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ATAD Implementation – Interest Limitation Feedback Statement
Tax Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583

BY EMAIL TO: ctreview@finance.gov.ie

Re: **Response to Article 4 Interest Limitation Feedback Statement July 2021**

A Chara

1. Introduction

We welcome the opportunity to respond to the Department of Finance's (the "**Department**") Article 4 Interest Limitation Feedback Statement issued in July 2021 (the "**Statement**"). As a policy matter, we consider it hugely beneficial that the Department engages in regular and detailed consultations and feedback statements, on a broad range of tax policy matters. Taking this proactive approach will ensure a more reflective, principled approach to tax policy in Ireland.

We note that a number of significant concepts remain under consideration in respect of the interest limitation rule ("**ILR**") of Council Directive (EU) 2016/1164 of 12 July 2016 ("**ATAD**"). Given that the subject matter of the Statement will result in major legislative changes, which are very technical in nature, we would encourage the Department to publish a further draft of the tax legislation arising in full for technical consultation with interested stakeholders prior to the publication of the Finance Bill. Engaging in such a process will ensure that Ireland maintains an open, transparent, stable and competitive corporate tax regime with best in class, fully considered legislation and would not interfere with the parliamentary process as the Oireachtas can choose to enact, amend or reject any bill.

2. Responses to questions in the Statement

Question 1: *Comments are invited on this possible approach, including whether any other matters should be considered in the transposition process.*

(a) Simplifying Interest Deduction

It is the Government's stated position that our existing interest deductibility rules are equally effective as the ATAD ILR provisions. Our existing provisions are complex and layering ILRs over these provisions will place a significant additional compliance burden on Irish corporate taxpayers. It is disappointing to note that there are no proposals in the Statement for the reform of the regime for interest deductions.

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As set out in our previous submissions, interest on, or costs associated with, any debt incurred for the purposes of earning taxable income should be deductible as it accrues in the statutory accounts, subject to anti-avoidance and other rules. One could introduce a "wholly and exclusively" concept (similar to Section 81 of the TCA) for all expenses in line with the current deductibility test for trading expenses. As noted above, a better approach would be a "to the extent" approach, i.e. expenses should be deductible "to the extent" that they are incurred for the purpose of earning taxable profit. An immediate and simple first step would be to ensure that Case III and Case IV profits were computed in accordance with normal trading principles. This should simplify the law by eliminating parallel regimes and should prevent double taxation within Irish groups, as is currently the case where interest is non-deductible for one corporate but taxed in another.

Effectively, specific rules for deductibility of expenses for each "Case" and the "charge on income concept", including Section 247 of the TCA, would be abolished and deductibility rules would be aligned with the general deductibility rules.

The following provisions should be amended or repealed to legislate for these proposals:

- Section 81 TCA – general rule as to deductions – the interest provisions should be replaced by a general interest deduction for interest to the extent that it was incurred for the purpose of earning taxable profit.

- Section 76(5)(b) TCA – computation of income – application of income tax principles should be abolished.

- Sections 243 and 247 TCA – interest relief as a charge should be abolished and replaced by general interest deduction for interest to the extent that it was incurred for the purpose of earning taxable profit.

- Section 249 TCA - this provision denies interest deduction where there is a recovery of capital, i.e. the investment using the debt is sold/returned. Since the effect of this would be to reduce EBITDA, it is likely no longer needed.

- Section 97 TCA – computation rules and allowable deductions interest provisions should be replaced by a general interest deduction for interest to the extent that it was incurred for the purpose of earning taxable profit.

- Section 254 TCA – interest on borrowings to replace capital withdrawn in certain circumstances from a business should be abolished.

- Section 552 TCA – acquisition, enhancement and disposal costs interest provisions should be replaced by a general interest deduction for interest to the extent that it was incurred for the purpose of earning taxable profit.

In the absence of implementation of the above as part of the ILR implementation, the following are some immediate changes which could be made in Finance Act 2021 at the same time as the ILR is implemented.

