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## Response to the Public Consultation on the Tax Treatment of Interest in Ireland

Department of Finance

30 January 2025

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© Law Society of Ireland

Blackhall Place, Dublin 7

t. 01 672 4800

e. [policyteam@lawsociety.ie](mailto:policyteam@lawsociety.ie)



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## About the Law Society

The Law Society of Ireland (**the Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland.

The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the Solicitors Acts 1954 to 2015. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council may delegate certain statutory functions. A separate organisation - the Legal Services Regulatory Authority - is responsible for regulating the provision of legal services by legal practitioners.

The Law Society delivers high-quality legal education and training and also places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

## Introduction

This submission is provided in response to questions raised in the Public Consultation on the Tax Treatment of Interest in Ireland (the **Public Consultation**) published by the Department of Finance (the **Department**) in September 2024.<sup>1</sup>

Ireland has been an outlier in relation to important aspects of its corporate tax system for many years when compared to its European Union and international counterparts. These differences have become more prominent in recent years in light of the proliferation of tax law introduced in compliance with international standards, most notably with the transposition of a suite of anti-avoidance legislation pursuant to the Anti-Tax Avoidance Directives (the **ATAD**),<sup>2</sup> the implementation of transfer pricing and more recently the transposition of the EU Directive ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (**Pillar 2**).<sup>3</sup>

The introduction of the Pillar 2 rules into Irish law means that Ireland can no longer rely on its tax rate advantage alone to attract new investment or indeed to retain the current levels of investment. In this context, it is essential now more than ever that other aspects of the Irish tax system (which have long required reform) are reviewed, amended and enhanced to reflect the realities of modern-day business and are aligned with international norms rather than being considered an international outlier.

The Irish regime in relation to the tax treatment of interest in Ireland is one such anomaly when compared to other international tax regimes. Reform in this area would be a major step forward and would mean that Ireland, at the very least, aligns with international norms. The plethora

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<sup>1</sup> Available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/305814/62ecddae-3070-4bdb-a31e-20716492e2fb.pdf#page=null>

<sup>2</sup> 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 & Council Directive (EU) 2017/952 of 29 May 2017 amending Directive EU 2016/1164 (ATAD 2).

<sup>3</sup> Council Directive (EU) 2022/ 2523 ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic ground in the Union.

of piecemeal changes over the years which have come about in the Irish tax system mean that much of the mechanisms required to effectively and efficiently change this area of our tax policy are already in place. It is now up to the Department to harness these recent developments so that they can be used to Ireland's advantage in creating a reformed policy of taxing interest such that Ireland maintains its reputation as a good investment destination.

The majority of our suggestions and recommendations will be centred around changes to the Taxes Consolidation Act (the **TCA**).

## **Summary of Proposals**

The following is a summary of the main Law Society suggestions and recommendations to the Department in relation to the tax treatment of interest in Ireland:

- 1) The Law Society would welcome a uniform rule for computing and assessing effective interest income and expense across all forms of commercial/business activity.
- 2) Non-resident persons in receipt of interest income subject to Irish tax should be subject to the same computation and deductibility measures as Irish resident persons.
- 3) Targeted anti-avoidance measures should be retained only where there is (a) a clear, objective justification from a policy perspective and (b) there are no other overlapping provisions.
- 4) The Law Society suggests the introduction of a commercial/business purpose test for interest deductibility, which will remain subject to the various other rules and protections in the legislation that align with EU law and international norms.
- 5) The Law Society recommends the replacement of the Section 247 and 249 provisions on anti-avoidance with a simple commercial/business purpose test due to their complex nature and the significant practical issues created by the recovery of capital rules.
- 6) The Law Society recommends the replacement of the current rules providing relief (as contained in Sections 81, 97, 247, 249 and 76E TCA) and, as noted above, the introduction of a simplified rule applicable to the computation of interest expense. Thorough reform of tax relief for interest expense (for genuine commercial/business purposes) is needed.
- 7) The regime governing the relief on interest that is capital in nature should be simplified.
- 8) The Law Society recommends (a) the introduction of a simple notification or abridged reporting procedure for companies relying on the Single Company Worldwide Group, and (b) the introduction of an exemption for the first €3M of profits for companies subject to the Interest Limitation Rules, consistent with the de minimis exemption.
- 9) Ireland should not undertake an Irish-only review of its policy choices when implementing Anti-Tax Avoidance Measures Directives, as the European Commission is already undertaking an EU-wide review of such.
- 10) The policy rationale for the retention of provisions restricting the deduction of interest incurred for commercial/business purposes (including within Section 291A, Section 437, Section 110 TCA, Chapter 1 of Part 28 TCA, Chapter 3 of Part 28, Sections 845 and 846 TCA) should all be reconsidered in the context of broader reform and should be kept only where there is clear and objective justification for them.

