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Tax Division
Department of Finance
Government Buildings
Upper Merrion Street
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BY EMAIL TO: interestreview@finance.gov.ie

Re: Response to consultation on the tax treatment of interest in Ireland

Dear Sir/Madam

1. Introduction

We welcome the opportunity to respond to the Department of Finance Public Consultation document on the tax treatment of interest in Ireland (the "**Consultation Document**"). We consider it hugely beneficial that the Department engages in regular and detailed consultations, on a broad range of tax policy matters and welcome that this consultation is happening in sufficient time to enable changes to be made in the 2025 Finance Bill.

Given the current international economic environment, never before has it been more of an imperative for the Department of Finance to focus on decluttering, simplification and a modernisation of the Irish tax system. We welcome the commitment in the Program for Government to continue to review and simplify the current business and enterprise tax system to promote innovation and economic growth. In practice, this requires a reflective and principled approach to tax policy in Ireland to ensure that Ireland attracts continued investment and remains competitive in the increasingly protectionist international environment that is upon us. Ireland has been an international outlier in many important aspects of its corporate tax system for many years, the implications of which are starker in light of the transposition of the EU Council Directive ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union[1], ("**Pillar Two**"), which removes any positive tax rate differential between Ireland and other jurisdictions. The introduction of the participation exemption in the Finance Act 2024 is welcome but is only one aspect of an overall

[1] Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (as transposed into Irish law in Part 4A TCA 1997).

modernisation that needs to occur. In January 2025 the OECD published a paper[2] examining and acknowledging the role played by tax policy beyond just the effective tax rate of a jurisdiction on shaping the investment decisions of MNEs. In its conclusion it states that tax related motives associated with locating investment and functions based on ETR will decline with the implementation of Pillar Two and concludes that "*The allocation of functions that are found to be particularly sensitive to average ETRs, such as Holding or the provision of Internal group finance, may be impacted most by the introduction of GMT. Jurisdictions with comparably low average ETRs before the introduction of the GMT might see the share of affiliates engaged in such functions decline over time as the relative tax advantage is reduced*". This aligns with what stakeholders have been conveying to the Department of Finance for many years: Ireland no longer has a tax rate advantage. Other aspects of the tax system are now the key to keeping investment and functions in Ireland and the lack of action on this is what is adversely affecting Ireland's reputation as an investment location.

In the context of this Consultation Document and the taxation of interest this means implementing a uniform rule for taxing interest income and deducting interest expense across all forms of commercial/business activity by the introduction of a commercial/business purpose test for interest deductibility. This would remain subject to the various other rules and protections already in the legislation that align with EU law and international norms.

2. Background

The Schedular system was introduced to the UK in "Addington's Act" of 1803. It introduced two innovations. First, it allowed taxation at source (i.e. a withholding tax from certain interest) as there was no means of taxing the recipient of the interest. Secondly, it introduced "Schedules" under which different types of income were taxed. In that Act, Schedule D levied income tax on trading income (Case I), income from professions and vocations (Case II), interest, overseas income (Case III) and casual income (Case IV). This taxing structure was introduced into Ireland in the 1850's and the fundamental structure has remained largely unchanged. The reason for different Schedules was to ensure that, since each schedule was administered by different people in the Inland Revenue, no Revenue official would know the full extent of a gentleman's income! Current policy is directly opposite of this as the corporation tax system only works if the Revenue Commissioners have full information about all of the activities of the company and its group. This means that the original policy objective of the schedular system is no longer good policy and for that reason alone it should be reformed.

Corporation tax was separated from income tax in Ireland by the Corporation Tax Act 1976, but the schedular and case-based system was applied to the new corporation tax on income. A capital gains tax was introduced in the 1970s and corporation tax on chargeable gains applied tax on chargeable gains to companies. A later consolidation took place under the Taxes Consolidation Act 1997 ("**TCA**") but again no material reform was undertaken of the schedular and case-based system. This 1997 consolidated legislation has been amended on at least an annual basis for intervening years without ever reforming the foundations of the system. The basic structure of the tax using schedules, cases and segregating income and capital has hardly changed as there has been no material reform of the basic income/capital distinction nor the schedular and case-based system since 1803. In the intervening 220 years, however, much has changed, and reform is long overdue.

This is illustrated by the confirmation in paragraph 2.1 of the Consultation Document that interest can be taxed under any number of cases each with a distinct set of rules. As has been widely acknowledged, the distinctions between trades, professions and other sorts of income earning activity are grounded in the British class system of the late 19th century. It seems bizarre that these concepts still hold sway in a 21st century republic. In addition to considering the reform of deductibility for interest, serious consideration should be given to restructuring

[2] OECD Taxation Working Paper No. 71 'MNE Business Functions and Corporate Taxation' , Samuel Delpeuch, Ana Cinta González Cabral, Felix Hugger, Pierce O'Reilly. Link available here.

the Irish corporation tax system in a way that reflects modern economic business activities and not early 18th century social norms in Britain. This approach is more logical also in light of the proliferation of additional layers of modern anti-avoidance measures that have been layered on in recent years; the development of a coherent and consistently applied accounting framework; the introduction of a comprehensive system of transfer pricing rules; and the exponential increase in the amount and quality of information provided to and available to the Irish Revenue Commissioners. At present, the corporate taxpayer faces a patchwork quilt of legislative sections through which to navigate, many of which no longer reflect modern economic reality, some of which reflect long abandoned policy objectives and others of which conflict with each other. We understand that an overhaul of an area of tax is a time consuming, arduous process, but it is necessary, and in Ireland, long overdue. So, while we welcome the introduction of the participation exemption and this consultation on the taxation of interest, what is actually required, given the unprecedented amount of changes in recent years and the outdated concepts inherent in the current system, is a principled based, fundamental review of the structure and basis of the Irish corporation tax system and the taxation of corporate entities.

The basic principles of a reformed corporation tax system should be:

- There should be a single pool of profit (or least as few as possible). This could mean that all income and capital gains are taxed simply as "profit". A lesser or interim approach would be to retain the current artificial income/capital distinction so to have one pool of income and one pool of profit. Less desirable would be to retain both the income/capital distinction and a distinction within income between active and passive income, in order to retain the current multi-rate (12.5%, 25%, 33%) structure which is an unusual feature of the current Irish corporation tax system.

- Profit and expenditure should be taxed or deducted when it is recognised under a correct application of generally accepted accounting practice.

- The scope of the charge to corporation tax on profit should be on profit earned by an Irish resident company (subject potentially to a branch exemption) or attributable to an Irish permanent establishment under OECD principles. Normal exemptions such as dividend and capital gains (shares) participation exemptions should be retained.

- Interest should be subject to the same deduction rules as any other expense (but see next bullet).

- All items of expenditure should be deductible if the expenditure was incurred for genuine business purposes. If more than one pool of profit/income/capital exists in this system, expenditure should be allocated on an arm's length/just and reasonable basis between the pools in a manner that no such expenditure ceases to be deductible as a matter of principle (i.e. "tax nothings" should be abolished).

- Expenditure incurred for genuine business purposes should only be rendered non-deductible under normal international principles, being rules required under the EU Anti-Tax Avoidance Directive ("**ATAD**")[3] (general anti-avoidance rules; interest limitation rules ("**ILR**"); anti-hybrid rules) and transfer pricing rules.

- No other adjustments should be made to the taxable profit unless there is an objective and compelling policy reason to do so, and the adjustment is in compliance with international norms.

In this context, one point that is not brought out in section 2.1 of the Consultation Document is the different basis of measuring income in the different "Cases". Schedule D, Case I income is

[3] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

taxed in accordance with the accepted accounting practice on an accrual's basis (as noted in section 2.1 of the Consultation Document) Schedule D Case II rules largely follow this. Schedule D Case III is levied on an arising basis on "income" (presumed to be gross income) as it would likely be "pure income profit", while Schedule D Case IV is also levied on an arising basis. It is levied on "profits" thus leading to the debate as to whether the Case IV charge is on a net profit basis or on a gross receipts' basis. The rationale for taxing interest under Case III but deposit interest under Case IV is lost in the mists of time. One useful simplification, as discussed in more detail below under the second option for a proposed solution would be to consolidate all of the Schedule D Case I, Case II, Case III and Case IV into a single source of income with the same rules for measuring profit. If a dual rate structure for corporation tax on income is still desired, there could be a sub-division between active business and non-active business with 12.5% applying to the active business and 25% applying to the non-active business. We suggest active/non-active to move away from trading/professional income (on the one hand) and non-trading/profession on the other as the trading/professional were introduced to distinguish between working class activity (trading – Case I); middle class activity (professional – Case II) and upper-class income types (other Cases). The measure of profits to which the rates apply should be measured on the same basis in all "cases". At present, with the different rules, if items are re-characterised from one case to another, not only can the rate increase but the quantum of profit can change, in some cases quite dramatically. This is not a feature of other tax systems and is very difficult to explain the logic to commercial people (or indeed anyone who is not deeply versed in the nuances of Irish tax).

A wider review of the Corporation Tax system ought to be instituted based on the above strawman proposal with a bias towards change and an explicit commitment to reform towards a commercially based system. This would mean that any proposal to retain an existing rule would have to justify its existence bearing in mind the principled basis of the new system as opposed to simply relying on the fact that it has been in place for some time or that there may be some avoidance at some stage (which would be addressed by the GAAR).