- The parts of Section 130(2)(d) of the TCA dealing with:

  - Convertible debt (Section 130(2)(d)(ii)); Results dependent interest (Section 130(2)(d)(iii)(I)), Special rules for 75% non-EU, non-trading debt (Section 130(2)(d)(iv), Section 130(2B) Section 452 and 452A and Section 845A) and "stapled" debt rules (Section 130(2)(d)(v)) should be abolished as anti-hybrid rules supersede these principles.

- Section 247(4A) & (4E) of the TCA should be abolished and recovery of capital rules should be temporarily relaxed to allow for restructuring of debt related to ILRs, the extension of transfer pricing rules etc. but such relaxation could be limited to cases without a tax avoidance purpose. The ILRs would limit the interest deductions available. In addition, the general Section 247 provisions should be simplified where possible to reduce complexity for taxpayers e.g. the common directorship requirement should be removed.

- With the additional layer of protection afforded to the tax base by ILR, the multiple specific anti-avoidance provisions relating to interest are unnecessary. As an initial step pending a more detailed review of interest provisions, Sections 817A, 817C and 840A of the TCA should be removed.

- Section 291A caps the current year relief for interest expense and capital allowances at 80% of the tax-adjusted income from specified intangible assets. Following implementation of ILR, this restriction of interest (with its own carried forward rules) should no longer be required and should be removed.

(b) Simplifying the Taxation of Corporate Groups

The current group relief rules are overly complex and unsuited to modern group structures. Most jurisdictions operate corporate consolidation systems i.e. the US consolidated group concept, the German *organschaft* concept, the Dutch fiscal unity etc. Ireland should introduce a consolidation system similar to one of these examples. This would simplify administration (like an Irish VAT group) and prevent temporal mismatches arising within corporate groups. For example, currently a loss in Company A can become "stranded" unless a group company has profits in the same year as the loss arose in Company A. As a result, the corporate group can make an economic loss but can make a taxable profit and pay tax. This could be achieved in a simple manner by altering the application of the existing group relief rules so that, instead of being able to surrender losses, the companies could elect to be consolidated. Other consolidation systems could be examined to develop an efficient and effective system for Ireland. This would also resolve the question of how to approach the grouping rules in the ILR.

(c) Comments on nine step approach

Subject to the above comments, we agree in general with the application of the ILR nine step approach as proposed in the Statement based on the complexities of the Irish tax system including the different rates of tax applicable to profits.

However, the following points should be addressed:

- Where a deduction is denied under the ILR and the related non-deductible interest is carried forward but remains unused due to excess interest charges in later years, the tax payable under ILR will become a permanent tax charge. In such circumstances, there should be an option to revisit the original tax computation and calculate items such as Schedule 24 double tax relief based on the taxable profits following denial of deductions under the ILR; and

- the implementation of the proposed carry forward regime for excess interest requires further consideration in particular in the context of Ireland's Section 247 regime which allows interest deductions on a paid basis. For example, due to companies having limited cash-flows as a result of the ongoing COVID-19 pandemic, it is likely that interest payments incurred in both 2021 and in 2022 will be discharged in 2022 as the impact of the pandemic lessens. Companies in breach of the ILR in 2022 as a result of being unable to carry forward excess interest capacity from 2021 is a clear disconnect from the intention of the interest limitation rules and should be avoided.

Question 2: *Comments are invited on these possible definitions of 'relevant entity' and 'interest group' and, in particular, how the possible definition of an 'interest group' interacts with the group ratio rules.*

We note the intention to define an interest group in line with the Irish loss group provisions. We agree that it is preferable to avoid an entirely new set of rules and definitions to accommodate the interest group provisions.

In our view the application of the proposed Irish loss group rules will be complex in some cases, for example, where there are non-EU/DTA companies in the group and where shares are held as trading stock. Given that the worldwide group is defined by reference to accounting consolidation, we consider that the "interest group" could also be defined by reference to the same test in addition to an Irish tax residence/taxable branch or permanent establishment requirement. In many cases these tests should not require additional analysis by taxpayers over and above the analysis required in the preparation of accounts and filing tax returns.

