal footing with respect to the computation of taxable

[1] Omnibus package - European Commission
[2] MacAonghusa v Ringmahon [2001] IESC 47

income and allowable deductions for expenses, 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.

Commencement of transfer pricing rules for medium sized enterprises

In our view, a commencement of the transfer pricing provisions in respect of medium sized enterprises in Ireland would overall negatively impact on Ireland's competitiveness as a place to do business and we would not recommend such a commencement at this time.

Proposed amendments to Interest Limitation Rules ("ILR")

We would not recommend the introduction of an additional €6million worldwide group de minimis limit (in addition to the existing €3million entity by entity de minimis). In our view, such a proposal would ultimately have a negative impact in terms of promoting investment activity within Ireland and within specific sectors. The introduction of an additional group de minimis limit may act to discourage investment in Ireland by such companies and groups who require higher debt levels within their structures for commercially valid reasons. In addition, it would not be uncommon, in our experience, for commercial lenders such as financial institutions and third-party banks to insist on lending to a single entity for security and/or risk purposes (potentially by lending at the level of a Holding Company or Intermediate Holding Company). Such funds may either be onward lent to group companies or may be used to acquire target companies depending on the needs of the group at that point in time. In addition, we would note that it would not be uncommon in certain industries and sectors for debt to be specifically drawn down by individual entities for valid commercial purposes and for debt to be ringfenced within such entities. Lastly we would point to the existing General Anti Avoidance Rules ("GAAR") in section 811C TCA 1997 which in our view be an appropriate ATAD compliant countermeasure for abusive debt transactions.

Lastly, an extension to the timeline for the creation of an interest group would be a positive development and would provide greater certainty for taxpayers prior to making such an election. However, caution should be exercised to ensure that the extended timeframe does not result in unintended consequences in connection with the Equity and Group ratio elections provided for in legislation.

Transitional and simplification measures for section 247 TCA 1997

In our view, simplification of section 247 TCA 1997 remains a priority to ensure the continued usefulness of the relief and to ensure that taxpayer uncertainty is mitigated.

While the simplification measures proposed in the Feedback Statement would appear reasonable, we would note that further review and simplification of both section 247 and section 249 TCA 1997 continue to be needed and should be prioritised. We would reiterate our comments previously made as part of our response to the Interest Consultation of January 2025 in this regard.

The proposal to retain relief for interest as a non-trade charge under the existing section 247 regime would appear reasonable subject to our comments below. Consideration should be given to the status of accrued, unpaid section 247 interest and providing taxpayers the flexibility to point payments of interest made after the introduction of the new rules either against these accrued, unpaid balances or against interest accruing under the new rules.

Simplification measures for section 130 TCA 1997

We would overall welcome this proposal on section 130(2)(d)(iv) TCA 1997. The Strawman proposal as outlined would appear to move section 130(2)(d)(iv) TCA 1997 from being "reactive" in nature to "proactive" in identifying payments made to non-EU or non-double tax treaty jurisdictions. We would note, however, that the above Strawman proposal does not speak to the consequential amendments which must be made to section 452, section 452A or section 845A TCA 1997 on foot of the proposed amendment to section 130(2)(d)(iv) TCA 1997. In particular we would note the following core recommendations:

- The Strawman proposal does not detail whether the above exemption in section 452(3A) TCA 1997 is to be retained notwithstanding the proposed amendment to section 130(2)(d)(iv) TCA 1997. In our opinion, the ability to disapply section 130(2)(d)(iv) TCA 1997 by election under section 452(3A) TCA 1997 is of vital importance to the Treasury sector and should be retained.
- The Feedback Statement is silent as to the proposed amendment (if any) to section 452A TCA 1997 on foot of an amendment to section 130(2)(d)(iv) TCA 1997. We would be of the view that consideration should be given to retaining section 452A TCA 1997.
- Where section 130(2)(d)(iv) TCA 1997 is simplified to remove the requirement to make an election under section 845A TCA 1997, caution must be taken to ensure that such an amendment does not narrow the scope for relief which would otherwise be afforded under section 845A TCA 1997. Where concerns arise as to ensuring that payments of interest are not made to a "specified territory[3]", provision for same could in our view be made within the law for same to ensure adequate protection is afforded.

Repeal of section 76E TCA 1997

We would be in agreement with a repeal of section 76E TCA 1997 as part of Finance Bill 2026 where the necessary changes are made. The proposed transitional measures contained in the Interest Feedback Statement would appear reasonable and would ensure that previously accrued interest to which section 76E TCA 1997 applies would be relieved at such time as the amounts are paid.

Taxation of Interest Income

We would note our broad agreement with moving to an accrual's basis of taxation for Case III interest in order to equalise the treatment of trading versus passive interest income and simplify the position overall. However, 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 on a receipt's basis. For this reason, the new regime should be optional, including a transition from a receipt's basis to an accrual's basis of taxation. Such an election may be made on a loan-by-loan basis at the outset.

Where optionality is not the preferred course of action in legislating for the new interest rules, we would recommend that taxpayers be given an appropriate lead in time prior to the introduction of the accruals basis of taxation to allow them ample time to identify the potential impacts from same and to model the tax impact.

[3] In accordance with the Outbound payment defensive measures, a "specified territory" pursuant to section 817U TCA 1997 means a territory other than a relevant Member State which is a listed territory or a zero-tax territory. Listed territory in this instance takes on the meaning as in section 835YA TCA 1997 and refers to a territory included in Annex I of the Council conclusions on the revised EU list of cooperative jurisdictions for tax purposes.

Double Taxation

The proposal requiring returns to be refiled when the foreign tax has ultimately been suffered would in our view give rise to a number of practical challenges including additional complexity in the compliance cycle and a proliferation of amended returns causing difficulties for the Exchequer in accurately forecasting and reporting tax receipts on a monthly or yearly basis.

The above challenges may, however, be mitigated by taking a practical approach to the claiming of relief for foreign tax. A practical approach would look to permit relief for foreign taxes not yet paid on an accrual's basis in so far as this is consistent with the recognition of income. Such an approach would undoubtedly avoid the practical difficulties caused by subsequent amendments to returns on a yearly basis, particularly where foreign tax is in fact levied at an earlier or later date compared to when the interest income is in fact taxed in the hands of the recipient in Ireland.

Taxation and Deduction of Interest Equivalents

In our view, an expansion of "interest" to include "interest equivalents" for both taxation and deduction purposes requires further consideration. In particular, foreign exchange gains or losses and amounts arising under hedging arrangements can give rise to complexity and uncertainty in the application of the Interest Limitation Rules. In our view, further consideration is needed to address the uncertainty posed in such cases prior to widening the definition of interest.

Where the definition of interest is expanded to include the above "interest equivalents", this expansion should be limited in scope to the taxation and deductibility of such amounts and should not have relevance in the context of interest withholding tax which would arise under section 246 TCA 1997.

2. Scope of Phase One Reforms

Strawman Proposal

- Changes are being considered in respect of the rules for the taxation and deductibility of interest income and expense as they apply to Cases I, II, III, and IV of Schedule D.
- The changes being considered as they relate to the taxation of interest income would apply for both Income Tax and Corporation Tax.
- The changes being considered as they relate to the deduction of interest expense would apply only to Corporation Tax.
- No changes to the interest deductibility rules concerning Case V of Schedule D are being considered for this phase of the review.
- No changes to the interest deductibility rules concerning Capital Gains Tax are being considered for this phase of the review.

We note the above scope with respect to the Phase One Reforms and the specific areas not included within scope. As outlined in our previous submission on the Interest Consultation in January 2025[4], we would be of the view that specific reform and amendment is nevertheless required in the following key areas:

- **Interest as against rental income (Case V of Schedule D):** We would refer the reader to pages 15 – 19 inclusive of our January 2025 submission.
- **Interest as a deduction against capital gains:** We would refer the reader to pages 27 – 28 inclusive of our January 2025 submission.

To the extent that such further reforms are considered by the Department of Finance, we would welcome further discussion on same in due course.

[4] Public Consultation on the Tax Treatment of Interest in Ireland, Deloitte responses are available at Consultation Tax Treatment Interest | Deloitte Ireland

3. New Interest Deductibility Rule for Corporation Tax

3.1 New Interest Deductibility Rule

Under the Strawman proposal, interest would be deductible where it is incurred in respect of borrowings used to fund activities or investments with the intention of directly generating profits or gains, within the charge to tax or that would be within the charge to tax but for a relieving provision under Cases I, II, III and IV of Schedule D and Schedule F. It is proposed that the "profit motive" test in the new interest deductibility rules would be applied in each accounting period that the interest in the borrowings accrues. To this end, we would note that the Feedback Statement provides that "taxpayers would assess the purpose of the borrowings, including replacement borrowings, for each period in which an interest expense accrues, and whether the borrowings were applied to that purpose throughout the accounting period. A deduction for interest for interest would not be available until the time the borrowings have been applied towards an activity or an investment has been undertaken, with a view to realising profits or gains that are subject to tax or that would be within the charge to tax but for a relieving provision under Cases I, II, III, and IV of Schedule D and Schedule F".