Any such reform must be done in light of Pillar Two. We suggest that any reform should seek to align as much as possible the Irish domestic corporation tax rules with those contained in Pillar Two to eliminate the need for corporate taxpayers to comply with two separate, sometimes inconsistent and conceptually different, systems of direct taxation. Equally, any reform should acknowledge that under Pillar Two, companies are subject to an effective minimum tax of 15%, i.e. any intra-group interest (or other) income paid elsewhere in the group will be subject to an effective tax rate of 15% so should be deductible in principle in Ireland. Our first proposed solution outlined below seeks to leverage the significant work done on Pillar Two internationally and by the Irish Department of Finance and Revenue Commissioners to apply the Pillar Two rules in Ireland.

Very importantly, the Irish tax system is subject to ATAD compliant anti-avoidance rules in addition to a broadly applicable system of transfer pricing based on internationally recognised OECD rules that ensure arm's length pricing of transactions. The key to creating a simple regime is to rely upon these existing rules as much as possible. Ireland should not create duplicative or inconsistent rules if it considers that any additional specific departures from the principles set out above are needed.

The specific rules on the deductibility of non-trading interest deserve particular discussion due to their complexity, uncommercial nature, "hair trigger" events for non-deductibility, retention of otiose rules and current unworkability. These rules for "charges on income" and "recovery of capital" are unduly complex, do not reflect modern commercial realities and, as outlined below, since the introduction of the ILR through transposition of ATAD are superfluous economically (as noted by the Department of Finance when assessing them as equivalent measures to the ILR). At present the application of Section 247 and Section 249 TCA can result in the denial of an interest deduction in a number of commercially driven transactions such as:

- Borrowing to pay a dividend in a non-trading context.

- Borrowing for normal commercial purposes but which does not fit within the narrow confines of Section 247 such as:
    - acquiring a company that is not a trader and not a property holding company or a group that has a mixture of activities;
    - acquiring less than 5% of the ordinary share capital (preference shares for example);
    - buying debt as opposed to lending the money (there is no economic difference);
    - borrowing to pay a dividend in a non-trading context.
- Borrowings that lose deductibility due to a failure of one of the "hair trigger" events, for example, where there ceases to be a common director for good governance reasons or where there is a gap of even a single day in the common director requirements such as resignation, death, etc.
- Interest is deducted on a "paid" basis as opposed to an accruals basis notwithstanding that businesses operate on an accrual's basis.
- Borrowings must be "defrayed" in specific purposes and the meaning of "defrayed" is unclear. We also note that the terminology is inconsistent:
    - "incurred" is used in Sections 82 and 284 TCA;
    - "defrayed" is used in Sections 243, 244, 245 and 247 TCA etc;
    - interest must be paid under section 247(3) TCA;
    - expenses must be accrued under Section 76A TCA.
- Borrowings that lose deductibility due to a normal commercial action such as a normal reorganisation of one or more of the companies within the group which leads to a "recovery of capital" where there is, economically and commercially no such recovery or where there is a redeployment of capital from one subsidiary of the borrower to another.
- Borrowing to pay a dividend in a non-trading context.

This paper contains three options for proposed solutions:

- **Option One** – Pillar Two companies are subjected to Pillar Two rules on taxation of income in domestic tax, at a rate of 12.5%.
- **Option Two** – all income is merged into a single source meaning that all income is computed in accordance with the same rules and a single rate of tax is applied to that income.
- **Option Three** – all interest income and expenditure is merged into a single case (Case II) with the imposition of Case I rules for calculating profit.

In these three proposals, the basic principle should be that arm's length interest on debt borrowed for genuine commercial/business purposes (i.e., not for tax avoidance) should be deductible when accrued.

This means that the rules of Sections 247 and 249 TCA should be eliminated. Anti-avoidance rules should be limited to those that are necessary without duplication of other rules. The remainder of this paper expands on how this can be achieved in a logically consistent and principled way. The destination should be to undertake thoughtful and principled reform of the corporation tax system based on an objective destination agreed by Stakeholders. That process should be taxation of all profits attributable to Ireland on a transfer pricing basis, either to an Irish permanent establishment (in the case of locally arising profits) or global profits (in the case of an Irish resident company), subject to normally and internationally accepted exemptions and rules. We will leave aside a discussion as to whether Ireland should move wholly to a source-based system of taxation such as is found in other countries like Hong Kong or as a semi-source-based system by introducing a branch exemption, a full remittance-based system like Singapore. It follows that all income should be recognised, and all business expenditure should be deductible when accrued in the accounts under generally accepted accounting provisions subject to adjustment that is required or authorised by law (similar to Section 76A TCA in the context of trades). The adjustments that are required at a minimum would include transfer pricing, anti-hybrid rules and interest limitation rules (as noted above) and any additional anti-avoidance rules must be measured against the policy objective of a simplification of the tax system and in the acknowledgement that Section 811C TCA prevents avoidance transactions and is now a part of the normal self-assessment system. It should also then be considered whether Ireland incorporates a broader definition of interest in line with the interest or interest equivalent concept in ATAD.

Rules should not be duplicated (e.g. specific avoidance rules where the GAAR applies) and rules that no longer perform their economic functions (either because the tax system has changed, or the economic facts have altered) should be abolished.

The second and third options are easier to conceptualise for those versed only in Irish domestic taxation and thus may be a way forward to an alternative to the current system involving less reform. It should be noted that taking either of these routes will mean that corporate taxpayers will remain subject to a dual compliance burden (tax returns for corporation tax and for Pillar Two) and inevitably inconsistencies will come to light. However, these solutions seek to simplify the domestic tax rules, such as the schedular system and multi-rate structure by, for example, abolishing the concept of charges on income, moving to a consistent profit recognition system and eliminating unnecessary complexity. It would mean that Ireland moves to a new system for the taxation of interest that is in line with commercial and accounting concepts, international best practice and with the systems of other EU Member States, Pillar Two and ATAD principles. In the UK, where a similar schedular system forms the foundation of their tax system, a new set of rules were created for interest taxation and deductibility, which created a new category of taxable income for "loan relationship credits" and also a coherent system for deductions for "loan relationship debits". That system also applies to financial instruments and other derivatives. New Zealand took the approach to overhaul its corporation tax code which has led to a more simplified and administrable system.

The following are the three proposed options to achieve these objectives which will be followed by an examination of the questions contained in the Consultation Document in light of those proposals.

3. The Proposed Solutions

3.1 Option One - Pillar Two companies subjected to Pillar Two rules on taxation of income in domestic tax at a rate of 12.5%

The Irish domestic corporation tax rules should align with Pillar Two rules for the calculation of the taxable income or loss (not gains) contained in Part 4A TCA.

The recently introduced Part 4A TCA contains a coherent set of rules for the calculation of "qualifying income or loss" of a company in respect of a fiscal year, which is the taxable base from which the effective tax rate for a jurisdiction emerges.

Under these rules, the starting point in determining the "qualifying income or loss" is to determine the financial accounting net income or loss ("**FANIL**") based on the acceptable financial accounting standard or authorised financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity. Where this is not possible, the FANIL may be determined using another acceptable financial accounting standard or an authorised financial accounting standard meeting the requirements as set out in the TCA. The rules provide for adjustments to be made to prevent any material competitive distortion and to conform to the treatment required for that item or transaction under International Financial Reporting Standards. Provision is also made for adjustments for various tax policy items to be made where necessary to reflect common permanent differences, such as to remove most dividends and equity gains so that the minimum tax does not apply to such income, or to remove expenses disallowed for tax purposes such as illegal payments and to correct prior year errors. In the context of interest expenses specifically, one such adjustment applies to deny the deduction of an interest expense arising from an intra-group financing arrangement where it is reasonable to assume that, over the expected duration of the financing arrangement, there will be an increase in the amount of expenses taken into account in calculating the qualifying income or loss of an entity in a low-tax jurisdiction without resulting in a corresponding increase in the taxable income of the counterparty that is located in a high-tax jurisdiction.

The Pillar Two Rules are robust and in line with international standards, such that they provide an approach that is harmonised across all jurisdictions. Given that these rules are already part of Irish domestic legislation, it is proposed that the rules for the computation of (qualifying) taxable income or loss under Part 4A TCA be used by taxpayers in calculating the income or loss for Irish domestic corporation tax purposes, such that Irish resident companies that are in scope of Pillar Two use one method for calculating the taxable income or loss for both their Pillar Two and domestic Irish corporation tax returns. A general broad-based rule should then be applied whereby all expenditure incurred wholly and exclusively for genuine commercial/business purposes should be deductible when accrued. The corporation tax rate of 12.5% and the normal Irish domestic tax filing and payment obligations should remain unchanged. The Irish domestic rules for the taxation of capital gains should continue to apply. The domestic top-up tax would then apply as outlined in Part 4A TCA.

The benefit that flows from this proposal is that corporate taxpayers that are already within scope of Pillar Two will have a materially reduced administrative burden. This approach also benefits the Revenue Commissioners by streamlining the information and assessments that are required for a single corporate taxpayer under the two concurrent tax systems. We do not view this as being a tax benefit that could be perceived by the OECD as a benefit to companies within the scope of Pillar Two in the peer review process of the domestic top-up tax. It is difficult to criticize Ireland for adopting an internationally recognized standard.

Further details are set out in the response below to the specific questions. As the Pillar Two rules exist already in the Irish tax system, the proposal could be part of Finance Act 2025 to take effect from 1 January 2026.