In order to minimise the compliance burden for taxpayers and bearing in mind the already restrictive interest regime in Ireland, in our view taxpayers should have the option to apply <u>either</u> the Irish loss group or consolidation test once the chosen option is applied consistently from year to year and across the group.

Question 3: *Comments are invited on these possible definitions of 'standalone entity', 'associated enterprise', 'enterprise' and 'entity'.*

We welcome the amendment to the definition of standalone entity to remove the requirement that such an entity is "chargeable to tax on all of its profits".

In the context of securitisation companies, we welcome the "group of one" proposal as set out in the Statement. However, we consider that a market standard securitisation company should be a "standalone" entity for the purposes of the ILR. Such a company may be established with its entire issued share capital held on trust for charitable purposes for reasons including as a requirement of the European Central Bank, rating agencies and commercial lenders, rather than to obscure its beneficial ownership or for any tax avoidance purpose (as has been acknowledged by Revenue in its published guidance). As long as a company is not part of a consolidated group for financial accounting purposes and has no non-Irish permanent establishment, a normal securitisation company, all of the shares of which are held on trust for charitable purpose for bona fide reasons should be a "standalone" entity for the purposes of the ILR. It cannot be the case that the term standalone entity has no practical application as this approach would undermine the policy of the ATAD and result in an overbroad interpretation of a policy that is targeted at multinational groups and not financing or assets holding entities that are deliberately structured to be bankruptcy remote for good commercial reasons. Accordingly, we recommend that the standalone entity concept is enacted in to Irish law in accordance with ATAD and whether companies qualify or not will be a factual matter.

Question 4: *Comments are invited on the exclusion for financial undertakings generally and this possible definition of 'financial undertaking'.*

Some countries have taxable AIFs and UCITS and include them in the financial undertaking exclusion. At present Ireland does not have such taxable investment funds. If it becomes the case that AIFs and/or UCITS become subject Irish tax, an exemption should be introduced from the ILR for such investment funds.

Question 5: *Comments are invited on this possible definition of 'legacy debt' and more generally on the concept of a modification in the context of legacy debt. Comments are invited on how this drafting would apply in respect of drawdowns on revolving credit facilities and phased drawdowns of loans under existing debt agreements.*

We welcome exclusion of interest on loans which were concluded prior to 17 June 2016 (although it is very limited in scope). We note that the excluded interest is limited to the amount "*which would have arisen based on the terms and principal as they existed on 17 June 2016*".

We would welcome confirmation that the following would not be considered a modification of the terms and principal of the loan for this purpose:

- A drawdown on a loan facility that was concluded prior to 17 June 2016 should not be a modification as it is simply implementing a pre-17 June 2016 agreement. Similarly, changes made to the amount of the loan facility which were provided for in a pre-17 June 2016 agreement should also not be a post-17 June 2016 modification. This is a logical position and is consistent with ATAD and accordingly and should be provided for in Ireland's adoption of the ILR. Both the Belgian and the Luxembourg tax authorities have confirmed this in respect of drawdowns within the terms of the loan and within the pre-agreed credit line limit. In this regard, we would suggest that the reference in the proposed definition of "legacy debt" to principal is unnecessary so that the text as quoted above would instead read, "*which would have arisen based on the terms ~~and principal~~ as they existed on 17 June 2016*".

- Revolving Credit Facilities are similar in many respects to a phased draw down loan facility and as such, a similar analysis as above should apply. However, due to the possible ongoing repayments and readvances it is recognised that this might allow the extension of the legacy debt exemption to apply on an open-ended basis in certain cases. In our view, this should not be a reason to exclude such arrangements entirely from the legacy debt exemption but instead any avoidance concerns could be dealt with by limiting the exemption for revolving facilities by reference to a fixed time period from the date of agreement or from 17 June 2016.