- 11) Consideration could be given to eliminating the interest withholding tax rules in Section 246 in their entirety.
- 12) The Law Society believes that the imposition of DIRT at source should be optional for taxpayers filing returns under the self-assessment system.
- 13) Consideration could be given to eliminating the encashment tax provisions in their entirety.
- 14) Reporting obligations applying to payors of interest should be aligned into one filing.
- 15) The Law Society firmly believes that a commercial/business purpose test should be introduced for the deduction of interest expense replacing the current plethora of rules.

The Department's Public Consultation was framed under a series of **27** primary questions which the Law Society will respond to in turn below.

## **Questions and Law Society Responses**

### ***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?***

The Law Society believes that there should be uniformity, or at least closer alignment, of the rules regarding the taxation and deduction of trading and non-trading interest income.

Under the current system, different rules and rates apply to compute the effective interest income and expense depending on whether the interest is trading or non-trading in nature. Not only is there a rate differential, but the quantum of profit may also change significantly from one case to another (e.g. Case I versus Case III) as the rules applicable to compute profits differ. This is not a feature of other international tax systems and the justification for such an approach is unclear in the current tax climate.

As such, we would welcome a uniform rule for computing and assessing the effective income and expense across all forms of commercial/business activity. Interest expense should be deductible in line with the manner in which it accrues in the statutory accounts to the extent the applicable rate is arm's length, and the interest is incurred for genuine commercial/business purposes.

There are already a number of additional protections in the domestic Irish tax legislation that impact the tax treatment of interest including interest limitation rules, anti-hybrid rules, outbound payments rules, transfer pricing rules, recharacterisation rules and general anti-avoidance rules.

In addition, for in-scope groups, the Pillar 2 rules are layered on top of this to ensure effective minimum taxation of the group globally. Accordingly, the regime in Section 247/249 TCA and other specific provisions relating to the deductibility of interest together with specific anti-avoidance rules should be replaced.

Although in the short-term there may be a reduction in corporation tax due to a higher quantum of interest being deductible (but subject to the rules described above including the interest limitation rule), the benefit of simplification and a reduced fiscal and administrative burden in terms of foreign direct investment cannot be overstated. Ireland is an outlier in an international

context at a time when it is imperative it maintains a competitive offering. Most regimes allow the deductibility of interest on borrowings drawn down for commercial/business purposes. The schedular system, distinction between trading and passive income and the complex rules contained in Section 247/249 TCA are not fit for purpose and a uniform approach in the form of a consistent measure of profits and a simplified interest deductibility rule should be adopted.

**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.**

Non-resident persons in receipt of interest income subject to Irish tax should be subject to the same computation and deductibility measures as Irish resident persons.

As discussed above, reform in this area may lead to a reduction in corporation tax in the short-term, however it should increase Ireland's competitiveness overall leading to an improved fiscal performance in the medium-to-long-term and would comply with recent CJEU case law.

**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 policy rationale for the retention of each provision should be considered in the context of broader reform. Only where there is clear, objective justification from a policy perspective and no other overlapping provision should they be retained.

**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.**

Under the wholly and exclusively test set out in Section 81(2)(a) TCA, interest incurred on borrowings largely obtained for trading purposes where some of the funds borrowed are used for non-trading, but other good commercial purposes could be denied deduction in full. These types of unreasonable outcomes affect Ireland's competitiveness on an international stage.