3.2 Option Two - Single Source

This proposal would involve merging all cases (Case I, II, III and IV) and potentially Case V (although one could exclude real estate taxation for simplicity of reform) into Case I. The effect of this will be that all income will be computed in accordance with the trading rules under Section 76A TCA and a single rate of tax will be applied to the income. This is similar to 2003 when the various trading regimes (0%, 10%, 30%) were merged into a single rate, Case I, and subjected to tax at a single rate of 12.5% (subject to excepted trades). The benefit of this

approach is that there is a single set of rules for the taxation of the income and a single tax rate. It eliminates the need for value basis of loss utilization and will also greatly simplify the interaction with the ILR. Since companies are taxed individually, group loss surrender/carry forward etc. would apply as currently exists for trading income. Capital gains tax will be unaffected as we would retain and income capital distinction.

The various interest deductibility rules highlighted in the Consultation Document would have to be assessed to see whether they are still relevant. The overall position would be to introduce a rule in line with the general deducibility concept such that an arm's length rate of interest on, or costs associated with, any debt incurred for genuine commercial/business purposes should be deductible as it accrues in the statutory accounts. This approach would align better with EU legislation, specifically ATAD and also Pillar Two.

Section 247 TCA would be abolished once there is a new test applicable to interest deductibility and many of the distribution rules and anti-avoidance rules (as outlined in the Consultation Document) **will become irrelevant** due to transfer pricing, interest limitation, anti-hybrids, etc. During the course of the ATAD transposition, Ireland argued that the safeguards contained in the conditions in Section 247 TCA and targeted anti-avoidance on the recovery of capital contained in Section 249 TCA were equivalent to the interest limitation provisions under Article 4 of ATAD. Notwithstanding Ireland's arguments, it was compelled to fully transpose the ILR, now contained in Part 35D TCA. In light of the equivalence in effect of protecting the tax base from excessive interest deductions, once the ILR was introduced these measures, along with other sections such as the multiple specific anti-avoidance provisions relating to interest were superfluous for accounting periods commencing on, or after, 1 January 2022 (such as Sections 817A, 817C and 840A of the TCA).

The proposed new deductibility rule would result in decluttering of the legislation as it would result in the abolition of the following provisions:

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

- Sections 243 TCA as it relates to interest and Section 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, and

- Section 249 TCA - this provision denies an 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 no longer needed and also the general commercial purpose rules would safeguard against artificiality with the purpose of recovery of capital.

- 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 genuine commercial purposes.

- 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 on the provision of a capital asset and is not otherwise deductible.

This proposal could be implemented as part of the Finance Act 2025 for accounting periods beginning on or after 1 January 2026, however we accept that it would more likely take some more time to consider all the various rules that will need to be abolished.

We should acknowledge that there may be a reduction in tax-take as income currently subject to tax at 25% would now be taxed at 12.5%, however given the significant increase in corporate income tax-take that Ireland will begin to take in from the collection of domestic minimum top-up tax we do not believe this should be a decisive consideration when looking at implementing the most straightforward and internationally competitive system for taxation of interest for corporate taxpayers. We also note that on the face of it, while a reduction in the tax-take from interest income is likely in the short-term, this must be balanced with the overall effect on the tax-take from companies leaving Ireland or not expanding operations here due to the unfavourable and complex rules on interest deductibility. Also, any cost associated with the new regime should be assessed after taking account of the increase in tax burden due to ILR.

3.3 Option Three – Schedule D Case III with imputation of Case I rules

This option is broadly similar to the previous option but would merge all interest income and expenditure into Schedule D Case III (other than trading interest) with the imposition of Case I rules for calculating profit and a genuine commercial/business purpose test for granting deductibility as it accrues in the statutory accounts as outlined above. The same analysis of the individual and all deductibility rules would have to be undertaken.

This structure would be similar to Option Two and supports the multi-rate structure, however:

- adds complexity: and
- is unusual in an international context.

Bearing in mind that Ireland is one of the few jurisdictions (all of which are common law jurisdictions derived from UK models) that actually have a concept of trading at all means that outside a narrow range of tax specialists from such countries, the concept is not generally understood. It is therefore difficult to explain to an investor in Ireland why a trading concept is important. Generally, however, persons understand the distinction between an active business and a passive business. This distinction should be applied so that the concept of trading is replaced by an active business.

4. Specific responses

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

As noted from the above, we believe there should be complete alignment between the rules for taxing and deducting trading and passive interest income and expenses. This should apply symmetrically to the income recognition and the expense deduction. If an active/passive distinction is to be retained for the purposes of supporting a 12.5%/25% rate structure (Option Three), then there would be two "pools" of net profit taxed at the various rates and the only issue would be allocation between those two pools. Instead, at present, if one moves an item of income or expenditure from one of the cases of Schedule D to another, a full reassessment of the tax status of that item of income or expenditure must be undertaken to determine the quantum of the profit, the timing of recognition, the rules relating to deductibility etc. Accordingly, the benefit in relation to aligning the rules for taxation of trading and passive interest income would be a major simplification and a reduction in administrative burden.

We do not believe that there will be any adverse consequences because, over a multi-year period, the same amount of income and profits would be recognised. It is true to say, however, that this structure would give rise to additional interest deductibility, but it ought to be

acknowledged that the ILR and transfer pricing serves to limit the over-allocation of interest deductions to Ireland. Also, Ireland has imposed significant additional tax on companies through Pillar Two, ILR, anti-hybrid rules, etc. in recent years. Accordingly, any change in the amount of Corporation Tax collected may not be material. Also, if it does result in a material reduction in the amount of Corporation Tax, since the State has a significant budget surplus, this would be a welcome use of that surplus as an investment in attracting business activity over the medium term. If the budget surplus reverses in the future, then the rates can be adjusted to accommodate that, however, we believe the simplification of the tax system will likely lead to additional foreign direct investment and therefore an increase in the Corporation Tax. Stealth taxation by restricting deductibility to achieve additional tax revenue can distort economic decision making because the amount of tax paid increasingly departs from the commercial profit realised. This makes an assessment of an investment in Ireland more difficult than needs to be the case as opposed to a simple rate change to plug any gaps. As stated above, however, we do not believe there would be such gaps as the simplification of the Irish tax system would facilitate foreign direct investment and investment generally and therefore overall would raise additional tax revenue.

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

Irish resident companies are taxed on their worldwide income and non-residents are taxed on their Irish source and Irish branch (PE) income. Aside from this, to ensure simplification, non-resident persons should be subject to the same tax rules as resident persons. With effect from 1 January 2022, companies not resident in Ireland holding Irish property were moved to Corporation Tax which moved the basis of assessment from Income Tax to Corporation Tax. This introduced simplification because companies no matter where resident were subject to the same rules. This change was introduced with minimal administrative difficulty because it was a simple alignment of rules which were already known. As the trading/accounting rules were profit computation are well-known, a move to this basis of assessment should be unproblematic.

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

The first issue in responding to this question, which is a wider policy issue, is defining the concept of interest. Currently, interest is payment over time for the use of money. It can include some premiums but not discounts. It does not include associated fees such as commitment fees, facility fees etc. It does not generally include arrangements which have the substance of giving rise to an interest receipt of payment. Changing the definition of interest to mirror the "interest equivalent" definition in the ILR would resolve this issue and align the term with its economical/commercial meaning. It would eliminate the avoidance at which Sections 812 – 815 TCA is directed.

If the rules for recognising a receipt of interest were moved to an accrual basis of taxation (instead of the current Case III/Case IV arising basis of assessment which can enable taxpayers to delay the receipt of interest), Section 817B TCA would no longer be needed.

The removal of the counter-intuitive and otiose rules in relation to the recognition of interest income and the deduction of interest expense to a more normal accruals basis of taxation would eliminate the need for the anti-avoidance rules arising from the ability to avoid tax due to the lack of a coherent conceptual basis in the current system. There would be no adverse consequences but only benefits from this change.

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

The answer to this question will address some of the general interest deductibility rules that are applicable to interest as a deductible expense whether trading or non-trading. It will also address interest deductible under Schedule D, Case II as a professional expense as the rules are similar to trading.

Section 81(2)(a) TCA contains the "wholly and exclusively" test. As is well-known, wholly relates to purpose and exclusively relates to quantum. Interest that is in part incurred for business purposes and in part not, could be denied deduction in full due to dual purpose tests. For example, if 1% of the purpose of incurring the interest was non-trading related (but for example had other good commercial reasons), then all of the interest is rendered non-deductible due to the "wholly" test. The exclusively test, however, works on a proportionate basis. These dual tests should be aligned so that both wholly and exclusively are proportionate basis denials of deductibility rather than absolute denials of deductibility. The benefit would be to align commercial reality with tax deductions. This would also facilitate the reallocation of interest deductibility between an active/non-active business if we were to move to a system of taxing, separate from the current source-based taxation system.

Section 81(2)(h) TCA is one of the most convoluted pieces of drafting in the Taxes Act and should be reformed to have a logical syntax. In addition, it only applies to sums "as aforesaid" i.e. matters within Section 81(2)(a)-(g) TCA and it does not apply to items listed in Section 81(2)(i)-(p) TCA. It is therefore ineffectual in part.

Other overriding rules prohibiting or modifying interest deductibility are discussed later and the discussion should be viewed as applying to the trading expense discussion.