- A change to the duration or calculation of interest payable (e.g. floating rate loans), where this change was originally provided for in the loan and does not require the agreement of the parties, i.e. this change happens automatically under the terms of the loan. In our view, any consequent changes to interest payments will arise "*based on the terms …… as they existed on 17 June 2016".* In particular, changes in calculation methodology due to the transition away from LIBOR should not be a modification.

- Changes to guarantee arrangements.

- An assignment of the loan after 17 June 2016 in accordance with its terms should not be a modification. Similarly, a novation or a loan after 17 June 2016 where the terms of that loan do not change should not be a modification.

- Other changes which do not impact interest payable, for example, changes to legal status or to the address of a party to the agreement or changes to the account into which the parties make payments under the loan.

Question 6: *Comments are invited on this possible approach to defining a 'long-term public infrastructure project', including by reference to the legislation and regulation. In responding to this question, please also comment on any potential considerations relevant to State aid compatibility.*

As set out in our previous submissions, we consider that it is very important that Ireland includes a long-term public infrastructure project exemption in its implementation of ATAD and we welcome the adoption of same.

For this purpose, and as outlined previously, we consider that it would be helpful to have a generic definition of what constitutes infrastructure and to follow the approach taken by the United Kingdom in its implementation of ATAD (in the amendments to the Taxation (International and Other Provisions) Act 2010 implemented via the Finance Act (No.2) Act 2017) in this regard. This legislation sets out definitions of what constitutes "qualifying infrastructure activity" by reference to the provision of public infrastructure asset(s) or activities ancillary to such provision, where a public infrastructure asset:

- Is part of the infrastructure of the UK or the UK section of the continental shelf (the legislation includes a non-exhaustive list of what constitutes infrastructure by reference to industry sectors (utilities, energy infrastructure, social infrastructure (such as health/education/courts/prisons) and types of assets, such as buildings occupied by public bodies).

- Meets a public benefit test (meaning that the asset is or will be procured by a relevant public body or is or will be used in the course of a regulated activity (i.e. regulated by an infrastructure authority (which are those listed in the legislation, together with any other public authority which has functions of a regulatory nature exercisable in relation to the use of tangible assets forming part of UK infrastructure) or could be regulated by an infrastructure authority if it exercised its powers).

- Has or has had an expected economic life of at least 10 years.

- Meets a group balance sheet test (such that, broadly, it is recognised on the balance sheet of a company or an associated company and that company or associated company is within the charge to corporation tax).

We consider that this legislative approach provides sufficient certainty as to what will constitute a long-term public infrastructure project while also addressing the "general public interest" requirement set out in ATAD itself. In addition, it is a requirement of the single market that Ireland applies similar rules to projects located in any Member State (as is provided for in ATAD) and not just in Ireland.

We note that the proposal in the Statement to use definitions of strategic infrastructure development used in, for example, the Planning and Development Acts, but the concern would be that these could omit certain types/sizes of infrastructure because the definitions are not generic and have thresholds as to size/capacity of assets. For example, a wind farm that has fewer than 25 turbines or total output of less than 50MW, would appear to be outside of the definitions set out in the Seventh Schedule of the Planning and Development Act 2000. Similarly, we would be concerned that projects which are not expressly listed under the Seventh Schedule of the Planning and Development (Strategic Infrastructure) Act 2006 might be out of scope even though a project might be generally considered a '*long-term public infrastructure project'*.

Question 7: *Comments are invited on this approach to the application of the ILR and to this possible definition of 'relevant profit or loss'.*

We note the definition of relevant profit or loss to include "the amount of profits on which corporation tax falls finally to be borne" which we understand to include chargeable gains. This is welcome and is the correct approach on the basis that the income and gains distinction is a peculiarity of the Irish tax system and such gains would be included in the tax EBITDA calculations of other EU countries.

The proposed definition in the Statement excludes losses carried forward but should also exclude losses carried back from a subsequent period.

As noted in our comments on Question 1, where a deduction is denied under the ILR and the related non-deductible interest is carried forward but remains unused due to excess interest charges in later years, the tax payable under ILR will become a permanent tax charge. In such circumstances, there should be an option to revisit the original tax computation and calculate items such as Schedule 24 double tax relief based on the taxable profits following denial of deductions under the ILR.