The Law Society believes that a commercial/business purpose test should be introduced for the deduction of interest expense replacing the current rules. This test will remain subject to the various other rules and protections in the legislation that align with EU and international norms. Reform in this area may lead to a reduction in corporation tax in the short-term, however it should increase Ireland's competitiveness overall leading to an improved fiscal performance in the medium-to-long-term.

**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.**

The Law Society suggests the introduction of a simplified interest deductibility rule incorporating a commercial/business purpose test, which will be subject to the various other rules and protections in the legislation. This should be applied to interest incurred on the provision of Irish rental property so that the rules are uniform across all commercial/business activity. We anticipate that this would be revenue neutral.

**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.**

The Law Society believes that the Section 247 TCA provisions are effectively inoperable due to their complex nature and peculiar outcomes. The provision has become cumbersome to apply as changes have been layered on top of changes without any rationalisation of the provision. The approach to amendment leaves traps for the unwary making the relief very difficult to access without professional advice (and in some cases submissions to Revenue are required to confirm that Revenue agree that the relief applies). It contains “foot-fault” provisions: provisions that result in permanent denial of deductibility for minor non-compliance with no policy justification. Further, the policy rationale underpinning the existing version of the provision is now very unclear. More significantly, the rules are no longer needed given the various other statutory protections now in place (e.g. the interest limitation rule, anti-hybrid rules, transfer pricing etc.).

As such, we recommend the replacement of the provision (and Section 249 TCA) in its entirety with a commercial/business purpose test.

At the very least, a number of conditions such as the requirement to have a common director; a 5% shareholding and the tests relating to the nature of the activities of the target companies should be removed given they do not achieve any logical objective.

**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.**

The various anti-avoidance provisions in Section 247 TCA add to the complexity of the tax regime as a whole and are no longer required due to the presence of the general anti-avoidance rule in Section 811C TCA, interest limitation/anti-hybrid rules and other protections in Irish law. On a general basis, we believe the approach to reform in this area should be biased towards simplification. As such, any proposal to retain an existing rule that does not reflect modern commercial life (i.e. that seeks to deny a deduction for interest with a commercial/business purpose) should be justified based on clear, objective policy reasons.

**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.**

The recovery of capital rules in Section 249 TCA cause significant issues in practice. The provision restricts normal commercial activity for taxpayers who manage to avail of the relief, particularly when it comes to reorganisations or changes to debt and equity arrangements which are very regular corporate activities. In addition, the provision operates on an underlying assumption that if debt is repaid further down the chain, the only rational commercial decision is to repay external debt - that assumption is not reflective of ordinary commercial activities which reallocate capital regularly.

The Department confirmed to the EU Commission that Section 249 TCA is equivalent to the interest limitation rule that has now been enacted in Ireland. It follows that Section 249 TCA should therefore be abolished in its entirety.

**9. Are there any aspects of relief for interest paid by Qualifying Financing Companies (QFC) which could be enhanced or simplified? Please explain, noting both the benefits and any adverse consequences of same.**

A simplified interest deductibility system across all cases of income should make the QFC regime redundant. Consistency between the computation of interest for Case I and other purposes is a simple reform that will facilitate the abolition of various unnecessary provisions such as Section 76E TCA.

More broadly, it should be noted that Section 76E TCA is not fit for purpose and is not a provision that has been widely used by taxpayers since its introduction. Restrictions within the provision (e.g., restricting the availability of the provision to third party debt, restricting the holding activities of the QFC to holding shares in trading companies only) along with additional burdens within the provision (in particular, the requirement to match loans) has undermined the utility of the provision and made it unattractive to taxpayers. Revisions to those aspects would be welcomed by industry. We note however that a proper simplification of the interest deductibility rules may make Section 76E TCA obsolete.

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

A similar simplified rule should apply to provide relief for interest that is capital in nature. For example, interest that is capital in nature and incurred for genuine commercial/business purposes should be treated as either an accretion to the base cost of the asset or a capital loss provided the interest is incurred for commercial/business purposes and the other conditions for deductibility are satisfied. This reflects commercial realities.