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

Interest deduction under Schedule D Case V is not addressed by this response paper in great detail. This is because corporations and business owners (other than specifically the landlord community) are not concerned with Schedule D Case V. Other contributors will no doubt respond on Case V issues. We would note, however, that in the interest of simplification, the basis of taxation under Case V should be moved to a full accruals' basis for all landlords with all interest deductible so long as it was incurred for good business expenses of the property business. This would be subject to the standard rules on denial of interest deductions to achieve effective alignment. This should not delay the more important reforms described in this submission.

Question 6 - Other than with respect to anti-avoidance provisions (set out in further detail below), are there any aspects of relief under section 247 TCA which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.

Interest as a charge under Section 247 TCA subject to the recovery of capital rules under Section 249 TCA is one of the most problematic provisions contained in Irish tax law. The conditions for interest deductibility outside of a trading/property scenario (i.e. Section 247 TCA), are based on the fundamental concept that activity other than trading or property letting is somehow "bad".

The conceptual basis of Section 247 TCA was originally to give a tax deduction where money is borrowed to buy shares either through subscription or purchase. Not all shares would count, i.e. the conditions set out in paragraph 2.2.3 of the Consultation Document must be complied with. In fact, the conditions are far more complicated and onerous and do not have a sound conceptual basis. For example:

i. Why does the 5% shareholding exist? If a person acquires shares below the 5% threshold from time to time in circumstances that do not amount to a trade surely the

interest should be deductible for that activity. Why is it limited to ordinary share capital? A person might buy preference shares giving an income like return using debt. Economically, the interest on the debt should be offset against the preference dividend return so that net profit only is taxed. Where the amounts borrowed are on lent giving rise to interest income, it should be irrelevant whether the borrower is connected with the person making the on-loan as the on-loan generates interest income. If the transaction is to borrow to on-lend, that should be sufficient to offset the interest income against the interest expense. There is no ability to borrow money and make any capital contribution to a 100% subsidiary without the issue of shares. This is a common transaction in most countries. The requirement for shares to be issued when making a capital contribution to a subsidiary has no basis in commercial reality.

ii. The common director requirement has no basis in commercial reality. Groups choose directors of their companies based on the appropriate commercial expertise of that individual and their ability to be available to make important decisions. Governance concerns may often require that independent boards are chosen, i.e. that there should be no director overlap between companies. In addition, a company making an investment of a small percentage (10%) may not have the right to have a director and commercially should not have a director appointed to the board of the investee company, but the tax rules would require it if a deduction is to be sought. How can it make policy sense to require a common director where from a governance perspective none should be in place?

iii. The recovery of capital rules have become unworkable and are causing significant issues in practice. Rather than describing each of the circumstances of recoverability of capital, connected companies and measuring and demonstrating how the application of the rules go beyond what is necessary to achieve the purpose, it is them, it is instead better to observe the following. The Department of Finance confirmed to the EU Commission that Section 249 TCA was an equivalent measure to the ILR that now form part of Irish law. It follows logically therefore, that Section 249 TCA should be abolished in its entirety. Section 249 TCA is unreformable at this stage and is a major bar to logical investment in Ireland through acquisition and funding of subsidiary companies. It is a very common international practice to locate the public debt/third party debt in one company and to use that company to deploy and re-deploy capital to other companies in the group. That activity is simply not possible in Ireland while retaining a Section 247 TCA deduction in the borrowing entity.

If interest deductibility is moved to the conceptual basis described above in the proposed options, neither Section 247 nor Section 249 TCA need survive in the Irish tax system. It is long past time to put them out of their misery.

Question 7 - Are there any aspects of the anti-avoidance provisions contained in section 247 TCA which could be simplified or are no longer required? Please explain, noting both the benefits and any adverse consequences of same.

As noted above, Section 247/249 TCA is effectively inoperable and is no longer needed with the introduction of the ATAD ILR rules. This was effectively acknowledged by the Department of Finance so there should be no policy reason to retain them anymore.

The full operation of Section 291A TCA is outside the scope of this response. It deserves one small comment, however. Investing in specified intangible assets for the purposes of an active business is a normal commercial activity. Interest incurred to fund the acquisition or development of those assets is a normal business expense. There seems no logical reason to restrict the deductibility of that interest to income arising from specified intangible assets. It should simply be a general interest deduction like any other. Also, the current structure of the rules in Section 291A TCA contains a glaring anomaly. A company incurred as capital expenditure on the acquisition of a specified intangible asset and interest on debt to fund that

capital expenditure is deductibility but ring-fenced. The same company acquires a licence and pays a royalty for similar specified intangible assets. As no capital expenditure was incurred on the latter transaction, the interest falls outside the ring-fence. Effectively, the two transactions which are economically similar (an IP acquisition that involved a capital payment and one that involved an income payment) are ring-fenced from each other. This problem would be eliminated if interest on debt for commercial purposes (including the acquisition of specified intangible assets) would be deductible as a normal business expense which it is.

Debt borrowed to finance the purchase of assets from another group company is subject to various anti-step-up provisions. These are no longer necessary due to the imposition of the ILR and the anti-step-up provisions in Pillar Two. Even if those transactions occurred, the interest deduction is limited by the ILR and therefore they are of little benefit. Section 2474F TCA (on-lending) is no longer necessary due to the effect of the ILR and anti-hybrid rules. In addition, proper application of transfer pricing rules would address any issues arising as would the general anti-avoidance rules in Section 811C or in 817A TCA would apply.

The particular issues at which Section 247(4G) TCA are addressed would be eliminated if interest as a charge was also eliminated by ensuring that all interest was treated as a deductible expense where it was incurred for *bona fide* commercial/business purposes. If a multi-rate structure (or two income pools as per Option Three) is to be retained, then there would be allocation to the 25% and 12.5% pools. A value basis of deduction which exists already in the legislation could simply be applied when the interest deduction is moved from one pool to the other. Thus, Section 247(4G) TCA could be abolished as it would no longer be necessary.

Question 8 - Are there any aspects of the provisions in section 249 which could be simplified or are no longer required? Please explain, noting both the benefits and any adverse consequences of same.

As noted above, Section 249 TCA no longer makes sense anymore and the provision is effectively inoperable. The retention of Section 249 TCA means that companies cannot undertake normal group restructuring transactions without resulting in a denial of interest where the policy reasons for such denial do not exist. The relief is also problematic as it is predicated on the assumption that the only commercial option for repayments of debt up through the group structure is the repayment of the external debt – an assumption that does not align with the fact that the ordinary commercial activities of groups can regularly involve the reallocation of capital within the group.

As stated above, the Department of Finance effectively acknowledged this in arguing for equivalence of Section 249 TCA with the ILR rules under ATAD. With the introduction of those ILR rules Section 249 TCA became defunct and should be deleted.

There is no policy reason for the retention of Section 249 TCA, so it should be abolished in its entirety. It is unreformable.

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

Ireland should be wary of introducing specific regimes to deal with specific problems but instead should have a proper conceptual basis for its tax system. The qualifying finance companies ("**QFC**") regime is an example of a partial solution to a problem caused by poor design in the original system. If the basis of taxation for non-trading interest transactions (referred to above as non-active businesses) was reformed to mirror that of trading transactions (the only reason for the retention of the differential between active/non-active would be to support the multi-rate structure) then the QFC regime would no longer be necessary. For example, a company could be set up simply to borrow money and on-lend at interest. The anti-hybrid rules would apply to ensure that double non-taxation did not arise. Transfer pricing rules would be applicable to ensure that the correct margin was attribute to the company and

taxed in Ireland. So that, only the correct amount of interest payable will be deductible, and the company will be deemed to receive the right amount of interest receipts. To the extent that the company was part of a group, the ILR would also apply to ensure that no excess interest deductible items were introduced into Ireland.

Whilst this proposal may appear revolutionary in an Irish perspective, it is effectively the system in most other countries. Through its non-trading loan relationship debit regime, this is effectively the UK system. Germany, Italy, Spain, the United States and most other jurisdictions achieve this by recognising that interest should be deductible unless incurred for good business purposes and not applying a fundamental difference in profit calculation to trading and non-trading situations. This seems to us to be a correct policy approach which would lead to the elimination of the need for the QFC regime because Ireland would have a proper regime for borrowing and on-lending. We note that the Government has consulted extensively on the ability of Ireland to provide financial services from the jurisdiction. In this context, any jurisdiction that is serious about being in a financial services jurisdiction needs to have a simple finance company subject to the normal rules of transfer pricing, interest limitation, anti-hybrids and general anti-avoidance. The reform of Case III profit computation to mirror a trading profit computation is a very simple way of achieving this even in the absence of a more fundamental reform.

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

Because Ireland has adopted a capital/income distinction but has not introduced a rule stating that any item that is capital in nature is inherently deductible, we end up with "tax nothings", these are items that are neither deductible for Capital Gains Tax purposes nor for Corporation Tax on income purposes. A rule should be introduced that expenditure for *bona fide* commercial purposes that is not income in nature is treated as either an accretion to the base cost and the capital asset or as a deductible item in itself against Capital Gains Tax, i.e. it creates a capital loss. This would eliminate the concept of tax nothings. Abuse would be very unlikely because of transfer pricing rules which would limit the amount of the deduction to an arm's length amount. In the absence of a more fundamental reform, this should be an immediate first step.

Question 11 - Are there any ways that the interaction of the above five areas of relief for interest could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.