We have outlined a number of observations with respect to the new interest deductibility rule proposals which should be considered further, namely:

- The "Profit Motive" Test
- The allocation of interest expenses
- Interaction with loss rules

3.1.1 "Profit Motive" Test

Based on our understanding of the Strawman proposals as outlined, the new deductibility rule would appear to encompass a three-stage "profit motive" test to assess deductibility for interest expenses:

1. Firstly, the taxpayer is required to assess the "purpose" of the borrowings drawn down,
2. Secondly the taxpayer is required to assess whether the borrowings were applied to that purpose throughout the accounting period.
3. Thirdly the taxpayer must assess whether the borrowings in question have been applied towards an activity or investment with a view to directly generating profits or gains from such activity or investment.

While the three steps above arguably form part of the overall proposed new test for deductibility, there are, in our view, a number of individual components to be considered. Firstly steps 1 and 2 would appear to take a "purpose based" approach, requiring not only the identification of the purpose of the borrowings but whether that purpose has in fact been adhered to throughout the accounting period in which a deduction is sought. We would have an overall concern firstly that such a purpose-based approach could constitute a departure away from the well-established principles with respect to interest deductibility based on section 81 TCA 1997 and the dicta in the Irish Supreme Court decision in *Ringmahon*[5]. Secondly, we would query whether the third step in the above test wherein an intended direct link between the borrowings and the generation of profits or gains is in fact required, and how this would interact with existing "wholly and exclusively" type principles.

[5] MacAonghusa v Ringmahon [2001] IESC 47

Purpose Based approach to Profit Motive Test

Section 81(2) TCA 1997 provides that in computing the amount of profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of "any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession". To address our first point outlined above, *Ringmahon* stands as the seminal case with respect to the deductibility of interest, wherein a loan was drawn down to redeem preference shares resulting in the question of whether the related interest on same could be said to have been incurred "wholly and exclusively for the purposes of the trade" as required by section 81 TCA 1997. Consideration of the dicta in both the High Court[6] and Supreme Court[7] in this instance is necessary.

The argument of the Appellant (the Inspector of Taxes) at the High Court was such that "the object of taking out the loan was in reality to give benefit to the shareholders and was not only for the purpose of the Company's trade. In this instance the loan obtained at the cost of the interest paid to the bank, was not spent on the Company's trade but instead was to put cash into the pockets of shareholders[8]". However, the decision of Budd J in the High Court focussed the use of the funds in question.

In considering whether the interest on the funds borrowed was deductible, Budd J would appear to have adopted the principle whereby one has to consider the *use* to which the borrowed funds were put as opposed to merely considering the purpose of the funds at the initial drawdown, as noted below:

"It seems to me that Ringmahon was entitled to redeem the preference shares. It was then faced with the need to plug the gap in its finances by acquiring trading funds which it did by acquiring a loan from the bank at the recurrent cost of interest. Since these funds were used for trading, and no new asset was acquired from these funds other than trading assets, applying the principles deduced from the cases cited, it seems to me that the learned Circuit Court Judge was quite correct in holding that Ringmahon was entitled to a deduction of £435,764 in computing the amount of its profits under Case I, Schedule D.[9]"

At the Supreme Court, similar arguments were advanced such that while the purpose of a loan drawn down to redeem preference shares was argued by the appellant to be related to capital structuring of the company and not the ordinary trading activities, the respondent (the taxpayer) nevertheless argued that the "ongoing annual interest is in quite a different position as it becomes merged in the ordinary ongoing liabilities of the company in its trading." Geoghegan J in the Supreme Court in particular quoted with approval from a submission from Counsel for the taxpayer wherein it was noted that:

"the essence of interest is that it must be looked at in each year and is not, it is submitted, necessarily coloured by the fact that the principal was used for a capital purpose – indeed, it is not so coloured at all because if one builds a factory on borrowings, which is clearly a capital expenditure and the borrowings would not be an allowable deduction, nonetheless the interest is an allowable deduction as has been agreed with the Revenue. In the present case no new asset was acquired by the

[6] [1999] IEHC 48
[7] [2001] IESC 47
[8] [1999] IEHC 48 at page 20 of the decision
[9] Page 62 of the decision

respondent – it extinguished share capital and continued its business by substituting bank borrowings on which it paid interest[10]*."*

Geoghegan J further notes:

"The respondent submits that there is no distinction in principle between interest payable on the bank borrowings for the purpose of redemption of the share capital and interest payable upon bank borrowings incurred in substitution for earlier borrowings from another bank. But even if this is no better than a debating point, I think that the respondent successfully demonstrates that the interest on an ongoing basis must be regarded as being laid out wholly or exclusively in earning of the profits of that particular accounting year[11]*."*

Later in the decision, Geoghegan J also notes:

"…it makes no sense, in my view, to hold that on a true interpretation of the relevant Irish legislation that because the loan was originally raised for the purposes of paying off preference shareholders, the interest thereon cannot ever thereafter be treated as "wholly and exclusively laid out or expended for the purposes of the trade.[12]*"*

The above comments made by Geoghegan J in the Supreme Court follow the same tenor and adopt the same principle as Budd J in the High Court wherein one is required to consider the use of the borrowed funds as opposed to an over reliance on the purpose at drawdown. As such, the primary focus in assessing deductibility of interest under existing rules would look to the *use* of the borrowed funds for the period in which a deduction is being claimed.

In this regard, it is questionable whether the above principles derived from *Ringmahon* are in fact reflected in the Strawman proposal on interest deductibility. In particular, we note at page 23 of the Interest Feedback Statement that "It is proposed that the deductibility of interest would be determined by reference to whether the borrowings are incurred for a certain purpose".

The Interest Feedback Statement later notes the following at page 25 (with underlining added for emphasis):

<u>"It is proposed that the 'profit motive' test in the new interest deductibility rule would be applied in each accounting period that the interest on the borrowings accrues, i.e., taxpayers would assess the purpose of borrowings, including replacement borrowings, for each period in which an interest expense accrues,</u> <u>and whether the borrowings were applied to that purpose throughout the accounting period.</u> A deduction for interest would not be available until the time the borrowings have been applied towards an activity, or an investment has been undertaken, with a view to realising profits or gains that are subject to tax or that would be within the charge to tax but for a relieving provision under Cases I, II, III, and IV of Schedule D and Schedule F. <u>A deduction for interest would not be available where a taxpayer borrows funds but fails to apply the funds to such a purpose."</u>

While an assessment of whether the borrowings were applied to the purpose (and thus an assessment of the use of the funds) would align with the assessment in *Ringmahon*, it is the initial requirements to assess the purpose of the borrowings which gives us difficulty. The proposed test, as we see it, inextricably links the purpose identified at Step 1 with an ongoing assessment of whether such a purpose was in fact adhered to on a year-by-year basis (Step 2). In requiring purpose and

[10] See page 6 of the judgment
[11] See pages 6 – 7 of the judgment
[12] See pages 12 – 13 of the judgment

adherence to said purpose to be the common thread in the proposed test for deductibility, this arguably moves away from the established principles in *Ringmahon* wherein the capital purpose of the loan drawn down was not held to colour the essence of the interest as a trading expense.

"Direct" generation of profits or gains

In addition, the proposed test for deductibility would also look to operate on an "intention" to generate profits or gains. As outlined in the Feedback Statement on page 25, there must be a genuine intention to directly realise profits or gains from the purpose to which the borrowings are put. Further consideration and analysis should be given to such a requirement that borrowings be drawn down subject to an intention to *directly* realise profits or gains in this fashion, and whether such specific language is in fact required.

The *Trans-Prairie*[13] decision is of note in this regard, not least due to the similarity in terms of their facts but also in the commentary in *Ringmahon* noting a similarity between the specific provisions of Canadian law with the provisions of section 81 TCA 1997. The relevant Canadian statutory provision as referred to in the *Trans-Prairie* case and cited in *Ringmahon* is reproduced below:

"11(1) Notwithstanding paragraphs (a), (b), and (h) of subsection (1) of subsection 12, the following amounts may be deducted in computing the income of a taxpayer for a taxation year:

.....

(c) An amount paid in the year or payable in respect of the year (depending on the method regularly followed by the taxpayer in computing his income) pursuant to a legal obligation to pay interest on

> *(i) borrowed money used for the purposes of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt)*

The expression "money used for the purposes of earning income from a business or property" is to be compared to the wording used within section 81 TCA 1997 which instead refers to "wholly and exclusively laid out or expended for the purposes of the trade". At the High Court, Budd J noted (in referring to arguments presented by the taxpayer) that "Under the Canadian Section the interest on the loan should be deductible for the years in which the borrowed capital was employed in the business and he says that the same principle applies in the very similar situation in *Ringmahon*[14]." Equally at the Supreme Court, Geoghegan J cited the *Trans-Prairie* case with approval, noting that while the wording of the statutory provision is different, such difference was not material to the points at issue being whether the interest was deductible for tax purposes. As such, we see a comparability drawn by the Irish courts whereby "wholly and exclusively laid out or expended for the purposes of the trade" and "used for the purposes of earning income from a business or property" can be said in some respects to be equivalent. This would suggest that within the "wholly and exclusively" concept, there is an implicit intention to earn income from a business or property embedded into same. It is therefore doubtful as to whether a reference to an intention to directly generate income would in fact be required with any new interest deductibility rule, where it is fashioned along the same lines as a "wholly and exclusively" test.

