AMERICAN
CHAMBER of COMMERCE
IRELAND

# Submission on the Tax Treatment of Interest in Ireland

From the American Chamber of Commerce (Ireland)
to the Department of Finance

**January 2025**

## The American Chamber of Commerce Ireland
## The Voice of US-Ireland Business

The American Chamber of Commerce Ireland (AmCham) is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and investment.

## Introduction

AmCham welcomes the opportunity to provide a response to the public consultation on the tax treatment of interest in Ireland. This response focuses on the overarching need for a comprehensive overhaul of the existing interest-related provisions. This approach is crucial to ensure Ireland continues to attract and retain US Foreign Direct Investment (FDI). Significant reform of the various interest related provisions is needed. Incremental adjustments to existing legislation would not be sufficient and may inadvertently create increased complexity in an already intricate area. A streamlined and modernised framework is essential to bring Ireland in line with other jurisdictions and to improve Ireland’s competitiveness internationally. Given the changing global geopolitical landscape, enhancing Ireland's competitiveness is more important than ever. The research outlined below highlights opportunities for Ireland to align more closely with other EU jurisdictions, emphasising the potential benefits of reform.

In recent years, substantial changes to Ireland’s domestic tax legislation have introduced additional layers of complexity to an already complex area of legislation. These changes include the implementation of anti-hybrid rules, interest limitation rules, reverse hybrid rules, and the 15 percent minimum tax rate under Pillar Two, each of which imposes its own set of differing provisions governing interest deductibility. These changes have been layered on top of historically complex provisions, such as Section 247 TCA 1997, Section 249 TCA 1997, and various anti-avoidance rules detailed throughout the public consultation document provided. This legislation is inherently technical and complex, ultimately leading to situations where a deduction is not available in the context of many genuine commercial transactions.

As the Department of Finance is currently exploring ways to simplify the tax treatment of interest in Ireland, there is a clear opportunity to reform the current system to better align with Ireland’s policy objectives of competitiveness and administrative simplicity. Moving beyond piecemeal amendments, a comprehensive and competitive interest tax regime and policy overhaul is required to position Ireland in line with other European jurisdictions and it is essential to maintaining a competitive offering for US FDI. Simplifying the tax treatment of interest will not only enhance Ireland’s attractiveness but also reduce administrative burdens on businesses and taxpayers.

AmCham has reviewed the interest regimes of other EU jurisdictions, offering valuable insights into how these jurisdictions have successfully reduced complexity while aligning with EU Directives. Drawing on these examples, Ireland has an opportunity to establish a best-in-class regime that balances compliance requirements with competitiveness objectives.

While implementing changes to the tax treatment of interest may require investment by the Department of Finance, such reform is essential to safeguarding Ireland's economic sustainability and reinforcing its reputation as a global investment hub. By adopting a forward-looking, competitive policy framework, Ireland can continue to attract and retain the investment that underpins its economic success.

**Overview of proposed new regime**

To bring Ireland's interest regime in line with international standards and other EU jurisdictions, a fundamental change is required to Ireland's tax policy in relation to the deductibility of interest expenses.

Ultimately, this can be achieved by the introduction of a system with the following features, which are intended to largely be in line with most other EU systems:

1. An **elective system**, whereby all taxpayers (i.e. those within and not within the scope of Pillar Two) can "opt in" to an interest regime which mirrors the interest deductibility rules provided for in Pillar Two,

2. A tax deduction that is prima facie available for interest incurred by taxpayers for genuine **commercial purposes**,

3. Interest deduction is available up to 30% of EBITDA, consistent with the current **Interest Limitation Rules** ("ILR"),

4. The current Irish **anti-hybrid and outbound payment provisions** would continue to apply, and

5. The new system would apply to both **existing and new debt**.

**Elective System**

An elective system offers several advantages, and it ensures that taxpayers who are not within the scope of Pillar Two are not unnecessarily required to apply the rules unless they wish to do so. It also ensures that any updates to the current system are not targeted solely at MNCs, promoting a balanced and inclusive approach for all businesses. For taxpayers within the scope of Pillar Two, this would simplify compliance by relieving them of the need to navigate two separate regimes for the deductibility of interest within a single accounting period.

The ability for all taxpayers within the scope of corporation tax to elect, for each accounting period, whether or not to apply the rules should help navigate the state aid provisions. A “fit for purpose” interest regime should embody fundamental characteristics that ensure competitiveness, simplicity, and alignment with global best practices.