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

As set out above, we recommend the abolition of the current rules providing relief (i.e. Sections 81, 97, 247, 249 and 76E TCA) and the introduction of a simplified rule applicable to the computation of interest expense. The reformed approach should be introduced in line with the following principles:

- A broad acknowledgement that interest is a legitimate cost of doing business and should therefore be deductible like any other such cost;
- Interest and other expenditure incurred for genuine commercial/business purposes should be deductible, subject to the other protections in ATAD and to transfer pricing rules; and
- The interest limitation rule, anti-hybrid rules, outbound payments rules, transfer pricing rules, Pillar 2 and general anti-avoidance rules reflect international norms and should be sufficient to protect the Irish tax base.

Further detail is provided in the Law Society's response to question 27 below.

**(b) Are there any commercial scenarios where tax relief for interest expense is not currently available for businesses under existing legislation, where tax relief should be available in your view?**

There are many examples of cases where tax relief for interest expense is not currently available despite it being incurred for genuine commercial/business purposes. There is an assumption within the rules that related party debt is put in place for avoidance purposes and taxpayers seeking to deduct interest on that debt must clear numerous, disjointed hurdles. This approach fails to recognise how large multinational groups typically fund themselves and puts Irish sub-groups at a disadvantage when compared to sub-groups in other jurisdictions which ultimately undermines the competitiveness of the Irish regime. International groups typically raise finance as cheaply and efficiently as their circumstances allow. This more often than not involves a group's external funding being raised in a single jurisdiction with good access to capital markets, stable currency (so that foreign exchange exposure can be sensibly managed) and by a single entity that has a good credit rating. The external financing is then on-lent throughout the group to support the business. Acceptance of this standard approach to group-financing would be a welcome first step in the review of the rules on the taxation of interest. We would note that this approach to funding international groups was referenced in the Final Report on Action 4 issued by the OECD Inclusive Framework on Base Erosion and Profit Shifting.

It is understood that facilitating intra-group financing must be balanced against the risk of base erosion. Many of the international tax standards developed and incorporated into Irish law over the past decade have adequately addressed this concern. However, no amendments were made to the pre-existing Irish restrictions on the deductibility of interest. This has resulted in a tax system that is overly hostile to related party debt and that hampers investment in Ireland.

We therefore believe thorough reform of this area is needed. A simplified interest deductibility rule should be introduced. All existing provisions should be reviewed and retained only where justified by clear, objective policy reasons. It should be acknowledged that intra-group funding is a usual a legitimate method of finance (within the confines of the agreed international standards). Reform in this manner will lead to a logical, coherent approach which is much needed in the current international climate.

**12. Are there any aspects of the Interest Limitation Rules (ILR) which could be enhanced or simplified, within the confines of ATAD? Please explain, noting both the benefits and any adverse consequences of same.**

The ILR works well in general. However, companies relying on the Single Company Worldwide Group are subject to a significant administrative burden in the form of full compliance/computation requirements where not strictly necessary. We recommend introducing a simple notification or abridged reporting procedure. Further, we suggest introducing an exemption for the first €3M of profits for companies subject to the ILR, consistent with the *de minimis* exemption.



**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 be removed or simplified? Please explain, noting both the benefits and any adverse consequences of same.***

We understand that the European Commission is undertaking a review of ATAD implementation across Europe. We therefore recommend waiting for completion of this review before undertaking an isolated Irish only review.

**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.**

We believe that each of these anti-avoidance measures should be removed. The introduction of a simplified interest deductibility rule in the manner described above together with the various protections in the Irish legislation should render these provisions redundant.

If the Department wishes to counter any specific anti-avoidance not captured by the general anti-avoidance rule in Section 811C TCA, a new targeted provision could be introduced. The impetus should be on reforming the system with a bias towards simplification.

**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 policy rationale for the retention of the provisions should be reconsidered in the context of broader reform. Only where there is clear, objective justification and no other overlapping provision should they be retained. For example, where transfer pricing applies, Section 130(2)(d)(iii) TCA should be switched off; Section 130(2)(d)(iv) TCA lacks a commercial justification, etc. The simplification of the Irish tax system is paramount in the current climate.

**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 Law Society does not recommend any changes to the anti-hybrid rule or transfer pricing provisions as these reflect international standards. The policy rationale for the purely domestic provisions (i.e. Section 291A and Section 437 TCA) should be reconsidered in the context of broader reform and only where there is clear, objective justification and no other overlapping provision should they be retained.