Clarity would be welcome in relation to the operation of subsection (1) which seeks to value the profits based on the tax payable on those profits. For example, will profits of €100 on which €25 is payable based on the 25% rate be valued at €200 for the purpose of the EBIDTA calculation? Where a company has income chargeable to corporation tax at differing rates, how are amounts deductible from total income to be allocated for this purpose?

Question 8: *Comments are invited on these possible definitions of 'interest equivalent', 'taxable interest equivalent' and 'deductible interest equivalent'.*

(a) *Interest Equivalent*

Article 2(1) of ATAD defines "borrowing costs" as follows

'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance as defined in national law, including, without being limited to, payments under profit participating loans, imputed interest on instruments such as convertible bonds and zero coupon bonds, amounts under alternative financing arrangements, such as Islamic finance, the finance cost element of finance lease payments, capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules where applicable, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

We note that the phrase "*payments under profit participating loans*" is used but this should only refer to such payments that are in excess of the amounts originally advanced.

We note that some but not all of the specific inclusions of the ATAD definition have been incorporated into the proposed definition of "interest equivalent" (e.g. there is no reference to amounts under Islamic finance arrangements which are referred to in ATAD). We assume that it is intended that the definition of "interest equivalent" be interpreted in line with the ATAD definition of "borrowing costs" and that this will be confirmed in the implementing legislation or Revenue guidance to ensure the Irish rules appropriately capture the EU provisions.

Notwithstanding the above assumption in relation to those specific inclusions, there are a number of areas where, in our view, the definition of "interest equivalent" should be expressly expanded to ensure the rules accurately capture the terminology used in other parts of the Irish tax code and to ensure activities considered to form part of financing transactions undertaken by Irish entities (such as "qualifying companies" under Section 110 of the TCA) are correctly captured.

This includes the following, which have not been covered in the updated definition provided in the Statement:

- Manufactured payments and any other payments which are economically equivalent to interest under stock borrowing or lending arrangements or under repurchase agreements;
- all income derived from the activities of treasury companies;
- all profits arising from "financial assets" of a qualifying company within the meaning of Section 110 of the TCA;
- the return earned by a company from its debt assets, including return earned from debt acquired or advanced at a discount. It is not possible to objectively distinguish between an "interest" component and a non-interest component so a better approach is simply to treat all such returns as interest equivalent as it is derived from debt. If this is not to be the case, the concept of "deductible interest equivalent" should mirror the statutorily defined interest/non-interest split so that symmetry is preserved and companies that acquire or advance debt at a discount using a funding structure mirroring that debt should not be impacted by the ILR;
- the finance income component of lease payments for lessors taxed under Case I; and
- commitment fees and facility fees should be treated in the same way as guarantee fees and arrangement fees.

To the extent that it is not proposed to specifically legislate for these, early and complete Revenue guidance confirming the interpretation of these points in line with the borrowing costs definition of ATAD would be welcome.

The treatment of foreign exchange gains/losses including on funding for debt assets requires specific consideration to ensure that the Irish implementation of the ILR does not give rise to inadvertent loss of deductibility. We would welcome clarity on the application of the ILR to such gains/losses including worked examples of how to identify the interest equivalent in such circumstances.

(b) Deductible interest equivalent

This is defined as the "amount of interest equivalent that is deductible in calculating the relevant profit or loss of a relevant entity". Clarity would be welcome in relation to the interaction of this provision and Section 247 interest, that amounts which are paid in a tax year but due to a number of possible factors do not reduce the tax liability in that year and are either carried forward or lost. Our understanding of the intention of this provision is that <u>only interest equivalent that actually reduces the tax liability of the relevant entity for that accounting period should be taken into account</u> for this purpose. This should be clarified in the legislative provisions. Also, where a company that is within Section 76A TCA is required to use an accounting methodology that is dis-associated from interest payments (e.g. fair value basis), clarity should be provided with worked examples of how to compute the deductible interest equivalent.