The answer to question 11(a) is set out above in the proposed solutions above at Section 3 for the reform of the deduction of interest in Ireland to align to normal commercial realities and to the way in which interest is deductible in other jurisdictions. The benefits and the lack of adverse consequences are set out in that discussion.

In relation to question 11(b), there are many examples of interest that is not deductible which are discussed above. These are all cases in which the interest was incurred for *bona fide* commercial purposes, was subject to transfer pricing rules, subject to anti-hybrid rules, was subject to ILR and to general anti-avoidance rules. Instead of respondents identifying specific cases where interest deduction should be granted, the Department of Finance should articulate a policy-based response as to why interest in those circumstances should <u>not</u> be deductible, against the underlying principle that interest is a legitimate expense of business and should accordingly be deductible like any other such cost of business. The request for specific instances of non-deductible interest illustrates the problem in the development of the Irish tax system over the last 220 odd years. There seems to be a lack of logical coherent overall policy-based decision-making resulting in a normal business outcome. In place of that coherent policy-based decision-making, a series of sticky plasters has been applied. This approach should no longer be followed.

Question 12 - Are there any aspects of the ILR which could be enhanced or simplified, within the confines of ATAD? Please explain, noting both the benefits and any adverse consequences of same.

We believe there is limited scope for the enhancement or amendment of the ATAD rules relating to interest limitation because our rules are ATAD compliant and therefore the scope of actions are limited. For example, the 30% rate could be reviewed in light of the changed interest rate landscape across Europe. However, this would decision would need to be taken at EU level rather than by the Irish Department of Finance.

For ease of reference, the policy choices underpinning the implementation of the ILR in a selection of different Member States is set out in the table at Appendix 2.

As a general comment, a significant complexity is introduced by our multi-rate structure 12.5%/25%/33%. This is likely to be retained unless our multi-rate structure is abolished or simplified. In addition, a consolidation system should be introduced along with the reform of Corporation Tax into a single source of profit computed with consistent rules. If that is the case, then a tax implementation could be significantly simplified for consolidated taxpayers.

More specifically we wish to make the following points:

- **De minimis -** The *de minimis* exemption should be amended slightly. At present, the €3m exemption ceases to apply where the profit amount is €3,000,001, i.e. there is no exemption at all. Incidentally, €3m should be a deductible item as opposed to a threshold.

- **Standalone Entity Exemption -** At present, the understanding is that there are no circumstances in which the exemption could apply. This is clearly not the legislative intent of ATAD and standalone entities should become more commonplace. For example, all bankruptcy remote SPVs should be viewed as standalone entities.

- **Filing requirements when relying on Single Company Worldwide Group -** We note that when a company is relying on the Single Company Worldwide Group it is subject to the same compliance requirements and must carry out all of the calculations for the purpose of the corporation tax return notwithstanding that these calculations are not material to calculating the tax liability or material to the return otherwise than to demonstrate that the existence of excess deductible interest that is relieved by virtue of the operation of the ration rules to the single company worldwide group. We would therefore suggest that to ease administrative burden that a company that is claiming the single company worldwide group exemption should only have to notify by ticking box indicating its status as a single company worldwide group as is currently the case with standalone entities. Alternatively, we suggest an abridged reporting requirement in order to ease the administrative burden on companies relying on single company worldwide group.

- **The long-term public infrastructure project exemption** will become a very useful feature of the Irish structure bearing in mind the need for significant investment in Irish public infrastructure. The Department of Finance should clarify that it applies to various sorts of investment in public infrastructure such as renewable power generation, public transport, energy transmission and any other projects that assist with the green transition.

Question 13 - When implementing ATAD, Ireland made policy choices, based on pre-existing domestic rules, in the following areas: a) treatment of a group as a single taxpayer,

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

We note that the European Commission has undertaken a public consultation and review of ATAD implementation and therefore, if any reconsideration of broader policy considerations underlying ILR implementation in Ireland are to be undertaken, it would be preferable to do so after the Commission findings are made available and instead focus attention in the immediate term on the domestic interest reform that is so overdue and vital.

Overall, Ireland implemented its ILR rules more recently than most Member States, for accounting periods beginning on or after 1 January 2022 and in terms of broad policy decisions are in line with the majority of Member States and are a sound policy choice in the context of the ATAD transposition requirement, subject to some of the points raised in the previous response.

For ease of reference, the policy choices underpinning the implementation of the ILR in a selection of different Member States is set out in the table at Appendix 2.

We would again like to note that while ILR under ATAD is complex, the real issue that taxpayers in Ireland face over taxpayers in other EU Member States with equivalent ILR rules is the interaction with the domestic provisions and also the schedular system of taxation – it is this that in particular leads to Ireland having such a disadvantage for taxpayers locating here.

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

The needs of business change over time and the funding structure of a business also changes. The switch from equity to debt funding, for the benefit of business purposes, should not result in a denial of deduction for interest on the replacement debt. Seeking to "deep freeze" the funding structure of a business seems an odd thing to do from an economic perspective. For example, a start-up business which is high risk may have a significant amount of equity funding and little or no debt. If it moves to the next phase of both where the income flows are more reliable and less volatile then it would make sense to replace its equity structure with debt. It is unclear why, from an overall economic policy perspective, this should result in a negative outcome particularly where the debt may be borrowed from an independent third party for *bona fide* commercial reasons. I understand from a narrow tax collection perspective that this rule has the effect intended but its economic rationale seems to be lacking.

Section 817A TCA is a specific targeted denial of deduction for interest incurred in avoidance purposes. We have no objection to its retention but would note that it overlaps with section 811C TCA. Its retention could have been justified if the old general anti-avoidance rule requiring an opinion of Revenue before its operation had been retained. As section 811C TCA is part of any self-assessment analysis of a taxpayer's position, it is difficult to see what effect section 817A TCA has in addition to 811C TCA.

Section 817C TCA would become unnecessary if the basis of taxation of non-trading interest received was moved to an accrual's basis of taxation. This is a logical step to take as noted above and therefore section 817C could be abolished.

Section 840A TCA is an anti-step-up provision similar to relevant parts of Section 247/249 TCA in relation to shares. Therefore, the same argument apples; with the effect of the ILR, this "equivalent measure" should be abolished.

As a general point, rules that no longer have application or overlap with other rules should be abolished for the purposes of simplifying and decluttering the system. These four examples in relation to question 14 highlight this point and therefore should be abolished.

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

The distribution rules contain many rules that are no longer justified or relevant and they should be considered and re-evaluated individually in detail based on a proper policy question. Fear of avoidance should not drive the decision as section 811C will deal with any avoidance matters. By definition, therefore, Section 130 TCA can only apply to non-avoidance transactions so the evaluation of each individual rule should be in the context of transactions undertaken for good business purposes only.

- Section 130(2)(a) TCA should be retained as dividends should be treated as non-deductible although we are unsure what a capital dividend is.

- Section 130(2)(b) TCA should be retained.

- Section 130(2)(c) TCA ought to be abolished as it is difficult to understand how it would apply to non-avoidance transactions.

- Section 130(2)(d)(i) TCA should be abolished for the same reasons.

- Section 130(2)(d)(ii) TCA should be reconsidered. It is already qualified by the granting of an interest deduction for AT1 securities in Section 845C TCA and seems difficult to align with the anti-hybrid rules derived from ATAD. Due to the application of the anti-hybrid rules which set the EU standard for non-deducibility on convertible/hybrid type debt, interest on convertible securities should be deductible to the extent recognised as an expense in the PNL. We understand that, from an accounting perspective, the convertible debt is bifurcated into an equity component and a debt component. The interest recognised represents the cost that could be incurred as a standalone debt and therefore the interest on that component of the security should be deductible. The rule in this section would not need to be retained if the deductibility rules for interest as a generic matter were limited to expenses recognised in the profit and loss of a company using generally accepted accounting principles.

- Section 130(2)(d)(iii) TCA, the reasonable commercial return provision could be retained but it should be limited to circumstances where transfer pricing does not apply or should be confirmed to an arm's length standard. It is difficult to understand why both an arm's length standard and a commercially excessive standard is needed as it can only lead to mismatches.

- The profit dependency rule is problematic on a number of levels. The "to any extent" causes problems. For example, all debt is to some extent profit dependent, i.e. if the company becomes insolvent, it may not get paid. Clearly that position would render interest on all debt to be a non-deductible distribution, so it is not applied. The rule therefore becomes very difficult in practice to apply and leads to inherent uncertainties in the tax system. This is allied to the fact that this is a "hair trigger", i.e. a small/economically irrelevant

amount of profit dependency leads to a denial of the full amount of the interest deduction. We would advocate for this rule to be abolished as the anti-hybrid rules perform this function.

- Section 130(2)(d)(iv) TCA, the 75% rule, has been disapplied to payment to EU Member States and to many Irish treaty countries. It is also very difficult to reconcile with the free movement of capital provisions for interest payments to third countries. Finally, it fundamentally undermines transfer pricing rules which will apply to restrict a deduction to an arm's length amount. From a policy perspective, why is there a need to increase the non-deductible amount, i.e. to deny a deduction for genuine third-party equivalent interest? The rationale for this will have long passed and it should be abolished.

- Section 130(2)(d)(v), the stapled stock provision, instead of operating as a full denial of deductibility, it should be limited to an arm's length amount, i.e. what would the amount of interest be paid on the debt separately from the shares to which it is stapled. Again, the policy rationale for this rule has passed.