The same comparability can be seen in the case of *Strong & Co Ltd v Woodifield*[15], wherein the particular law issue provided as follows:

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[13] Trans-Prairie Pipelines Limited v. Minister of National Revenue 70 DTC 6351
[14] See page 42 of the judgment
[15] [1906] 5 TC 215

"In estimating the balance of the profits or gains to be charged according to either of the first or second cases, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade, manufacture, adventure or concern…"

Lord Davey in *Strong* provides further insight as to the meaning of the words "wholly and exclusively laid out or expended for the purposes of…" wherein he says as follows: "These words are used in other rules, and appear to me to mean "for the purpose of enabling a person to carry on and earn profits of the trade" etc. I think that the disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade, or is made out of the profits of the trade. It must be made for the purposes of earning the profits…".

While *Strong* was distinguished by the Supreme Court in *Ringmahon*, it is arguable that this distinction was made on the basis that the facts in *Strong* were wholly different to those in *Ringmahon,* as the former case addressed once off payments payable on account of injuries caused to a visitor to the taxpayer's premises as opposed to an ongoing liability for interest. It is therefore arguable that *Strong* was not distinguished based on the principles outlined in the case regarding the level of connection between the disbursement and the making of profits in the trade, and as such *Strong* continues to be persuasive authority in this respect[16]. Indeed, the case of *Strong* has been referred to in a number of instances both by Revenue and by an appellant as part of an appeal to the Tax Appeals Commissioner on the meaning of "wholly and exclusively", while in 128TACD2023 in particular the Tax Appeal Commissioner noted as follows:

88. In the Irish decision of MacAonghusa, the Court was asked to consider whether the interest on a term loan taken out to redeem preference share capital was an expense of the company's trade. While this was not in connection with deductibility of taxes, the Supreme Court endorsed the test in Strong & Co and the case was decided in favour of the taxpayer. The Court upheld that the interest payments were integral to the trading of the company and as such deductible. The purpose of the payment was key to the decision in that it was found to be for the purpose of earning profits, rather than the financing of the trade. If it had been for the latter purpose, Geoghegan J stated the payments could not have been deductible. Furthermore, he stated that the matter had to be approached by making a finding of fact as to the purpose of the payment and in light of that it would become "reasonably clear whether as a matter of law the payment [is] deductible or not".

A similar approach may be found in the words of Lord Cave in *British Insulated and Helsby Cables Ltd v Atherton*[17] wherein he stated "…a sum of money expended, not of necessity and with a view to direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency and in order to indirectly facilitate the carrying on of a business, may yet be expended wholly and exclusively for the purposes of the trade".

In our view, case law in the area and in particular *Trans-Prairie* and *Strong* would suggest that the "wholly and exclusively" principle brings with it an implicit intention to earn income from a business or property; furthermore the precedents in this area would also serve to provide taxpayers and authorities with sufficient guidance as to the proximity required between the disbursement of the amounts in question and the making of profits in a trade. In our view, such principles are equally

[16] Strong in particular has been cited in submissions made by both the Revenue Commissioners and Appellants in various Tax Appeal Commission cases, notably 145TACD2020, 08TACD2019,47TACD2024 and 128TACD2023 (link above)
[17] 10 TC 155

applicable to the making of profits or gains from activities not within the realm of trading and as such a requirement to explicitly refer to an intention to “directly” generate profits or gains as part of a new interest deductibility test would appear unnecessary.

We can appreciate the distinction made by the Interest Feedback Statement between a “wholly and exclusively” test and a “to the extent” test as noted on page 29 – 30, recognising that a company may borrow a single amount for a number of different purposes and a potential need to apportion interest expenses where a loan has been drawn down for more than one purpose. However, in our view such a distinction is not required where the test for deductibility is as discussed above.

A related point may be made with respect to the profit motive test and a requirement that a taxpayer must show that the amount of the loan is directed towards the generation of profits on a year-by-year basis. The requirement to match such a purpose with the yearly intention to generate profits, in our view, may result in a tracking of loans and their uses in a manner which would likely increase the complexity associated with any new test for deductibility. In our view, any changes to the deductibility of interest should be considered from the perspective of an overarching theme of simplification for taxpayers.

Within the charge to tax

The Strawman proposal would look to provide interest relief on borrowings used for activities or investment directly generating profits or gains which would be taxable within the Irish tax net. We would note that the Interest Feedback Statement at page 25 recognises that profits or gains may be within the charge to tax but ultimately may not be subject to tax due to a relieving provision. We would agree with the proposal therefore to permit interest relief connected to the generation of profits or gains which are within the charge to tax or would be within such a charge but for a relieving provision. In our opinion this should explicitly encompass section 129 TCA 1997 and section 831B TCA 1997. Such relieving provisions are already recognised for the purposes of section 835E TCA 1997[18] and as such inclusion within any draft legislation on interest deductibility would ultimately appear reasonable to us.

3.1.2 Allocation of interest expenses

As outlined in the Strawman proposal, interest expenses would be allocated on a Case-by-Case basis against the profits or gains arising or that may arise from the activity or investment funded by the borrowing, by reference to the Schedular and Case categorisation of those profits or gains. Such an approach would appear reasonable to us, while we would note that the matching of interest expenses against profits or gains in this manner would appear to already be provided for via the “wholly and exclusively” principle and the rule in *Strong* which would look to the deductibility of disbursements made for the purposes of earning profits. A Case-by-Case approach would appear reasonable such that interest expenses which are deductible and provide tax relief a rate of 25% should be equally matched against income also taxable at the same rate. However, where the allocation of interest expenses (including interest equivalents) against income generated by the activity or investment funded by the activity, the question which arises is the extent to which a Case III loss generated by one activity may be set against a net Case III profit generated by another activity in the same year. In this regard, the proposed loss relief rules as outlined in Part 3.1.3 of this document would appear to be less flexible than their Case I counterparts and we would refer the reader to our recommendations in this regard.

[18] See section 835E(2)(b)(ii)(II) TCA 1997 in this regard

3.1.3 Interaction with losses

The Strawman proposal notes that where a loss arises in respect of a Schedule or Case because of interest expenses exceeding income, the existing rules with regard to the use of losses arising under that Schedule or Case would continue to apply. As such, it is proposed that the loss relief rules remain as currently legislated for, but that Case III losses that cannot be used in an accounting period would be carried forward in a similar manner to Case IV losses.

In our view, such an approach would likely lead to a measure of inflexibility with respect to the new regime on interest deductibility and would not serve to equalise the treatment between trading and passive interest income. As previously outlined in our submission on the Interest Consultation of January 2025, 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[19]. Losses arising from such a trade may therefore only be carried forward against future profits from the same trade.

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 deductions for expenses, 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.

Where such amendment is not made and instead Case III loss rules are modified in line with the Strawman proposal, this in our view this would not adequately equalise the treatment of trading and passive activities and would in fact serve to create greater complexity. It would also likely result in a reduced benefit to companies who would be entitled to claim a deduction for interest expenses under the new rules in certain situations. For example, page 25 of the Interest Feedback Statement would suggest that where a company invests the amounts borrowed to acquire share capital of a company to generate future income, this would be an example of an investment or activity aimed at "directly generating profits or gains" and thus interest expense accruing on such borrowed funds should be deductible under the new rules. However, where such dividend income is in fact relieved from tax (for example under the Participation Exemption on Foreign Dividends[20]), the benefit from such a Case III deduction is arguably limited and such a company may never crystallise the benefit of such deductions depending on the expected income streams from subsidiaries in the future. While relief under section 247 TCA 1997 would nevertheless be available to such a company, we would note that this relief continues to be subject to a variety of specific conditions and overly onerous recovery of capital rules which can make the relief itself complex. The loss rules as proposed in the Strawman proposal would therefore in our view limit the benefit and flexibility of choice offered to taxpayers.

[19] See section 396(4) TCA 1997

[20] Section 831B TCA 1997

3.1.4 Expenses economically equivalent to interest

We note the Strawman proposal such that expenses that are economically equivalent to interest would be deductible under the new interest deductibility rule in the same manner as interest expense. Please refer to our comments with respect to this proposal at Part 8 of this document.

3.1.5 Additional comments

We remain 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. Accordingly, we presume that that the new interest deductibility regime (where legislated for) will not affect the existing deductibility rules currently in force with respect to companies qualifying under section 110 TCA 1997.

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[21]. 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, the definition of income in accordance with section 434(4) TCA 1997 which is applied for the purpose of the close company surcharge may need to be modified depending on how the interest deduction is treated.

We would note that where the new interest deductibility rule is provided for, in addition to an optional election to remain within the section 247 regime (addressed further in Part 3.2 of this document), significant work may be required by companies to assess their existing debt structures to further assess any new changes. While we note that amended legislation for Phase One is to be included within the Finance Bill 2026, we recommend further consideration be given to an optional lead in time to allow companies with complex financing structures sufficient time to assess such changes. Where revised rules have an effective date of 1 January 2027, we would not be of the view that companies with complex financing structures and multiple interest flows will have sufficient time to appreciate the changes. An optional lead in time of one year would therefore be welcome.

3.2 Election to apply the section 247 regime

Under the Strawman proposal, taxpayers would have the option to apply section 247 TCA 1997 to interest on qualifying loans (i.e. loans that meet the conditions of section 247 in current legislation) as an alternative to applying the new interest deductibility rule. This election would apply on a loan-by-loan basis, irrespective of the drawdown date of the loan. Once an election has been made in respect of a loan, it would be irrevocable.