Section 291A TCA operates by restricting the deductibility of interest incurred on funding the acquisition or development of intangible assets to income arising from specified intangible assets which seems illogical given such interest is a normal commercial/business expense and monetising intellectual property is a normal commercial/business activity.

The restriction in Section 437 TCA generally operates by reference to nominal share capital and produces extremely arbitrary outcomes. We therefore recommend that, at a minimum, the threshold on restriction is revised so that it operates by reference to an arm's length amount.

**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.**

The policy rationale for the retention of these provisions within Section 110 TCA should be reconsidered in the context of broader reform and only where there is clear, objective justification and no other overlapping provision should they be retained.

**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.**

The policy rationale for the retention of these provisions within Chapter 1 of Part 28 should be reconsidered in the context of broader reform and only where there is clear, objective justification and no other overlapping provision should they be retained. In the interim, it should be noted that the removal of the Revenue statement of practice which facilitated taxation in accordance with the economic outcomes for these transactions is causing deep uncertainty for impacted Irish taxpayers.

**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.**

The policy rationale for the retention of these provisions within Chapter 3 of Part 28 should be reconsidered in the context of broader reform and only where there is clear, objective justification and no other overlapping provision should they be retained. In the interim, it should be noted that the removal of the Revenue statement of practice which facilitated taxation in accordance with the economic outcomes for these transactions is causing deep uncertainty for impacted Irish taxpayers.

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

As described above, we suggest the introduction of a simplified interest deductibility rule consistent across all industries and cases of income. The policy rationale for the retention of Sections 845 and 846 in relation to lessors should be reconsidered in the context of the

broader reform and only where there is clear, objective justification and no other overlapping provision should they be retained.

**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.**

As described above, we suggest the introduction of a simplified interest deductibility rule consistent across all industries and cases of income. The policy rationale for the retention of specific provisions in relation to lessors should be reconsidered in the context of the broader reform and only where there is clear, objective justification and no other overlapping provision should they be retained.

**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.**

We have no specific comment on the provisions in Part 8A TCA. This regime goes part of the way to a reformed system by taxing close to economic reality.

**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.**

A wide range of exemptions from interest withholding tax apply domestically. With the advent of exchange of information and outbound payment provisions, consideration may be given to eliminating the interest withholding tax rules in Section 246 TCA in their entirety.

This would simplify the Irish tax system bringing it in line with the German, French and other European systems, without any significant impact on Ireland's fiscal position.

**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.**

With advances in client identification procedures and information sharing measures, the Law Society believes that the imposition of DIRT at source should be optional for taxpayers under the self-assessment system (i.e., such taxpayers could receive deposit interest gross and pay tax under self-assessment).

This optimises flexibility and brings the taxation of Irish interest in line with other forms of income while not leading to any adverse consequences.

**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.**

With advances in client identification procedures and information sharing measures, the encashment tax provisions should be eliminated in their entirety. This would simplify the Irish tax system without any significant impact on Ireland's fiscal position. The encashment tax provisions must be considered by taxpayers in numerous transactions from a compliance perspective even though in most cases, they do not give rise to a liability. It is hard to imagine that the real tax raised by the Exchequer warrants the administration required by taxpayers and Revenue. The equivalent tax has been eliminated by the UK.

**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.**

Payors of interest are subject to various reporting obligations. Where possible, these obligations should be condensed so that taxpayers file a single return across all reporting obligations thereby reducing the administrative burden.

**27. Should Ireland introduce a commercial business purpose test, or any other basis, for the deduction of interest expense? In explanation of your answer, please consider each of the issues noted above and any other issues you consider to be relevant, noting both the benefits and any adverse consequences of same. Please provide examples of regimes in other jurisdictions, and consider, and include in your analysis, the broader corporate tax regime in that country within which the interest provisions operate.**

The Law Society firmly believes that a commercial/business purpose test should be introduced for the deduction of interest expense replacing the current rules.