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

The ring-fencing section to enable 291A TCA was addressed above.

Section 437 TCA should be amended to align the definition of interest (along with the general definition of the Taxes Act) to the "interest equivalent" definition in the ILR. This rule could be abolished and the arm's length/transfer pricing standard applied instead for the purposes of consistency.

Part 35A TCA needs to be retained in compliance with the ATAD rules.

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

As a general comment, SPVs play a vital role in both the Irish and broader EU economy and are central to achieving key EU policy objectives such as the of expansion access to funding for Europe's economic growth by offering access to finance through securitisation and facilitating loan origination and non-bank-lending to assist SMEs in accessing finance. Given the vital role played by this sector, any rules or modernisation of something as fundamental as the rules on interest deductibility should take account of their application to Section 110 companies. A modern broad-based approach as outlined above would ensure that the sector is not disadvantaged by the rules and any unnecessary discriminatory features arising from archaic principles of common law that are not internationally recognized or understood principles are removed (such as for example the Badges of Trade which, due to regulatory and risk reasons, an SPV cannot meet while in reality carrying out genuine commercial activities).

More specifically we wish to make the following points:

- Throughout the lifetime of the Section 110 regime a plethora of anti-avoidance provisions have been introduced. However, since the implementation of hybrid rules and ILR there is some duplication, and consideration should be given to the updating of the specific anti-avoidance provisions in Section 110.

- The Irish specified property rules contained in Section 110 (5A) TCA were introduced at a time when Irish debt secured on Irish land was trading at a significant discount. In order to prevent acquirers of that debt in the second-hand markets from earning untaxed capital gains through the general improvement in the credit quality of Irish assets (opposed to individual action on their own behalf) the deduction was denied for interest on certain profit dependent debt instruments. As Irish debt assets are no longer trading at a significant discount due to the general economic environment, this section is no longer relevant and should be abolished. Its function has, in part, been overtaken by the ILR so the policy justification is no longer present for adding duplicative rules. A similar rationale applies to Sections 110 (4A) and (4B) TCA.

- The opportunity should be taken to remove an unfair and discriminatory rule Section 110(4A)(b)(ii) TCA, which denies a deduction for interest paid to certain pension funds, government bodies or other tax-exempt persons which are resident for tax purposes in the EU or any country that has a tax treaty with Ireland. Interest payments to such persons resident in Ireland are not subject to the same treatment. We also believe that in light of the recent CJEU judgment in case C-601/23[4],while this judgment dealt with withholding tax rules on dividends, it clearly sets down the principle that rules on the operation of withholding taxes (and in that case refunds available) will constitute a restriction on the free movement of capital under Article 63 TFEU if those rules discriminate against non-resident taxpayers that are in a comparable and equivalent position.

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

If the definition of interest was appropriately drafted (and we believe that following the definition of "interest equivalent" would work) then this mismatch would not arise. It also is influenced by the fact that we have a capital / income distinction in Irish tax law. These structural features give rise to the opportunity for avoidance that is targeted by the bond washing provisions. If these structural issues were resolved in the Irish Tax System, the need for avoidance legislation would disappear.

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

We wish to make the following points:

- The **12-month time period** severely restricts the availability of the substance over form treatment for these transactions and seems to serve no purpose when one considers the specific anti-avoidance provisions in Section 753E TCA, the current restrictions on availability of the treatment under Section 735B and the hybrid mismatch rules. This restriction should also be removed from the stamp duty reliefs.

[4] Case C-601/23 *Credit Suisse Securities (Europe) Ltd v Diputación Foral de Bizkaia* ECLI:EU:C:2024:1048, [2024]

- **The restriction on lending over dividend / interest payment dates under Section 735B** seems superfluous in the context of the specific anti-avoidance provisions under Section 735E TCA.

- **The applicability of the legislative framework to companies within the charge to Irish Capital Gains Tax ("CGT") (rather than corporation tax) creates issues due to t**he fact that the regime does not apply to non-residents where the securities are within the charge to Irish CGT and is therefore discriminatory , as there is often no disposal under their own tax rules applicable to stock lending / repo transactions but there will be a disposal (and reacquisition) for Irish CGT purposes. It also seems an anomaly that a non-resident taxpayer within the charge to CGT can avail of the treatment if its counterparty is an Irish resident company or within the charge to corporation tax, but the same treatment is not afforded to two counterparties within the charge to Irish CGT only.

- **The restriction on deductibility for manufactured payments in excess of the dividend / interest received** is problematic; when one considers that the economic purpose of such a payment would be to represent the interest due for the lending of the securities to the stock buyer, why must it be restricted to the amount of the dividend / interest received? If an entity borrowed wholly and exclusively for the purpose of its trade, it is entitled to take a deduction for the interest due, so one would expect the excess manufactured payment to be treated in the same manner; however, the restriction under Section 735C(2) and (3) TCA seems to remove this possibility from the stock buyer. This is an onerous provision, in particular where the excess over the manufactured payment is taxable in the hand of the stock seller under Case IV (Section 735D TCA).

- Finally, again, if the definition of interest payable/receivable was defined to match the "interest equivalent" definition in the ILR there would be no need for stock lending/repo transactions as they would be economically treated as loan transactions.

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

These provisions in Section 845 and 846 TCA would not be necessary if the definition of the purpose of the debt giving rise to deductible interest excluded the exempt government and certain other securities referred to in Section 845 TCA. If so, the related interest would not in principle be deductible and this would be consistent for normal policy.

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

The specific rules for leasing companies may or may not be retained if the changes to the definition of interest were adopted. This would need to be investigated in full. In principle, however, if any of Proposed Solutions outlined above at Section 3 were adopted then many of these rules may not be needed.

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

The retention of the specified financial transactions legislation would fully accord with a more reformed approach to the concept of interest. It may be the case that Part 8A TCA would no longer be necessary, but this would have to be investigated in full. It is a minor point in relation to the overall objective of reforming interest deductibility rules.

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

It has long been recognised that withholding taxes are one of, if not the most, economically damaging of all taxes by virtue of the fact that withholding taxes are operated not on profit but on gross revenue. When compared to large economies and sophisticated economies, Ireland is unusual (if not unique) in imposing dividend withholding tax and interest withholding tax. Most European jurisdictions do not impose interest withholding tax (or only do so in very limited connected party/profit dependent type transactions). For example, none of the Netherlands, France, Germany, Austria or the Nordic countries generally impose interest withholding tax. The US imposes interest withholding tax but has significant exemptions e.g. the portfolio debt exception, which exempts unconnected/normal debt instruments from the interest withholding tax regime. Although the UK imposes interest withholding tax, it has no regime for the withholding of tax on dividends. The removal of interest withholding tax would be a major benefit to Ireland and would bring it more in line with the standard features of the EU tax system. The four fundamental freedoms of the EU single market are a key feature of the EU legal system. The free movement of capital is one such fundamental freedom, which also extends to third countries. Article 63 of the TFEU provides as follows: "*Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between member States and between Member States and third countries shall be prohibited*". Article 63 TFEU is important when considering the compatibility of Ireland's interest withholding tax regime with key EU tax principles and many instances of interest withholding tax likely breach the free movement of capital and are likely illegal.

The objective of imposing withholding tax is to enforce the collection of tax. It seeks to incentivise the recipient to pay the correct amount of tax on Irish source income (the only interest to which withholding tax applies by virtue of being subject to tax under Schedule D) and, as a result, reduces the risk and impact of tax non-compliance This is only effective where the recipient has a tax rate that is the same as or lower than the withholding tax rate. Interest withholding tax may once have been an important mechanism to support this objective, but it is obsolescent. Accordingly, we advocate for the complete abolition of interest withholding tax.

First of all, it is rarely imposed so its abolition would not lead to any material loss to the exchequer. This is because Irish domestic law already provides for various exemptions from interest withholding tax including an exemption for interest payments made, in the ordinary course of trade or business, by Irish-resident entities to entities in countries which are members of the European Union or with which Ireland has a double tax treaty (Section 246(3) TCA).

In relation to interest payments which cannot benefit from the domestic exemptions listed in the legislation, there are options open to Revenue, other than the operation of withholding of tax, to reduce the risk and impact of tax non-compliance. The exchange of information between tax authorities has transformed in recent years, meaning that the Revenue Commissioners has far-reaching access to information relating to taxpayers at a global level and not just under the extensive tax treaty and EU based information sharing provisions. The introduction of the Foreign Account Tax Compliance Act (the "**FATCA**") and the Common Reporting Standard (the "**CRS**"), the operation of which was made mandatory for all EU Member States by DAC 2, means that it should be a simple matter for the Revenue Commissioners to utilise this information collected by the authorities to verify tax compliance and identify cases of non-compliance.

Furthermore, where the Revenue Commissioners identify cases of non-compliance, Revenue could invoke an expanded provision of our domestic legislation (Section 1002 TCA) to direct any payer of interest to operate withholding and/or to pay to Revenue the lesser of the amount due to the defaulting taxpayer and an amount equal to the tax due by the defaulting taxpayer.