The Interest Feedback Statement also notes as follows:

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

Election to apply the section 247 regime

- Where a taxpayer elects for section 247 to apply to borrowings, section 247 alongside section 249 (recovery of capital rules) would apply. Relief would be available for interest as a non-trade charge on the same basis as under existing tax legislation. Any replacement borrowings would be considered new borrowings and, as such, a new election to apply section 247 to those borrowings would be required, if applicable. See section 5.5.2 below regarding simplification measures in relation to section 247.

The Strawman proposal as noted above would appear reasonable to us and would appear to achieve a balance in terms of offering flexibility to taxpayers who wish to remain within the scope of section 247 TCA 1997 and those who wish to apply the new interest deductibility rules to an existing loan. As a practical point, we would note that consideration needs to be given to the manner in which an election for the loan is made, whether as part of the Form CT1 or as a separate election. Where an election on the Form CT1 is the preferred course of action, we would suggest that failure to make this election (i.e. failure to tick the box as required) in cases where section 247 treatment is nevertheless applied by the company in the computation of its taxable income/losses and in the treatment of its interest expense that this treatment should be taken as a "de facto" election such that a taxpayer should not unnecessarily be treated as being subject to the new deductibility rules by default.

We note that transitional provisions and simplification measures have been proposed elsewhere in the Interest Feedback Statement. Please refer to our comments in this regard in Part 5 of this document. As an overall comment, we would reiterate the need for broad simplification of section 247 TCA 1997 going forward.

3.3 Proposal to repeal section 76E TCA 1997

As noted in our response to the Interest Consultation of January 2025, we recognise that the relatively newly enacted section 76E TCA 1997 provides a measure of relief to a Qualifying Finance Company to obtain a deduction for external interest paid where certain conditions are satisfied. However as also outlined in our response[22], we noted a number of amendments required to the provisions of section 76E TCA 1997 to ensure that the rules are expansive enough to bridge the gap in terms of the treatment of trading and non-trading interest. In light of the Strawman proposals outlined in the Interest Feedback Statement to closer align the treatment of trading and passive interest, we would be in agreement that with repeal of section 76E TCA 1997 as part of Finance Bill 2026 where the necessary changes are made and would simplify the interest landscape overall in Ireland.

We note that transitional provisions have been proposed elsewhere in the Interest Feedback Statement. Please refer to our comments in this regard in Part 6.2 of this document.

[22] Deloitte responses are available at Consultation Tax Treatment Interest | Deloitte Ireland. See pages 24 – 27 inclusive in this regard.

4. International guardrails

4.1 Transfer Pricing

4.1.1 Commencement of transfer pricing provisions contained in section 25A and Part 35A in relation to Medium Sized Entities

Small and Medium Enterprises ("SMEs") accounted for 99.8% of all enterprises and 69.2% of persons employed in 2021, with medium enterprises accounting for nearly 20% of persons employed, with 14.1% of total turnover attributed to these entities[23]. Such enterprises play a key role in ensuring economic growth, innovation and job creation. As Ireland is a small open economy in comparison to many other larger European countries, the proportion of businesses that fall within this definition is greater here. Any legislative amendment therefore to commence the transfer pricing provisions in section 25A TCA 1997 and Part 35A TCA 1997 in relation to medium sized entities should therefore be considered in light the aims of such a commencement and the likely administrative and compliance burden resulting from same.

We would note from the Interest Feedback Statement that based on a report published by the European Commission in September 2023[24], Ireland is one of the few Member States whose Transfer Pricing rules include a carve out for SMEs. While this fact in isolation would suggest that Ireland is out of step with the rest of the EU, it is important to note that such a comment was made in the context of a Proposal for a Council Directive on Business in Europe: Framework for Income Taxation ("BEFIT") and was made specifically within the boundaries of an Impact Assessment report accompanying such a proposal. While we can appreciate the standalone comment made in the report as to the status of the SME carve out in Irish transfer pricing provisions, such a report does not, in our opinion, provide further evidence as to the particular concerns around tax avoidance and/or aggressive tax planning which would be mitigated by the commencement of transfer pricing rules in the context of medium sized entities.

We would also note that similar proposals to extend transfer pricing rules to SMEs in other jurisdictions have been unfavourably viewed in other jurisdictions, particularly in the UK. As part of a consultation process which ran from 28 April 2025 to 7 July 2025, the UK Government noted as follows[25]:

"The UK is an international outlier in having exemptions from transfer pricing. Most exempt businesses will therefore already need to apply the transfer pricing rules of another territory to their cross-border transactions with connected parties. The additional burden of applying international standards on transfer pricing in the UK may therefore be limited.

We would note that the above comments made as part of the UK Government consultation are similar to those made within the Interest Feedback Statement[26]. On foot of the above comments

[23] Business in Ireland 2021 CSO statistics – published 30 January 2024 and accessible here.
[24] Commission Staff Working Document Impact Assessment Report: Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) and Proposal for a Council Directive on Transfer Pricing, 12 September 2023. Accessible here.
[25] Transfer pricing scope and documentation - GOV.UK
[26] See page 14: "Depending upon the domestic transfer pricing rules in the counterparty jurisdiction to such transactions, SMEs may therefore already have obligations to demonstrate compliance with the arm's length principle in the pricing of all related party transactions in the other jurisdiction".

made, the UK Government proposed the removal of the medium-sized enterprise exemption from transfer pricing, while proposing to retain the exemption for small enterprises, given the greater potential administrative impact applying transfer pricing would have on that population.

While a number of responses[27] to the UK Consultation note the benefits associated with the application of transfer pricing to medium enterprises, several respondents opposed the removal of the exemption noting concerns such as increased compliance burdens and costs, reduced competitiveness and administrative capacity and an overall limited tax risk in the context of such enterprises not traditionally viewed as engaging in aggressive tax planning. Based on responses received, medium sized enterprises within the UK are expected to continue to benefit from the existing transfer pricing exemption. In our view therefore, a commencement of the transfer pricing provisions in respect of medium sized enterprises in Ireland would likely place us out of step with our nearest competitor in terms of the promotion of domestic and indigenous business and would overall negatively impact on Ireland's competitiveness as a place to do business.

In addition, any future changes to the application of transfer pricing rules to medium sized enterprises must, in our view take into account the ongoing EU focus on simplification. As noted further at part 4.2.4 of this document, the EU Commission has stated its aims to simplify EU policies and reduced administrative burdens to boost competitiveness and growth. Consideration should also be given to the overall theme of simplification, which is currently in focus at an EU level, with the Tax Omnibus package forming part of the EU Commission's commitment to reduce administrative burdens by 25% for all businesses and 35% for SMEs[28]. As noted in the European Commission work programme for 2026[29]:

"Simpler regulation and smoother implementation of EU rules are instrumental to a more competitive and attractive Europe. The 2026 work programme will further build the simplification momentum. The Commission has already put forward omnibus and other simplification proposals aiming to bring more than EUR 8.6 billion in annual savings for European businesses. More than half of the work programme's legislative initiatives will focus on making EU law lighter, clearer and easier to implement. <u>We will continue our work to cut administrative burdens by 25% overall and 35% for SMEs</u> – without lowering standards. A new series of simplification initiatives and omnibus packages will simplify life for people and rules across key areas such as automotive, environment, <u>taxation</u>, food and feed safety, medical devices and simplifying energy product legislation. We will streamline reporting, accelerate permitting and align legislation to changing market conditions. In addition, we will continue to use our new consultation tools – implementation dialogues and reality checks – to find further opportunities for simplification."

[27] Transfer pricing scope and documentation — Summary of responses - GOV.UK
[28] Omnibus package - European Commission
[29] Accessible here.

4.2 Enhancements of the Interest Limitation Rule ("ILR")

4.2.1 Introduction of additional "group" de minimis threshold

Under this proposal, an additional de minimis threshold would apply on a group basis such that the aggregate exclusion for all Irish resident or permanent establishment members of a worldwide group, as defined, cannot exceed €6million (regardless of whether the companies in a worldwide group have elected to be members of an interest group).

In our view, such a proposal is not recommended and would ultimately have a negative impact in terms of promoting investment activity within Ireland within specific sectors. It would not, for example, be uncommon for capital intensive industries (for example, infrastructure developments and investments, real estate and renewables) to require such higher levels of debt. Accordingly, the introduction of an additional group de minimis limit may act to discourage investment in Ireland by such companies and groups who require higher debt levels within their structures for commercially valid reasons.