**(a) & (b) “The basis for a new interest deduction rule and how it would differ from the existing tax regime” AND “Whether an accruals or payments based interest deduction regime should be adopted”;**

The rule should allow the deductibility of interest incurred for commercial/business purposes as it accrues in the statutory accounts of the company subject to the various protections in the legislation. This approach would align with the ATAD measures, transfer pricing and Pillar 2 and would be consistent with simplified measures adopted by other countries such as Germany and the UK.

**(c) “The requirement, or otherwise, for enhanced transfer pricing legislation with regard to intra-group financial transactions, in conjunction with any new interest deduction rule”;**

The transfer pricing legislation incorporates OECD guidelines and should be sufficient in its current form to protect a reformed Irish tax base. It works for other jurisdictions so there is no reason to suppose that it would not work in Ireland.

**(d) “The treatment of interest-based derivatives (e.g., swaps, hedging instruments etc.) and amounts equivalent to interest under any new interest deduction rule”;**

Consideration could be given to incorporating a broad definition of interest matching the concept of “interest equivalent” for ILR purposes and deducting or taxing “interest equivalent” in the same way as interest.

**(e) “The requirement, or otherwise, for thin capitalisation rules to be introduced in conjunction with any new interest deduction rule i.e., restriction of the deductibility of interest in cases where the company is overly debt financed as compared to its equity funding”;**

The ILR and transfer pricing rules should be sufficient to ensure companies are not overly leveraged without the need for additional thin capitalisation rules.

**(f) “The requirement or otherwise of a rule that takes into account the level of taxation of the Recipient”;**

The protections incorporated in the Irish legislation, for example transfer pricing, anti-hybrid rules and Section 811C TCA, should ensure that no further rule is required to be introduced in relation to investor level taxation. Even if such a rule was considered necessary, how would an effective tax rate be calculated for global business credits? Would the rate be calculated by imposing Pillar 2 rules; Irish tax rules; local accounting rules; or local tax rules? How would the taxpayer be in a position to confirm such information for the lender? In addition, such restrictions on deductibility would need to be considered for compliance with Ireland’s non-discrimination obligations under EU law (including in Third Country situations under free movement of capital) and bilateral tax treaties. Local tax rules such as the “level of tax” rule are overly complex in practice.

**(g) “The requirement for new rules to prevent abusive transactions relating to any new interest deduction rule, in particular the requirement for targeted or principles based anti-avoidance rules”;**

We expect that the protections incorporated in the Irish legislation, for example transfer pricing, interest limitation rule, anti-hybrid rules and Section 811C TCA, are sufficient to ensure that no further anti-avoidance provisions are required. The policy rationale for the introduction of any targeted anti-avoidance rule should be considered in the context of broader reform and only where there is clear, objective justification and no other provision addressing the issue, should any targeted anti-avoidance rule be introduced.

**(h) “The requirement, or otherwise, for new rules regarding the characterisation of financial instruments as debt or equity”;**

Characterisation of debt or equity occurs under transfer pricing rules so no additional rules are needed.

**(i) “Whether the deductibility of interest (or interest equivalent) expenses could, or should, be linked or matched to the income earned from the use of the debt finance, taking into account the different rates of tax applicable to different sources of income in Ireland”;**

Interest expense should be allocated between trading and non-trading businesses on a just and reasonable basis so that no interest on borrowings obtained for genuine commercial/business purposes would be denied or fall out of scope. Obligations to match interest on loans is overly burdensome in practice as reflected in the update of the new relief under Section 76E TCA.

**(j) “The interaction of relief under any new interest deduction rule with relief for losses and group relief”;**

No change is proposed as rules exist to address the use of trading/non-trading losses and group relief surrender.

**(k) “The requirement for, or structure of, any transitional rules on the adoption of a new interest deduction rule”;**

Rules similar to those in Schedule 17A, Paragraphs 2, 3 and 4 TCA would cover any transitional issues as they covered the introduction of Section 76A TCA.

## **Conclusion**

The Law Society appreciates the opportunity to contribute towards the Department of Finance's Public Consultation on the Tax Treatment of Interest in Ireland with this submission.

The Law Society, in particular through its Taxation Committee, remains available to assist the Department of Finance on any aspect of this submission and are available to meet to discuss this submission.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: [PolicyTeam@LawSociety.ie](mailto:PolicyTeam@LawSociety.ie)