Where the Department of Finance is of the opinion that some interest withholding provisions should be maintained to tackle potential risks of tax non-compliance in certain zero tax jurisdictions, it would be enough to rely on the outbound payments defensive measures which were introduced into domestic law in 2024. These measures remove certain exclusions from the obligation to deduct withholding taxes on certain payments, which include payments of interest, to associated entities resident or situated in the 'no-tax' and 'zero-tax' territories listed in the Annex I of the EU list of non-cooperative jurisdictions for tax purposes. One amendment to this measure should be to exclude interest paid to an entity that is subject to Pillar Two.

It follows that interest withholding tax should be eliminated (potentially subject to the outbound defensive measures) to ensure that Ireland's tax system, supports competitiveness and aligns with our commitments in the field of EU taxation and international norms.

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

Deposit Interest Retention Tax ("**DIRT**") is not a major feature economically of the Irish jurisdiction other than in relation to Irish resident individuals. It was introduced at a time when non-compliance was rife in the country. In the interim period compliance levels have increased significantly and anti-money laundering/client identification standards have been fundamentally transformed. Since it is now possible to identify all the Irish resident depositors in any bank because of the requirement to provide PPS number to the relevant bank on opening the account, withholding tax is no longer required. We would suggest that DIRT become a voluntary tax i.e. an account holder can choose to agree with the bank for it to be levied or to receive interest gross. For an individual that is subject to tax at the basic rate or would otherwise have its tax liability satisfied by a DIRT payment, in order to avoid filing a self-assessment return the individual could agree to DIRT being withheld. In other circumstances, DIRT should not be withheld, and the individual should pay tax on their own income.

There is no logic in taxing deposit interest under Case IV and it should be moved to Case III immediately.

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

As with DIRT, the advances in client identification procedures and anti-money laundering legislation eliminates the need for encashment tax. Accordingly, it should be abolished.

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

As noted from the Consultation Document, there are a number of situations requiring reporting of the payment of interest and the identification of the beneficial owner of that interest. These should all be condensed into a single reporting standard applicable with the same rules to all individuals. This would be a major simplification by requiring the person subject to the reporting standard to file a single return across all reporting obligations. The approach of introducing specific legislation for each individual item and to have separate implementations of FATCA, CRS and other international standards is confusing and adds to an administrative

burden. A single combined obligation and return and compliance obligations would make matters much clearer.

5. Broader Policy Consideration

The last question posed in the Consultation Document is whether Ireland should introduce a commercial business purpose test or any other basis for the deduction of interest expense?

We believe this is the only logical and acceptable solution and therefore the focus of the Department and its resources should be on this question and arriving at a solution that is in line with international norms rather than consuming time and resources sifting through possible tweaks and piecemeal ad hoc changes to the current system that will not achieve the desired result and merely delay the inevitable further work of enacting a new set of rules of the taxation of interest in Ireland. As previously stated, we believe the time saved could allow for further changes to a modernisation of the Irish corporate tax system, such as for example moving away from the schedular system and multi-rate structure.

5.1 Considerations

As we set out above at Section 3, we believe an arm's length rate of 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, and is incurred wholly and exclusively for a commercial/business purpose should be deductible, subject to the various other rules and protections in the legislation that align with EU law and international norms. This approach would align better with EU legislation, specifically ATAD and Pillar Two. The test would reflect those in other EU Member States. A table containing a high-level summary of the rules for interest deductibility in a selection of other jurisdictions is contained in Annex 1. As is evident from this table, the vast majority of jurisdictions allow for an arm's length rate of interest on, or costs associated with, any debt incurred for genuine business purposes to be deductible as it accrues in the statutory accounts and is incurred wholly and exclusively for the purpose of the trade, subject to a commercial purpose test and any necessary specific anti-avoidance rules.

In Germany, interest on loans and other debts relating to the business are generally deductible subject to the rate being arms' length if related parties and the interest expense being 30% EBITDA. In Spain, interest on loans is also generally deductible subject to the overarching limitation to the 30% limitation and certain restrictions on intra-group debts which, cannot be justified by calid economic reasons (a commercial purpose test essentially). In the UK, where a similar schedular system forms the foundation of their tax system, a new set of rules were created for loan relationships which created a new category of taxable income for "loan relationship credits" and a coherent system for deductions for "loan relationship debits". Again, as is international best practice, the UK system has the concept of an "unallowable purpose condition" in respect of a loan relationships which include a purpose which is not amongst the business or other commercial purposes of the company.

In response to the specific policy considerations raised at Section 3.1 of the Consultation Document we have the following points to make:

(a) Our proposed solutions and how they interact with the existing tax regime are outlined in detail above at Section 3 of this paper.

(b) Our proposed solutions and how they interact with the existing tax regime are outlined in detail above at Section 3 of this paper.

(c) The Irish transfer pricing legislation applies to fully incorporate OECD Guidelines and therefore is sufficient in its current form to adequately protect the Irish tax base.

(d) As stated, we believe that consideration should be given to incorporating an "interest equivalent" concept into Irish law in line with that used under the ILR.

(e) We do not believe that this proposal would require the introduction of thin capitalisation rules for cases where the company would be overly debt financed as compared to its equity funding – the 30% EBITA ILR achieves this purpose and ensures that companies are not overly leveraged. Additionally, transfer pricing rules also perform this function.

(f) Regarding the level of taxation of the recipient, the hybrid rules that are based on the concept of full deduction should be sufficient to deal with this concern. A fundamental assumption behind the anti-hybrid rules is that expenses are deductible otherwise no mismatch can occur. This is not currently the case in Ireland due to the convoluted structure of the tax system and the complex rules relating to deductibility of interest which differs significantly depending on whether it is on debt incurred for trading purposes or not. In any event, such a rule relating to the level of taxation of the recipient is commercially inoperable. This is because the only way for this to be achieved is to require the recipient to recompute its tax under Irish principles to determine the correct level of taxation. An alternative is to look at the statutory tax rate although this may not have very much meaning in principle. Both of these approaches are deeply flawed and require a substitution of the Irish rules for a foreign country's rules (thus impinging on their sovereignty) or a super simple analysis of tax rates that have no meaning and no relationship to effective tax rates. For companies within the scope of Pillar Two, the interest income wherever received will be subject to a minimum effective rate of 15%. For non-Pillar Two companies, a geographic limitation based on the EU blacklist of non-cooperative jurisdictions could be introduced, but we do not believe it necessary given the strong base protections already contained in the legislation. Some Member States as part of the broad based rule on interest deductibility do have requirements on the level of taxation of the recipient (e.g. in Belgium, the interest is not deductible if it is directly or indirectly paid or attributed to any foreign company or individual when, according to the law of the country where these are established or resident, they are not liable to income tax or are subject to a tax treatment that is notably more favourable than that of Belgium. However, in keeping with the genuine business purpose nature of the rules, the interest is still deductible if the taxpayer shows that the payment corresponds to a genuine business transaction and that the amount is not abnormally high)

(g) With a properly drafted rule no new rules are required to deal with abusive transactions since the commercial/business purpose-based deductibility of interest will be sufficient when allied with interest limitation, transfer pricing, anti-hybrid and the general anti-avoidance rule in Section 811C TCA. When these rules are considered together it is hard to see what any specific or targeted anti-avoidance rule would achieve. In previous discussions with Department of Finance and Revenue Commissioners the point has been raised that specific rules make it easier for Revenue to enforce a policy objective. We do not believe this to be the case; if a transaction is an avoidance transaction, then Section 811C TCA targets it, and recent jurisprudence has strengthened Revenue's ability to use Section 811 C TCA without the necessity to rely on specific anti-avoidance provisions, even in the event one exists. This said, we believe the existing robust system of anti-avoidance rules comprehensively protects the Irish tax base there does exist a:

- If it is a hybrid transaction, then the anti-hybrid rules target it.
- If a company is over-leveraged, then the ILR attacks it.
- If the company is undertaking transactions that are not arm's length with associated person, then the transfer pricing rules address this.

- Targeted rules should not be introduced unless a transaction has occurred that is not affected by any of the previously mentioned rules, i.e. there is a gap in the fundamental system that is applicable across all of Europe. We very much doubt that this is relevant in practice.

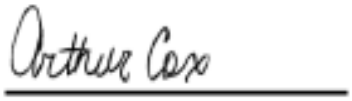
(h) The current transfer pricing rules entail a characterisation of debt or equity, so no additional rules are required.

(i) The question in Paragraph (i) seems to be predicated on the retention of a multi-rate structure in Ireland with a distinction between capital and income. We would advocate for a single system respecting a unified concept of profit to eliminate all of these distinctions. We suspect however that this is unlikely. Accordingly, the allocation of deductible interest between active/non active (taxed at 12.5% and 25% respectfully) would resolve this issue. The apportionment should be on a just and reasonable basis so no interest incurred occurred on debt borrowed for genuine business purposes would be denied a deduction in one of the two buckets.

(j) We do not see any change in the interaction between the relief for losses and group relief. Interest incurred for genuine business purposes is deductible. If it creates a loss so, be it. There is no need to deny lost relief for genuine transactions. There would be no transitional rules other than to ensure that double deduction and that no income is excluded. This sort of rule has been implemented in the past when Section 76a was introduced and also when non-resident companies were moved from income tax to corporation tax.

(k) We believe limited transitional rules should be necessary, however, if necessary, rules of a similar nature to those adopted in Schedule 17A that were introduced at the time of Section 76A TCA to provide transitional rules for tax purposes which apply when a company moves from one accounting standard to another. These rules ensured that no amount of trading income, or deductible trading expenses, that would have been taken into account in computing profits in accordance with "relevant accounting standards", were doubly counted or fell out of charge to tax as a result of the transition to a new accounting standard.