In addition, the Feedback Statement notes as follows: "The fact that each company in a group can avail of the de minimis threshold provides an opportunity for the fragmentation of group debt amongst member companies, with instances of this type of avoidance behaviour identified by the European Commission". This would suggest that an additional de minimis limit at worldwide group level would be with the aim of counteracting "debt fragmentation" transactions designed to take advantage of the existing €3m de minimis which exists on an entity-by-entity basis[30]. In our view, this is not reflective of the reality of many financing transactions entered into by companies and groups. It would not be uncommon, in our experience, for commercial lenders such as financial institutions and third-party banks to insist on lending to a single entity for security and/or risk purposes (potentially by lending at the level of a Holding Company or Intermediate Holding Company). Such funds may either be onward lent to group companies or may be used to acquire target companies depending on the needs of the group at that point in time. In addition, we would note that it would not be uncommon in certain industries and sectors for debt to be specifically drawn down by individual entities for valid commercial purposes and for debt to be ringfenced within such entities. For example, within the renewable energy sector it would not be uncommon for such structures to have special purpose vehicles ("SPVs") set up for genuine commercial reasons given market and investor requirements that each renewable project will have its own SPV in which to house the debt to ringfence any commercial and/or financial risk. Such structuring is undoubtedly motivated by the needs of the market and investors as opposed to a desire to avail of the €3m de minimis threshold for ILR purposes, but such industries and sectors would in our view bear a heavy burden where an additional group de minimis limit is introduced in Part 35D TCA 1997. Such a burden would, in our view, negatively impact on investment decisions in the future and would be undesirable.

In this regard, the General Anti Avoidance Rule ("GAAR") in section 811C TCA 1997[31] should be also considered in so far as section 811C(3) TCA 1997 provides that "A person shall not be entitled to any tax advantage arising out of or by reason of a tax avoidance transaction".

It should be noted that Article 6 ATAD provides as follows:

[30] Please note that where we refer to the €3m de minimis applying on an entity-by-entity basis, we are referring to application of the de minimis to a "relevant entity" which in accordance with section 835AY TCA 1997 means a company or an interest group (as defined).

[31] Inserted by S87(1)(c) Finance Act 2014, which came into effect as and from 23 October 2024. In accordance with S811C(8) TCA97, a transaction shall not be a "tax avoidance transaction" for the purposes of S811C TCA97 if it was commenced on or before 23 October 2014 and instead regard is to be had to S811 TCA97.

1. *For the purposes of calculating the corporate tax liability, a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.*
2. *For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.*
3. *Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated in accordance with national law.*

As outlined in the Corporation Tax Roadmap (January 2021 update[32]), Article 6 was not transposed into Irish domestic tax law on the basis that "Ireland's longstanding General Anti Avoidance Rule meets the ATAD standard". Accordingly, ATAD specifically recognised the GAAR as an appropriate countermeasure.

Where debt is fragmented in a manner designed to take advantage of the €3m entity-by-entity de minimis, and where this transaction is designed to give rise to a tax advantage and was not undertaken or arranged primarily for a purpose other than to give rise to this tax advantage or to avoid a liability to tax, we would be of the view that the introduction of a group de minimis of €6m would act as a blunt tool in addressing such tax avoidance concerns that could instead be addressed by less overarching methods.

4.2.2 Amendment to deadline for interest group election

Under this proposal, the deadline for making an interest group election in section 835AAK(3)(c) TCA 1997 would be extended to two years after the end of the accounting period to which the election first relates (with the existing rule that the election last for a period of at least three years to be maintained).

In our view, an extension to the timeline currently provided for in section 835AAK(3)(c) TCA 1997 would provide greater flexibility while a longer timeframe would likely provide greater certainty for taxpayers in assessing whether to elect to form an interest group for ILR purposes. However, we would note a number of practical and technical points which should be considered with respect to the above proposal.

Group Ratio (section 835AAH TCA 1997)

Under section 835AAH TCA 1997, where the group ratio exceeds 30% for an accounting period of a relevant entity, the relevant entity may make an election so the "allowable amount" shall be modified such that the EBITDA limit is increased from 30% to the group ratio percentage. The "group ratio" means the group exceeding borrowing costs[33] over group EBITDA[34], expressed as a percentage.

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[32] Ireland's Corporation Tax Roadmap January 2021 update, published on 14 January 2021, accessible here.
[33] Pursuant to S835AAG(1) TCA97, "*group exceeding borrowing costs*" means the amount included in respect of net finance expense, excluding any amount of finance income or finance expense in respect of a qualifying long-term infrastructure project, in the ultimate consolidated financial statements of the worldwide group or single company worldwide group, as the case may be, of which the relevant entity is a member for the period in which the relevant entity's accounting period ends
[34] Pursuant to S835AAG(1) TCA97, "*group EBITDA*" means the amount included in respect of profit or loss, before taking into account any amount of income tax, finance income, finance costs, depreciation, amortisation or impairments, excluding any amounts in respect of a qualifying long-term infrastructure project, in the ultimate consolidated financial statements of the worldwide group or single company worldwide group, as the case may be, of which the relevant entity is a member for the period in which the relevant entity's accounting period ends

It should be recalled that under section 835AY TCA 1997, a "relevant entity" means a company *or* an interest group. In the context of company not within an interest group therefore, such an entity is treated for ILR purposes as a relevant entity in its own right and in accordance with section 835AAH(1) TCA 1997, such relevant entity may make an election under the Group ratio where the required conditions are met.

Under section 835AAJ(1) TCA 1997, an election made in respect of the Group Ratio shall be made –

a. In such form as the Revenue Commissioners shall specify, and
b. On or before the specified return due date for the accounting period to which the election relates.

Therefore, for an accounting period ended 31 December 2025 the required Group Ratio election must be made on or before 23 September 2026 (the specified return due date). It is therefore expected that where no interest group exists and the relevant entity is a single company, such an election for the Group Ratio would be included within the Form CT1 for that company to be filed on or before that specified date, with section 835AAF TCA 1997 specifying the reporting obligation which arises in respect of that company including the disclosure of the group exceeding borrowing costs and group EBITDA.

In contrast, where an election is made to form an interest group then such an interest group is treated as a "relevant entity" for ILR purposes. The question then arises as to what the outcome would be where not all companies ultimately forming part of the interest group previously made the election for the Group ratio when filing their corporation tax returns as single companies. One reading of the legislation would suggest that where not all entities ultimately forming part of the interest group have made the election then the election cannot have been made on or before the specified return due date and thus cannot form part of the ultimate ILR calculations. A similar concern arises with respect to whether an interest group as a relevant entity can in fact make an election for the Group Ratio after the expiry of the specified due date for the accounting period to which the election relates when such an interest group did not exist at the date of the specified due date and instead only comes into existence within the two year period after the end of the accounting period in question. Section 959V(2A)(a) TCA 1997 permits an amendment to a return and self-assessment where such an amendment "arises from an allowance, credit, deduction or relief due under the Acts". While notice to amend a return can only be given within 4 years after the end of the chargeable period to which the return relates, section 959V(6)(b) TCA 1997 provides that this period for amendment does not extend to a claim made for "an exemption, allowance, credit, deduction, repayment or any other relief from tax" where such a claim is subject to a shorter timeframe including an election for the Group Ratio. Subsequent amendment to a return to make the required election would therefore appear to be restricted under section 959V TCA 1997, and consideration would need to be given to the appropriate mechanism to address this.

Equity Ratio (section 835AAI TCA 1997)

Where a relevant entity makes an election under section 835AAI TCA 1997, the operation of the ILR as provided for by section 835AAC TCA 1997 is disapplied such that exceeding borrowing costs (where such amounts arise) are not restricted to 30% of the EBITDA for the relevant entity. An election for the Equity Ratio rule is available in respect of an accounting period where the relevant entity's ratio of equity over total assets is greater than, equal to, or not more than two percentage points less than the worldwide group's ratio of equity over total assets[35]. As with the Group Ratio

[35] S835AAI(3)(a) TCA97

election, in the context of company not within an interest group, such an entity is treated for ILR purposes as a relevant entity in its own right and in accordance with section 835AAI(6) TCA 1997, such relevant entity may make an election for the Equity ratio where the required conditions are met.

Under section 835AAJ(1) TCA 1997, an election made in respect of the Equity ratio shall be made –

a. In such form as the Revenue Commissioners shall specify, and
b. On or before the specified return due date for the accounting period to which the election relates.

Therefore, an election in respect of the Equity ratio for the year ended 31 December 2025 must be made by the relevant entity on or before the return date for that year i.e. on or before 23 September 2026. It is therefore expected that where no interest group exists and the relevant entity is a single company, such an election for the Equity Ratio would be included within the Form CT1 for that company to be filed on or before the specified due date, with section 835AAF TCA 1997 specifying the reporting obligation which arises in respect of that company including the disclosure of amounts relating to equity and total assets for the company and the worldwide group.

Where an election is made to form an interest group then such an interest group is treated as a "relevant entity" for ILR purposes. Where an interest group is formed after the specified due date for the return, and where the Equity Ratio election may be availed of based on the relevant entity ratio of equity over total assets compared to the worldwide group ratio of equity over total assets, the question which arises is what the outcome should be where not all companies forming part of the interest group previously made an Equity ratio election when filing their corporation tax returns (Forms CT1) as single companies. It is entirely possible that when filing returns as single entities, an assessment of the Equity ratio in each case may have yielded differing results with some companies entitled to claim an election and some restricted from doing so, whereas the interest group as a whole may instead be entitled to claim the election based on the total combined equity and total asset ratio when taking all of the results of the interest group members together. The difficulty which arises concerns the outcome where not all entities ultimately forming part of the interest group have made the election in the first instance, and whether the election relevant to all entities in the interest group can be said to have been made on or before the specified return due date when the interest group is in fact formed at a later date.