**Commercial Purpose Test**

The introduction of a commercial purpose test would be welcome as it would allow interest expenses incurred on genuine commercial activities, such as trading, non-trading, day-to-day operations, or capital expenditure, to qualify for deduction.

This approach would replace the complex and fragmented existing provisions, simplifying the system for businesses while maintaining compliance with EU and international standards.

**Other Features**

The proposed commercial purpose test would apply consistently to both **existing and future debt** arrangements, providing clarity and certainty for taxpayers. By consolidating the current framework, including outdated rules such as Section 247 TCA 1997, into a single, modernised regime, Ireland can eliminate unnecessary administrative burdens and ensure the tax system is fit for purpose. Safeguards against artificial arrangements would remain in place through the **retention of key anti-avoidance provisions**, including **anti-hybrid and reverse hybrid rules**, ensuring **adherence to EU Directives**.

**Interest regimes in the EU – Key Comparisons**

To inform a proposed reform of Ireland’s interest tax regime, it is important to examine the approaches adopted by other EU and European jurisdictions. In this case, Italy, Luxembourg, Spain, Germany, the Netherlands, the UK, Austria, and Denmark have been examined. A streamlined and modernised framework is essential to bring Ireland in line with other jurisdictions and improve Ireland’s competitiveness internationally.

It is clear from the research carried out that in these jurisdictions interest is generally deductible in the first instance. These jurisdictions do not include tests such as trading/non-trading tests and do not have specific requirements such as Ireland’s Section 247 TCA 1997 regime. As such, the general starting point is that interest is deductible in commercial scenarios and the question then becomes how much of that interest is ultimately deductible when certain other provisions, such as ILR, are applied.

Appendix I below provides a clear comparison of these regimes, highlighting taxation rates, general deductibility rules, and the restrictions applied in each country, such as Interest Limitation Rules (ILR), thin capitalisation rules, and anti-avoidance provisions. This analysis demonstrates how other jurisdictions have managed to simplify and modernise their systems while maintaining compliance with EU Directives.

In reviewing the regimes across these jurisdictions, a number of consistent themes emerge: the importance of clarity, administrative efficiency, and adherence to EU standards. Many countries, such as Italy, Austria, and the UK, have adopted clear restrictions like the Interest Limitation Rules (ILR), limiting deductible interest to 30 percent of EBITDA. These measures ensure compliance with EU Directives while providing a degree of certainty for businesses. In Germany and the Netherlands, arm's-length principles and earnings stripping rules form the foundation of their frameworks, helping businesses navigate interest deductibility while adhering to international standards.

Luxembourg and Denmark provide additional insights into balancing tax competitiveness with anti-avoidance measures. For example, Luxembourg combines general deductibility rules with restrictions such as thin capitalisation, anti-hybrid provisions, and EBITDA limits. Denmark's rules include asset-based thresholds and restrictions on payments to certain affiliates, ensuring alignment with EU policies while protecting the integrity of its tax base.

This comparative analysis, detailed in Appendix I, highlights two key insights for Ireland: the importance of clarity in rules and the growing adoption of standardised restrictions. Countries like Italy, Austria, and Spain have implemented frameworks that provide businesses with certainty and reduce administrative burdens, while Luxembourg and the UK showcase how additional safeguards can be applied without undermining competitiveness.

For Ireland, there is a clear opportunity to adopt a modernised and streamlined interest regime. By introducing a commercial purpose test and aligning deductibility provisions with international best practices, Ireland can simplify its framework, ensuring that interest expenses incurred on genuine commercial activities qualify for relief. At the same time, aligning with rules such as the ILR and retaining key anti-avoidance measures—similar to those applied in other jurisdictions—will ensure compliance with EU Directives while safeguarding the integrity of Ireland's tax system.

This comparison illustrates the need for Ireland's position to move beyond piecemeal changes and implement a comprehensive, forward-looking policy framework. A modernised system that

aligns with EU and international norms, while reducing administrative burdens, will solidify Ireland's status as a competitive, attractive destination for FDI.