In addition where a company has income chargeable to corporation tax at differing rates, how are amounts of deductible interest deductible from total income to be allocated for the purpose of valuing deductible interest equivalent for this purpose?

Question 9: *Comments are invited on these possible definitions of 'EBITDA', 'exceeding borrowing costs' and 'interest spare capacity'. In particular, does the definition of H in the definition of 'EBITDA' satisfactorily resolve concerns about circular calculations that may arise because both double taxation relief and EBITDA are calculated based on taxable profits?*

We welcome the amendments to the definition of EBIDTA which no longer exclude the legacy debt and the de minimis amounts. We also welcome the additional amount "H" to be added to EBIDTA to reflect foreign income which is subject to Irish tax but in respect of which double tax relief has been claimed. We refer to our answer to Question 7 in relation to the circularity point in circumstances where an ILR restriction becomes permanent.

Question 10: *Comments are invited on this possible definition of worldwide group and related concepts which are relevant for the operation of the equity ratio rule.*

We have no comments on these definitions.

Question 11: *Comments are invited on the above approach to the transposition of the equity ratio rule.*

We note that it is proposed that for a single company worldwide group, the debt and equity should be reduced by the amount of any debt with related parties. Related parties is not defined for this purpose. In order to reduce complexity and leverage existing provisions we suggest that related parties are defined by reference to the ATAD association test as it applies to anti-hybrid rules.

The application of the equity ratio rule which is intended to provide relief from the ILR in the context of interest groups will be complex and may be unworkable in practice for certain groups due to the requirement under the proposed interest group rules (page 26 of the Statement) to prepare a notional consolidation for ILR purposes. We suggest that instead, the equity ratio rule can be calculated based on <u>either</u> amalgamated results of its members, or by reference to the results of the group having disregarded all intragroup transactions (i.e. notional consolidation) once the methodology is applied consistently from year to year and across the notional local group.

Question 12: *Comments are invited on this possible approach to the "group of one".*

We welcome the proposal to apply the group ratios to a "group of one" being any company, which is neither a standalone entity nor a member of a worldwide group. We note that the UK rules have the concept of a Single-Company Worldwide Group ("**SCWG**") which may avail of the consolidated "group" escape provisions notwithstanding that the entity does not fall within the definition of a consolidated group under International Accounting Standards.

In addition, there is likely a legal requirement under EU law (the principle of freedom of establishment (under Article 49 in conjunction with Article 54 TFEU)) for adopting the "group of one" approach. This is because, in the absence of a "group of one" approach, an Irish company with no subsidiaries but branches in EU countries would not be in a worldwide group (and due to its shareholding may not be a standalone entity); whereas the establishment of subsidiaries in those EU jurisdictions would allow the Irish company to be in a worldwide group and thus access the group escape provisions. Similarly, a company that is established in Ireland only (but is not a standalone entity) is at an economic disadvantage compared to a similar worldwide group so that, without a "group of one" concept, there would likely be State aid to the equivalent worldwide group. Accordingly, we consider that the inclusion of the "group of one" concept will eliminate the possibility of the EU Commission initiating infringement proceedings against Ireland for breach of EU fundamental freedoms and/or State aid.

Question 13: *Comments are invited on the above approach to the transposition of the group ratio rule.*

Our comments on Question 11 apply here also.

Question 14: *Comments are invited on the proposed definitions of 'disallowable amount', 'de minimis amount', 'allowable amount', 'EBITDA limit' and 'limitation spare capacity'.*

We are concerned that the interaction of the definitions of *'allowable amount' and 'disallowable amount'* will result in the unintended denial of access to the de minimis amount in many cases.

We note that in the previous Feedback Statement issued by the Department of Finance in December 2020, the €3m de minimis amount was deducted in arriving at the '*exceeding deductible interest equivalent'*. This amount was then reduced by the taxable interest equivalent and compared with 30% of EBIDTA to arrive at the taxable amount. For a company with €10m of deductible interest equivalent and no taxable interest equivalent the amount to be compared with 30% of EBITDA would be €7m (i.e. €10m - €3m) and if EBITDA were €24m (which at 30% would give rise to a threshold of €7.2m) the ILR would not apply.