Section 959V(2A)(a) TCA 1997 permits an amendment to a return and self-assessment where such an amendment "arises from an allowance, credit, deduction or relief due under the Acts". While notice to amend a return can only be given within 4 years after the end of the chargeable period to which the return relates, section 959V(6)(b) TCA 1997 provides that this period for amendment does not extend to a claim made for "an exemption, allowance, credit, deduction, repayment or other relief from tax" where such a claim is subject to a shorter timeframe including an election for the Equity Ratio. Subsequent amendment to a return to make the required election would therefore appear to be restricted under section 959V TCA 1997, and consideration would need to be given to the appropriate mechanism to address this.

In our view, an appropriate remedy for these technical difficulties would be to extend the timeframe or claiming the Group and Equity ratio elections to align with the timeframe for forming an interest group. Where the above difficulties are not remedied, the likely outcome is such that the availability of the Group and Equity ratio elections may be lost where the required election is not made on or before the specified due date notwithstanding the extended timeframe for forming an interest group of two years in accordance with the Strawman proposal. For groups who may wish to avail of these elections, the extended two-year timeframe to form an interest group and the benefits from same would therefore undoubtedly be lost.

4.2.3 Future considerations and amendments at EU level

Article 10 ATAD states that the Commission shall evaluate the implementation of the Directive, in particular the impact of Article 4 (the ILR) and report back to the Council. The report to the Council shall, if appropriate, be accompanied by a legislative proposal. As such, the evaluation of ATAD[36] is expected to provide evidence on the implementation of the Directive, to what extent its objectives have been achieved and whether measures need to be amended in the future.

As part of an ongoing focus on simplification, the EU Commission has stated its aims to simplify EU policies and reduced administrative burdens to boost competitiveness and growth. As part of a consultation process running from 31 July 2024 – 11 September 2024, Deloitte made a number of recommendations relating to the ILR[37]. In particular, the BEPS Action 4 report on Limiting Base Erosion Involving Interest Deductions and Other Financial Payment recognised that interest rates fluctuate over time, and that the 30% EBITDA limit was set in a context of low interest rates (close to zero and even negative in certain cases) compared to historical averages that time the Report was issued in 2015. Given the economic context since 2022, the interest rate environment has changed across the globe with a significant interest rate increase due to monetary policies aimed at limiting inflation, making debt financing expensive. This may have a negative impact on capital-intensive industries requiring large investments to carry out their activities (e.g. infrastructure developments and investments, real estate etc). Deloitte recommendations made against such a background have noted that consideration should therefore be given to adjusting the benchmark ratios to the changing interest rate environment by increasing these ratios to take account of interest rate growth.

As part of the overall ATAD evaluation, the European Commission is expected to present an Omnibus Tax Directive proposal in June 2026 addressing ATAD and in particular the ILR. While not specifically addressed as part of this Feedback Statement, we would note that where any amendments to ATAD are proposed by the EU in either Q3 or Q4 2026, further consultation with stakeholders should be carried out prior to any changes to domestic tax law. In addition, we would recommend that further consideration should be given to how legislative changes to be introduced as part of Finance Bill 2026 are expected to interact with proposed future changes to ATAD. Consideration in particular should be given to the overall theme of simplification, which is currently in focus at an EU level, with the Tax Omnibus package forming part of the EU Commission's commitment to reduce administrative burdens by 25% for all businesses and 35% for SMEs[38].

[36] Anti-tax Avoidance Directive (ATAD) – evaluation

[37] Feedback from: Deloitte

[38] Omnibus package - European Commission

5. Section 247 TCA 1997

5.1 Transitional Provisions of section 247 TCA 1997

Strawman Proposal

- It is proposed that transitional provisions would apply where the new deductibility rule applies to interest on existing loans that previously qualified for relief as a non-trade charge under section 247.
- It is proposed that:
  - where a company has accrued interest on a loan which would have qualified for relief under section 247 on a paid basis had it been paid,
  - the new interest deductibility rule applies to such existing loan (because the taxpayer has not elected to apply section 247), and
  - no relief has been previously granted in respect of that interest,

  then the accrued interest would continue to fall within the remit of section 247 when it is paid, and any interest accrued after the application of the new interest deductibility rules to the borrowings would fall within the new interest deductibility rule.
- It would be necessary to apportion interest accrued in an accounting period that covers a period pre and post the commencement of the new rules.
- Where a taxpayer elects to continue to apply section 247 to the borrowings, a transitional provision would not be needed.

As noted in our comments at Part 3.2 of this document, the proposal to retain relief for interest as a non-trade charge under the existing section 247 regime would appear reasonable to us.

In terms of the proposed transitional rules noted above, we must consider the position of the taxpayer who accrues interest on a qualifying section 247 loan in Year 1 (on which relief is available as a non-trade charge on a paid basis) but in Year 2 opts not continue to apply section 247 treatment and instead opts to apply the new interest deductibility rules (in which relief is available on an accruals basis). In such cases, future payments of interest may be made both in respect of the previously accrued section 247 interest and also interest falling due under the new rules on deductibility. For example:

For example:

In year 1, a company accrues "section 247" interest of €150. No interest is paid at this time and no relief is obtained on this basis.

In year 2, the taxpayer does not elect to continue the section 247 treatment previously adopted and instead opts to apply the new interest deductibility rules under which relief is given on an accruals *basis. The company reflects an interest expense of €150 in their accounts for Year 2 and makes an interest payment equal to €100.*

We would recommend that in the above example that the taxpayer should be entitled to point the interest payment made either against the balance of accrued section 247 interest from prior years, *or* against the current year interest expense subject to the new interest deductibility rules on an accrual basis (i.e. there should be no requirement in the transitional rules such that interest payments are deemed to be made against earlier periods in priority to later periods). Such an approach would, in our view, serve to maintain the continued flexibility with respect to interest relief as a charge currently in operation under section 247 TCA 1997 and would ensure that relief on a transitional basis is equalised with relief under loans where the taxpayer has opted to retain section 247 treatment. Such an approach would also in our view be supported by a body of case law[39] to the effect that in the absence of any statutory direction, taxpayers may claim reliefs and allowances in the manner which is most beneficial to them.

5.2 Simplification Measures for section 247 TCA 1997

Strawman Proposal

- It is proposed that section 247 TCA 1997 would be simplified whereby the requirement to 'defray money applied' in lending to a company money which is used wholly and exclusively by a connected company for the purposes set out in section 247(2)(ba) and (bb) would be met where the money passes directly from the investing company to the connected company. As such, there would be no requirement for money to flow from the bank account of the investing company to the investee company and then on to the connected company. The requirement to 'defray money applied' would be met where money flowed directly from the investing company to the connected company and the lending to/from the investee company may be done by way of net settlement arrangement.
- It is further proposed that the 'common director' requirement would be removed from section 247.

In our view, simplification of section 247 TCA 1997 remains a priority to ensure the continued usefulness of the relief and to ensure that taxpayer uncertainty is mitigated.

To this end, we would broadly note that the above proposals with respect to the simplification of section 247 would appear reasonable. In particular, the "common director" requirement that exists in section 247(3)(b) TCA 1997 poses an administrative burden without an easily discernible policy rationale for allowing a deduction for interest as a charge; accordingly, we would agree that with the above proposal that this should be removed from section 247 TCA 1997.

However, as an overarching comment we would also note that the conditions which continue to attach to relief under section 247 are, in our view, overly onerous and require continued simplification. We would also note that the conditions attaching to recovery of capital provisions

[39] Sterling Trust v IRC 12 TC 868; Ellis v BP Oil Northern Ireland Refiner Ltd [1987] STC 52 and note Commercial Union Assurance Co v Shaw [1999] STC 109.

contained in section 249 TCA 1997 are overly burdensome in reality. We would reiterate our comments previously made as part of our response to the Interest Consultation of January 2025 in this regard. While we would refer the reader to pages 19 – 24 inclusive of our January 2025 response wherein we have detailed our specific concerns, we have summarised the key points below:

- **Section 247(2) TCA 1997 and the specific use of the monies defrayed:** While the changes made to section 247(2) TCA 1997 by section 24 Finance Act 2017 ("FA2017") serve to provide relief where a company indirectly holds shares via one or more intermediate holding companies, we would note that the amendments do 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[40].
- **Qualifying Loan conditions and recovery of capital provisions:** Section 247(3) TCA 1997 provides that a loan will be a qualifying loan where specific conditions are met. In particular, 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 in our view onerous and burdensome. In our experience, certain routine and common bona fide transactions such as repaying intragroup debt, sales, liquidations or internal restructurings can result in denial of interest relief. Broad simplification of the recovery of capital rules contained in section 249 TCA 1997 is required to ensure that interest as a charge provisions can operate unencumbered.
- **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 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. Our previous submission of January 2025 recommended 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

[40] 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. Refer to Part 08-02-01 - Charges on income for Corporation Tax purposes at para 3.2.3

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 through aggressive tax planning and therefore consideration should be given to removing section 247(4A) and (4E) TCA 1997.

6. Miscellaneous Items

6.1 Simplification measures for section 130 TCA 1997

Strawman Proposal

- It is proposed that section 130(2)(d)(iv) and its related provisions would be simplified such that distribution treatment would only be applied under section 130(2)(d)(iv) to interest on securities issued by a company and held by a 75% associated company, where the interest is not paid in the ordinary course of a trade and the lender is not resident in an EU Member State or double tax treaty jurisdiction. There would no longer be an option to elect for the disapplication of section 130(2)(d)(iv).