Yours faithfully



30th January 2025

APPENDIX 1

TAXATION OF INTEREST IN EU MEMBER STATES & OTHER JURISDICTIONS

Jurisdiction	Based on bona fide commercial purpose	Interest Limitation Rules (ILR)	Transfer Pricing	Anti-Hybrid Rules
Austria	✓ • Interest paid on loans and other debts granted by a third party which are economically connected with any type of income or used for the purchase of business assets is generally deductible.	✓	✓	✓
Belgium	✓ • Interest payments are generally deductible if the general conditions of deductibility of business expenses are met.	✓	✓	✓
Bulgaria	✓ • In general, interest accrued for the relevant period is deductible even if not paid.	✓	✓	✓
Croatia	✓ • Generally, interest is deductible if incurred for the purpose of deriving income. However, the deductibility of interest is limited under the Croatian thin capitalization rule and the excessive interest rate rule.	✓	✓	✓
Cyprus	✓ • In general, interest is deductible in computing taxable income insofar as it is incurred "wholly and exclusively" for the purposes of the trade.	✓	✓	✓
Czech Republic	✓	✓	✓	✓

	• Interest is deductible to the extent that it is at arm's length.			
Denmark	✓ • In general, interest is deductible as a business expense if paid at arm's length.	✓	✓	✓
Estonia	X	✓	✓	✓
Finland	✓ • In general, interest expenses are deductible.	✓	✓	✓
France	✓ • Interest paid to third parties is generally deductible if the debt is incurred for the business purposes of the company and is shown in the balance sheet. Interest is deductible in the year it accrues. However, several specific limitations may apply to the deduction of the interest expenses. • The deduction of interest paid to shareholders or to related companies is limited to interest paid at a rate not exceeding the annual average rate of interest charged by financial institutions on variable interest rate loans to enterprises with a duration exceeding 2 years (Determined by the French Central Bank). • As an exception, interest paid to related companies in excess of this rate may be deducted if it can be shown is a market rate, interest exceeding the market rate limit is not deductible by the paying company.	✓	✓	✓

Germany	✓ • Interest on loans and other debts paid relating to the business are generally deductible. However, the following limitations apply to the deduction of interest: • Interest on loans granted by shareholders or affiliated companies may be treated as a distribution to the extent the rate charged exceeds the market rate (the interest rate prevailing in the country of the currency) for a similar loan.	✓	✓	✓
Greece	✓ • In general, interest (including default interest) paid by a company is deductible from its gross income, provided the loan relates to its business.	✓	✓	✓
Hungary	✓ • Interest paid relating to the business is generally deductible up to its arm's length value.	✓	✓	✓
Italy	• The main limitations to the deductibility of interest are the EBITDA rule and specific rules relating to financial intermediaries.	✓	✓	✓
Lativa	X	✓	✓	✓
Lithuania	✓ • Interest paid on loans and other debts related to the business are generally deductible.	✓	✓	✓
Luxembourg	✓	✓	✓	✓

	• In general, interest payments on loans, bonds, debentures and other debts of a company are deductible as normal business expenses.			
Malta	✓ • Deductibility of interest payments is regulated under the general rule on deductibility, in terms of which borrowing costs incurred by any person is a deductible expense if such costs were wholly and exclusively incurred for the purpose of that person's trade, business, profession or vocation or on capital employed for the purpose of acquiring income.	✓	✓	✓
Netherlands	✓ • In general, interest payments on loans, bonds, debentures and other debts of the company are deductible as normal business expenses.	✓	✓	✓
Poland	✓ • In general, interest accrued and paid is deductible (if incurred for the purpose of earning income), while interest accrued but not actually paid is not deductible.	✓	✓	✓
Portugal	✓ • Interest is generally deductible for tax purposes.	✓	✓	✓
Romania	✓ • As a general rule, interest payments made in relation to loans contracted for the purpose of performing taxable activities are	✓	✓	✓

	deductible for corporate income tax purposes.			
Slovak Republic	✓ • Interest on debts relating to the business is deductible for tax purposes. Interest for late payment is not deductible including also interest for late payment of taxes and social security contributions.	✓	✓	✓
Slovenia	✓ • In general, interest is tax deductible.	✓	✓	✓
Spain	✓ • Interest paid on loans is generally deductible, subject to the limitation provided by the rule on the deduction on borrowing costs.	✓	✓	✓
Sweden	✓ • Interest paid on loans is generally deductible.	✓	✓	✓
U.K.	✓ • Interest deductible on an accruals basis unless incurred for an "unallowable purpose"	✓	✓	✓
U.S.	✓ Interest is generally deductible for tax purposes	✓	✓	✓

APPENDIX 2[5]

ILR Table – Sample EU Member State Implementation

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Portugal	Spain	Sweden
Is there legislation limiting interest deductibility?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	YesI
Has the interest limitation rule of the ATAD been transposed into its domestic legislation?	Yes, with effect from 1 January 2021	Yes, with effect from 1 January 2019	Yes, with effect from 1 January 2019	Yes	Yes, with effect from 1 January 2019	Yes, the existing national rule has been adapted in order to meet the requirements of the ATAD	Yes, with effect from 1 January 2019 .	Yes -	Yes	Yes. with effect from 1 January 2019	Yes	Yes, with effect from 1 January 2019	Yes	Yes	Yes
Which deductibility threshold is used?	Yes	30% of the calculation base (i.e. the difference between the gross accounting profit and the tax-exempt income to which corporate income tax, exceeding borrowing costs and deductible tax depreciation, is added back)	30% EBITDA	25% of the EBITDA .	30% EBITDA	30% EBITDA	30% EBITDA	30% EBITDA	30% EBITDA	30% of the calculation base (i.e. the difference between the gross accounting profit and the tax-exempt income to which corporate income tax, exceeding borrowing costs and deductible tax depreciation, is added back)	30% EBITDA	20% of the calculation base (i.e. the difference between the gross accounting profit and the tax-exempt income to which corporate income tax, exceeding borrowing costs and deductible tax depreciation, is added back) Note that the new Dutch government announced an increase to 25% EBITDA)	30% EBITDA	30% of the operating profit (EBITDA)	30% EBITDA
Is a safe harbour threshold implemented?	Yes	Yes	Yes.	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes Fully deductible up to EUR 1 million	Yes	Yes	Yes Net interest expense of SEK 5 million is always deductible

[5] Information obtained from IBFD research platform.

	Net interest expenses in the amount of EUR 3 million are deductible in any case	Net borrowing costs of up to EUR 3 million are fully deductible	Full deductibility up to DKK 22,313,400 (equivalent to EUR 3 million)	Fully deductible up to EUR 500,000 for loans between related parties and EUR 3 million for loans from unrelated parties	Fully deductible up to EUR 3 million	Full deductibility of exceeding borrowing costs up to EUR 3 million	Fully deductible up to EUR 3 million	EUR 3 million (threshold applies)		Fully deductible up to EUR 3 million	Fully deductible up to EUR 3 million		Net financial costs are deductible only up to EUR 1 million	Net interest expenses of less than EUR 1 million are deductible in any case	
Is full deductibility for standalone entities granted?	Yes	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Is the equity escape rule under article4(5)(a) of the ATAD implemented?	Yes	No	No	Yes	Yes	Yes	Yes, for members of consolidated groups	Yes	No	Yes	Yes	No	No	No	No
Is the group ratio rule under article 4(5)(b) of the ATAD implemented?	Yes	No	Yes	No	Yes	No	Yes, for members of consolidated groups	Yes	No	Yes, but Luxembourg applies the group escape on a stand alone basis.	Yes	No	Yes The regime provides the option to apply the group ratio on an entity-by-entity basis	No	No
Are loans for long-term public infrastructure projects excluded from the scope of the rule?	Yes	Yes	No	Yes	Yes	Yes, applies to financial years from 14 December 2023 and not ending before 1 January 2024	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Are financial undertakings excluded from the scope of the rule? (article 4(7) of the ATAD)	No	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No	Yes	No, but the limits will not apply to credit institutions and insurance companies	No
Is the grandfathering rule implemented? (article 4(4)(a) of the ATAD)	Yes	Yes Loan contracts may not be fundamentally changed	No	Yes	No	No	No	Yes	Yes (relevant interest will be subject to a targeted rule, not excluded from the scope of application of the ATAD rule)	Yes	Yes	Yes	No	No	No

Is it possible to carry-forward or carry-back borrowing costs that are not deducted?	Yes	Yes Carried forward indefinitely	Yes Carried forward indefinitely	Yes Carried forward (only)	Yes 1) Non-deducted borrowing costs: carried forward indefinitely 2) Unused interest capacity: carried forward up to 5 years	Yes Carried forward indefinitely	Yes Carried forward indefinitely	Yes 60 months	Yes 1) Non-deducted borrowing costs: carried forward indefinitely 2) Unused interest capacity: carried forward up to 5 years	Yes Carried forward indefinitely	Yes 1) Non-deducted borrowing costs: carried forward indefinitely 2) Unused interest capacity: carried forward up to 5 years	Yes Carried forward indefinitely	Yes Carried forward for 5 years	Carried forward indefinitely. From 2024, if the deduction possibilities are not fully used, the unused part can be deducted in the following 5 years.	Yes Carried forward for a maximum of 6 years