In the Statement, the new proposed definitions of *'allowable amount' and 'disallowable amount'* are such that the *'allowable amount'* is calculated as <u>the greater of</u> 30% of EBITDA and the de minimis. This amount is then compared with exceeding borrowing costs (which is not reduced by the de minimis). Therefore in the above example the allowable amount would be €7.2m (i.e. 30% of EBITDA) and the disallowable amount (in respect of which the ILR will apply) will be calculated as the difference between €10m and €7.2m i.e. €2.8m and the company in this case would not benefit from the de minimis exemption.

It cannot be the intention that the ILR would apply in such circumstances and clarification on the change in approach since the December 2020 Feedback Statement would be welcome.

Question 15: *Comments are invited on this potential approach to the application of the interest limitation rule.*

We agree that the ILR should apply after the application of the anti-hybrid rules in Part 35C. The layering complexity of the new rules, anti-avoidance and differing computation rules found in the Irish tax system is unsustainable. As noted in our response to Question 1 above, the fundamental reform of the interest deductibility regime in Ireland is long overdue.

Question 16: *Comments are invited on the proposed interaction of the interest limitation rule with the balance of the corporation tax code.*

We refer to our comments on Question 1 above and note that there are a number of immediate amendments which should be made to the tax code in advance of the implementation of the ILR as well as a number of more fundamental changes which should be made as soon as possible thereafter.

We would welcome confirmation that where interest income is deemed to arise (for example under Section 812 TCA 1997) this will be treated as interest income for the purposes of ILR

Question 17: *Comments are invited on these possible methods of carrying forward of the disallowable amounts.*

We have no comments on this question.

Question 18: *Comments are invited on these possible methods of carrying forward spare capacity.*

We have no comments on this question.

Question 19: *Comments are invited on this potential approach to applying the ILR to interest groups. In particular, it is noted that the provision would require reference to accounts that comprise the results of all group members. Comments are invited on the most effective method for compiling such accounts, noting that disregarding transactions between members of an interest group may be complex and administratively difficult for some groups. Stakeholders are invited to suggest how this process may be simplified.*

As noted in our comments on Question 1 above, Ireland should introduce an elective consolidation system which would simplify the application of the ILR to Irish groups.

In addition, see our comments above on Question 11.

Question 20: *Comments are invited on this possible approach to addressing the interaction of the ILR with section 291A TCA 1997.*

As noted in our comments on Question 1 above, the interest restriction under Section 291A should be abolished as it gives rise to additional complexity in the context of the ILR implementation and it is unnecessary to apply two separate restrictions to the same interest.

Question 21: *Suggestions are invited concerning appropriate adjustments to the preliminary tax rules, to allow reasonable opportunity for compliance with preliminary tax obligations following the introduction of the ILR.*

Any additional tax arising due to the ILR should be excluded from the preliminary tax payment requirement for at least an initial 3-year period until taxpayers have become familiar with the application of the rules in their specific circumstances. Thereafter a safe harbour based on the prior year's tax liability or ILR calculation should be provided on an optional basis for those companies that are unable to accurately prepare the calculations in advance of the preliminary tax payment deadlines.

Question 22: *Comments are invited on these possible reporting requirements with regard to the ILR.*

We have no comments on the possible reporting requirements as proposed other than to note the significant additional compliance requirement for taxpayers in preparing these reports. Consideration should be given to allowing for an extended period for the completion of these reports (similar to the concessional extended IXBRL filing deadline).

Question 23: *Comments are invited on these possible reporting requirements with regard to the ILR.*

We have no comments on the possible reporting requirements as proposed other than to note the significant additional compliance requirement for taxpayers in preparing these reports. Consideration should be given to allowing for an extended time period for the completion of these reports (similar to the concessional extended IXBRL filing deadline).

Yours faithfully

ARTHUR COX LLP