In our view, simplification of the tax treatment of interest remains a priority.

We would overall welcome this simplification proposal on section 130(2)(d)(iv) TCA 1997. In its current form, section 130(2)(d)(iv) TCA 1997 may be described as "reactive" in nature, targeting all payments of interest in which the conditions outlined are met (i.e. intragroup interest payments to non-resident companies where there is at least a 75% ownership test) with the default position being to recharacterize such interest as a distribution unless an election is made under section 452, section 452A or section 845A TCA 1997 to disapply such treatment.

The Strawman proposal as outlined would appear to move section 130(2)(d)(iv) TCA 1997 from being "reactive" in nature to "proactive" in identifying payments made to non-EU or non-double tax treaty jurisdictions. We can appreciate the rationale for same. To ensure that the section in fact operates in this proactive way as intended, we would recommend that consideration be given to the widening of the geographic scope to include not only EU or DTA jurisdictions but also jurisdictions which have legislated for the Pillar Two rules in their domestic legislation as in our view such rules act as an effective safe guard to ensure that qualifying income with an effective tax rate of less than 15% is effectively taxed to an appropriate level. Such an approach would level the playing field in terms of payments to "good" jurisdictions and would ensure that the application of section 130(2)(d)(iv) TCA 1997 remains targeted and simple to apply.

We would note that the above Strawman proposal does not speak to the consequential amendments which must be made to section 452, section 452A or section 845A TCA 1997 on foot of the proposed amendment to section 130(2)(d)(iv) TCA 1997. We have addressed these in turn below.

Section 452 TCA 1997

Section 452(2) TCA 1997 provides that a company may elect such that interest which is recharacterized as a distribution nevertheless retains the character of interest where the following conditions are met:

i. The interest is a distribution by virtue only of section 130(2)(d)(iv),
ii. The interest is payable by a company in the ordinary course of a trade carried on by that company and would, but for section 130(2)(d)(iv) be deductible as a trading expense in computing the amount of the company's income from the trade, and
iii. Is interest payable to a resident of a relevant territory[41].

Where section 130(2)(d)(iv) TCA 1997 is amended in the manner proposed, we would note that an election under S452(2) TCA 1997 should no longer be required. However, the Strawman proposal is silent to as to the scope of amendment, if any, to be made in respect of section 452(3A) TCA 1997. Where a company so elects under section 452(3A) TCA 1997, the interest which would otherwise be recharacterized as a distribution shall nevertheless retain the character of interest where the following conditions are met:

i. The interest is a distribution only by virtue of section 130(2)(d)(iv),
ii. The interest is payable by a company in the ordinary course of a trade carried on by that company and would, but for section 130(2)(d)(iv) be deductible as a trading expense in computing the amount of the company's income from the trade, and
iii. Is not interest to which section 452(2)(a) applies.

In accordance with section 452(3A)(a)(iii) TCA 1997, the above election to disapply distribution treatment under section 130(2)(d)(iv) TCA 1997 is thus wider than payments of interest made to a "relevant territory". The Strawman proposal does not detail whether the above exemption in section 452(3A) TCA 1997 is to be retained notwithstanding the proposed amendment to section 130(2)(d)(iv) TCA 1997. In our opinion, the ability to disapply section 130(2)(d)(iv) TCA 1997 by election under section 452(3A) TCA 1997 of vital importance to the Treasury sector and should be retained.

Section 452A TCA 1997

Under section 452A TCA 1997, section 130(2)(d)(iv) TCA 1997 is not to apply to the deductible amount for a territory[42] in respect of a qualifying company for an accounting period. Where a qualified company therefore pays interest to a company resident in a territory with which Ireland does not have a double tax treaty, section 130(2)(d)(iv) TCA 1997 will not apply to a proportion of the interest paid. The Feedback Statement is silent as to the proposed amendment (if any) to section 452A TCA 1997 on foot of an amendment to section 130(2)(d)(iv) TCA 1997. We would of the view that consideration should be given to retaining section 452A TCA 1997 as it provides a required exemption for interest paid to non-treaty countries other than –

a. Yearly interest, and
b. Interest to which section 130(2B), section 130(2)(a), section 452(3A)(a) or section 845A(2) applies.

Section 845A TCA 1997

Section 845A TCA 1997 permits interest paid by banks to their foreign parents or other associated companies not to be recharacterized as a distribution under section 130(2)(d)(iv) TCA 1997. Under

[41] Pursuant to section 452(1) TCA 1997, "relevant territory means – (a) a Member State of the European Communities other than the State, or (b) not being such a Member State, a territory with the government of which arrangements have been made.
[42] Pursuant to section 452A(1) TCA 1997 "territory" means a territory other than a relevant territory within the meaning of section 246 TCA 1997. "Relevant territory" in accordance with section 246 TCA 1997 refers to either an EU Member State or a jurisdiction with which Ireland has a double tax treaty.

section 845A(2) TCA 19987, such treatment shall apply (where the required election is made) to so much of any interest that as –

a. Is a distribution by virtue only of section 130(2)(d)(iv) TCA 1997,
b. Is payable by a bank carrying on a bona fide banking business in the State and would but for section 130(2)(d)(iv) TCA 1997 be deductible as a trading expense in computing the amount of the bank's income from its banking business, and
c. Represents no more than a reasonable commercial return for the use of the principal in respect of which the interest is paid by the bank.

We would note that the above conditions do not impose any specific geographic scope in order for an election under section 845A TCA 1997 to be available. Such an election may therefore be made in respect of payments of interest made to non-EU/non-treaty countries. Where section 130(2)(d)(iv) TCA 1997 is simplified to remove the requirement to make an election under section 845A TCA 1997, caution must be taken to ensure that such an amendment does not narrow the scope for relief which would otherwise be afforded under section 845A TCA 1997. Where concerns arise as to ensuring that payments of interest are not made to a "specified territory[43]", provision for same could in our view be made within the law for same to ensure adequate protection is afforded.

Section 130(2B) TCA 1997

Section 130(2B) TCA 1997 disapplies section 130(2)(d)(iv) TCA 1997 as respects interest other than interest to which section 452 or section 845A applies, paid to a company which is a resident of:

a. A Member State other than Ireland, or
b. The United Kingdom.

Where section 130(2)(d)(iv) TCA 1997 is amended as proposed, a consequential amendment to section 130(2B) TCA 1997 may also be necessary. As section 130(2B) TCA 1997 also refers to section 452 and section 845A TCA 1997, further consideration should be given as to how amendments to these sections will also result in consequential amendments to section 130(2B) TCA 1997. In the absence of draft legislation on this matter we are unable to comment further.

Amendment to section 130(2)(d)(iv) TCA 1997 to align with new interest deductibility rules and other consequential amendments

Where section 130(2)(d)(iv) TCA 1997 is amended such that it will not apply to interest paid "in the ordinary course of a trade", consideration must be given to how such an amendment would sit alongside the previously noted Strawman proposals to equalise the treatment between trading and non-trading interest. It would appear anomalous to us to disapply distribution treatment for trading interest while applying distribution treatment for non-trading interest which would otherwise be deducible based on the aforementioned "profit motive" test.

We also would also note that section 452(3A)(A)(ii) TCA 1997 refers to interest which "is payable by a company in the ordinary course of a trade carried on by that company and would….be deductible as a trading expense in computing the amount of the company's income from the trade". Equally section 845A(2)(b) TCA 1997 refers to interest which "would…be deductible as a trading expense in computing the amount of the bank's income from its banking business". While the proposed

[43] In accordance with the Outbound payment defensive measures, a "specified territory" pursuant to section 817U TCA 1997 means a territory other than a relevant Member State which is a listed territory or a zero-tax territory. Listed territory in this instance takes on the meaning as in section 835YA TCA 1997 and refers to a territory included in Annex I of the Council conclusions on the revised EU list of cooperative jurisdictions for tax purposes.

amendments to both section 452 and section 845A TCA 1997 are not at this stage known to us, we would recommend that consideration be given to consequential amendments required to these sections to allow for any new interest deductibility rule going forward so as to equalise the treatment between trading and passive interest expenses.

6.2 Repeal of section 76E TCA 1997

Strawman Proposal

- It is proposed that Section 76E would no longer apply to interest expense. Appropriate transitional provisions would be required as relief under section 76E currently applies on a paid basis.
- It is proposed that:
  - where a company has accrued interest on a loan which would have qualified for relief under section 76E on a paid basis had it been paid,
  - the new interest deductibility rule applies to such borrowings (because section 76E no longer applies), and
  - no relief has been previously granted in respect of that interest,

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

As noted in our comments at Part 3.3 of this document, we would be in agreement with repeal of section 76E TCA 1997 as part of Finance Bill 2026 where the necessary changes are made.

In our view, the proposed transitional measures contained in the Interest Feedback Statement would appear reasonable and would ensure that previously accrued interest to which section 76E TCA 1997 applies would be relieved at such time as the amounts are paid. Such a transitional measure would ensure that relief is not lost solely due to the repeal of the section in circumstances where the conditions of section 76E TCA 1997 have already been met.

Consideration should however be given to the position of the taxpayer with interest which has accrued under a loan which qualified for section 76E TCA 1997 relief, and for whom these transitional rules would now apply.