The analysis conducted also illustrates that none of the other jurisdictions which were subject to our review operated a two-tier system for the taxation of interest income. Interest income earned in the other jurisdictions is generally subject to tax at the headline corporation tax rate. Under the current Irish legislation, interest incurred in relation to trading activities is deductible at the rate of 12.5%, whereas interest income is generally subject to tax at the rate of 25%. This presents a clear disparity with regards the taxation of interest income in Ireland when compared to other EU jurisdictions.

**Implementation Timing**

Whilst recognising that implementing these changes may entail an initial cost to the exchequer, this could potentially be balanced by aligning the timing of the reforms with the collection of tax revenues from Pillar Two, targeted for June 2026. This phased approach would support a smooth transition for businesses, ensuring Ireland's tax system remains competitive, efficient, and aligned with global standards.

**Conclusion**

AmCham is of the view that the matters outlined above have illustrated the need for a comprehensive overhaul of Ireland's interest regime to ensure it remains competitive, streamlined, and aligned with international best practices.

As demonstrated through analysis and comparisons with key EU jurisdictions, Ireland has a clear opportunity to modernise its tax policy framework. The introduction of a commercial purpose test would bring clarity and certainty to the deductibility of interest for businesses, replacing the fragmented system currently in place. Coupled with an elective system that allows alignment with Pillar Two rules, such reform would reduce unnecessary complexity, simplify compliance, and support taxpayers.

A modernised regime will provide a more predictable, administratively efficient environment for businesses, in line with international norms such as the Interest Limitation Rules (ILR) already in place across peer EU jurisdictions. At the same time, retaining key anti-avoidance measures will ensure the integrity of Ireland's tax system while addressing EU compliance requirements.

By adopting a forward-looking approach to interest taxation, Ireland can safeguard its economic sustainability, bolster its reputation as a premier destination for US FDI and maintain its position as a leader in global competitiveness.

**Appendix I - Comparison to regimes in other jurisdictions**

| | General Deductibility Rules | Restrictions | Anti-avoidance Rules |
|---|---|---|---|
| **Italy** | Interest expense (net of interest income) is deductible up to 30% of EBITDA. | ILR in line with ATAD provisions and no thin capitalisation rules. | Has rules against undue tax benefits (i.e. Benefits obtained in contrast to the purpose of the law). |
| **Luxembourg** | Interest expense is generally deductible. | Thin capitalisation and ILR rules apply. | Has an anti-abuse rule and has implemented the EU General Anti-Abuse Rule ("GAAR"). |
| **Spain** | Interest expense is generally deductible. | ILR in line with ATAD provisions, intragroup interest not deductible unless taxpayers provide valid economic reasons, additional restriction when acquiring interests in the capital or equity of any type of company. | Has two general anti-avoidance rules, which allow the tax authorities to ignore and/or recharacterise transactions. |
| **Germany** | Interest expense is generally deductible. | Arm's length interest expenses is generally deductible within the limitations of the German interest capping rules. Additional 25% restriction for trade tax purposes, calculated post ILR restriction. | Germany has a GAAR which is generally applicable if no specific anti-abuse rule applies. |
| **Netherlands** | Arm's length interest expenses are generally tax | Earnings stripping rules are applicable. | Has a General Abuse doctrine (Fraus Legis). |

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|---|---|---|---|
| | deductible unless specific rules restrict the deduction of interest. | Additional restriction for low-interest bearing (i.e. 30% lower than an arm's length interest) or non-interest bearing and has no fixed maturity date. | From 1 January 2025, the Netherlands will have a written GAAR in its Corporate tax laws. |
| **UK** | Interest is generally deductible. | Corporate interest restriction - net UK interest is restricted to 30% of UK taxable EBITDA. Thin capitalisation rules also apply. Unallowable purpose rule (business purpose test) also applies. | GAAR rule in place. Specific targeted anti-avoidance for commercial purpose test (business purpose test). |
| **Austria** | Interest payments are generally tax deductible if they meet the general arm's-length requirements. | ILR in line with ATAD provisions.<br>No thin capitalisation rules.<br>Interest on internal reorgs can be non-deductible in certain circumstances. | GAAR rule in place and also has anti-abuse rules in place based on "substance over form" and "abuse of law" doctrines. |
| **Denmark** | Interest expense is generally deductible. | Thin capitalisation and ILR rules apply.<br>Additional asset based and debt/equity restriction. | GAAR was adopted under ATAD which is applied to both domestic and cross-border transactions. |

*In addition, each of the jurisdictions listed above have introduced anti-hybrid provisions.