We would presume that where such interest has accrued in prior years and continues to accrue under the revised deductibility rules that the company is permitted to point any interest payments made against either the "pre repeal" accrued amounts or the amounts now accruing under the revised rules, at their discretion.

7. Taxation of Interest Income

7.1 Basis of Assessment

Strawman Proposal

- An amendment to the basis of assessment for Schedule D Case III and Case IV is proposed to provide that interest income chargeable to tax under Case III and Case IV of Schedule D is computed on an accruals basis.
- This amendment would apply to interest income chargeable to tax under both Income Tax and Corporation Tax.
- This amendment would solely relate to interest income (or interest income equivalents – see section 5.8 below) and not to other income chargeable under Case III or Case IV.
- No amendments are proposed to the basis of assessment of interest income that falls to be taxed under Cases I and II of Schedule D.
- No amendments are proposed to Section 817B TCA 1997.

In our response to the Interest Consultation of January 2025, we had outlined that 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, our core recommendations centred on introducing a new, broader regime in respect of such activities. 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. While we have noted our comments as to the new deductibility regime proposals in Part 2 of this document, we note the intention to equalise the treatment of trading versus passive interest income and simplify the position overall.

However, we recognise that not all lenders or investors may wish to be within the scope of this new regime and would prefer to remain within the existing Case III regime on a receipt's basis, given that they may be taxed before receipt. For this reason, the new regime should be optional, including a transition from a receipt's basis to an accrual's basis of taxation. 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, while taxpayers opting to apply the new Case III treatment be taxed on an accrual's basis. Such an election may be made on a loan-by-loan basis at the outset to ensure no movement between the accruals or receipts basis.

Where optionality is not the preferred course of action in legislating for the new interest rules, we would recommend that taxpayers be given an appropriate lead in time prior to the introduction of the accruals basis of taxation to allow them ample time to identify the potential impacts from same and to model the tax impact. This is particularly crucial in the case of taxpayers who may have accrued interest income which has not yet been received as they will need to model out the future cash tax impact from a move to an accrual's basis of taxation notwithstanding the transitional 5-year rule addressed in Part 7.2 of this document.

7.2 Transitional Provisions

Strawman Proposal

- Where the accruals basis of assessment for interest income applies to a period for the first time:
    - where interest income has been accrued in a previous period but not received, that amount of interest income would be a 'transitional adjustment' that would be chargeable to tax over a five-year period commencing in the first period to which the accruals basis applies, and
    - where interest income has been received in a previous period but not accrued, the amount would not be regarded as chargeable to tax for a period to the extent that it has been included in computing profits or gains for a previous period.
- It would be necessary to apportion interest accrued in an accounting period that straddles the period in which the change in the basis of assessment would come into effect.

We would broadly be in agreement with the above transitional provisions, subject to our earlier comments with respect to providing taxpayers with the option to remain within the existing Case III regime on a receipts basis versus moving to the new basis of assessment for Case III purposes. Alternatively, an appropriate lead in time for the new provisions to allow taxpayers to model the cash tax impact from moving to an accruals basis of taxation would alleviate the time constraints that would undoubtedly arise from an effective date of 1 January 2027.

7.3 Double Taxation

Strawman Proposal

- Under an accruals basis of assessment, foreign source interest income may be assessed under Case III and chargeable to Irish tax in an earlier period than the period in which any foreign tax in respect of that income is suffered (e.g. withholding tax suffered on payment).
- To address the timing difference between the period in which the interest income is liable to tax in Ireland and the foreign jurisdiction, relief for foreign tax on interest income (double taxation relief) may be provided in the period where the foreign interest income is accrued by allowing the tax return in respect of that period to be amended when the foreign tax has ultimately been suffered. It is proposed that the general time limit on amending a tax return in respect of the claim for double tax relief would be followed, i.e., this time limit would be four years after the end of the chargeable period to which the claim for repayment relates, subject to any relevant double tax treaty requirements.

While the above approach would appear practical, we would note that it presents a number of difficulties and potential unintended consequences which merit further consideration.

Firstly, we would note that taxpayers with a number of recurring sources of foreign interest income may be required not only to file a corporation tax return with no foreign tax relief claimed but to subsequently amend this return as and when the foreign tax is suffered. This would not only require time input from taxpayers and tax agents but could conceivably result in additional work and complexity being built into the compliance cycle for such companies. In addition, where a corporation tax return and self-assessment has been prepared and filed on the basis that no foreign tax suffered in the first instance and where this return is then amended to allow foreign tax ultimately suffered it is entirely possible that such revisions to the return could place companies in a refund position. While amendments to returns previously filed which result in such a refund are commonplace and are not unexpected, where there is an increase in the number of such amended returns in the future then we could foresee challenges for the Exchequer in terms of the accuracy of the reporting of tax receipts on a yearly basis.

Lastly, we would note that while the legislation permits a return to be amended subject to certain conditions, we are also well aware that repeated amendments made to returns previously filed can result in an increased risk of Revenue query. While we can appreciate the need for Revenue to monitor and challenge perceived noncompliance, a proliferation of returns being amended to subsequently claim foreign tax relief may result in additional and ultimately unnecessary Revenue queries. This may negatively impact not only on taxpayers who must address such queries as they arise, but also Revenue systems may have difficulty in identifying and assessing real risks of noncompliance when faced with a proliferation of amended returns on an almost yearly basis.

The above challenges may, however, be mitigated by taking a practical approach to the claiming of relief for foreign tax. A practical approach would look to permit relief for foreign taxes not yet paid on the accrual’s basis in so far as this is consistent with the recognition of income. Such an approach would undoubtedly avoid the practical difficulties caused by subsequent amendments to returns on a yearly basis, particularly where foreign tax is in fact levied at an earlier or later date compared to when the interest income is in fact taxed in the hands of the recipient in Ireland.

Such timing mismatches are recognised in OECD Commentary on the Model Treaty[44] as below:

F. Timing mismatch

32.8 The provisions of the Convention that allow the State of source to tax particular items of income or capital do not provide any restriction as to when such tax is to be levied (see, for instance, paragraph 2.2 of the Commentary on Article 15). Since both Articles 23 A and 23 B require that relief be granted where an item of income or capital may be taxed by the State of source in accordance with the provisions of the Convention, it follows that such relief must be provided regardless of when the tax is levied by the State of source. The State of residence must therefore provide relief of double taxation through the credit or exemption method with respect to such item of income or capital even though the State of source taxes it in an earlier or later year. Some States, however, do not follow the wording of Article 23 A or 23 B in their bilateral conventions and link the relief of double taxation that they give under tax conventions to what is provided under their domestic laws. These countries, however, would be expected to seek other ways (the mutual agreement procedure, for example) to relieve the double taxation which might otherwise arise in cases where the State of source levies tax in a different taxation year.

A practical approach would therefore appear reasonable to us and would mitigate the aforementioned challenges.

[44] OECD (2019), Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing. http://dx.doi.org/10.1787/g2g972ee-en

8. Taxation and Deduction of Interest Equivalents

Strawman Proposal

- It is proposed that income and expenses that are economically equivalent to interest income and interest expense, respectively, would have the same tax treatment as if that income or expense were interest for the purposes of the taxation of interest equivalents and the deductibility of interest equivalents under the new interest deductibility rule. Amounts considered economically equivalent to interest would include:
  - Where securities are issued at a discount, that discount.
  - Amounts under derivative instruments or hedging arrangements that are directly connected with raising finance.
  - The portion of the profit or loss on financial assets or financial liabilities (within the meaning of section 76B TCA 1997, i.e. the meaning assigned to them by international accounting standards), the coupon or return on which primarily comprises interest, to the extent that it would be reasonable to consider that such an amount is economically equivalent to interest.
  - Amounts arising directly in connection with raising finance, including guarantee fees, arrangement fees, and commitment fees.
  - Foreign exchange gains and losses on interest or amounts economically equivalent to interest.
  - Any amount arising from an arrangement, or part of an arrangement, which could be reasonably considered, where the arrangement is considered in the whole, to be economically equivalent to interest but not including any amount that is taxable or deductible under another provision of the Taxes Acts (e.g., lease payments).
- Interest equivalent income or expense would not include any amount that is considered to be a distribution in accordance with any provision of the TCA 1997.

In our view, such a proposal would appear to recognise that expenses in connection with the raising of finance and related to financing activities under Case III are not solely limited to interest as "payment by time for the use of money[45]". While such an approach would on the face of it appear reasonable, we would recommend caution and that further consideration should be given prior to adopting such a change. In particular, foreign exchange gains or losses and amounts arising under hedging arrangements can give rise to complexity and uncertainty in the application of the Interest

[45] See Bennett v Ogston 15 TC 374

Limitation Rules. In our view, further consideration is needed to address the uncertainty posed in such cases prior to widening the definition of interest.

Where the definition of interest is expanded to include the above "interest equivalents", this expansion should be limited in scope to the taxation and deductibility of such amounts and should not have relevance in the context of interest withholding tax which would arise under section 246 TCA 1997. Section 246(2) TCA 1997 applies a requirement to levy and pay interest withholding tax but specifically applies where any yearly interest charged with tax under Schedule D is paid. Where the interest withholding tax obligations are widened to include within its remit payments of interest equivalents, this would in our view require continuous tracking of when certain expenses are paid (and not just interest on a loan) to assess when withholding tax must be levied. In our opinion such additional complexity is not necessary.