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Re: ATAD Implementation – Interest Limitation Feedback Statement

Dear Mr Hogan,

We welcome the substantial work undertaken by the Department in producing this Feedback Statement. This submission from the American Chamber is focused on the feedback we have heard from our members and hence does not provide answers to all questions raised in the consultation document.

Members continue to consider the impact of the solutions proposed in the Feedback Statement and we would welcome the opportunity to engage further with the Department as it develops the framework, particularly in advance of the second Feedback Statement to be published in the summer.

Below we have set our key observations in response to the Framework Statement:

#### General Feedback

We welcome the strong focus, within the Feedback Statement, on including **optionality** where it is allowed within the ATAD Directive. Considering the ongoing significant changes to the international tax landscape that businesses are adapting to, all opportunities to provide flexibility within the final provision should be utilised.

The solutions outlined in the Feedback Statement remain overly **complex** once layered over existing conditions for interest deductions. We believe there is an opportunity to overhaul and simplify the basis on which tax relief for interest incurred on debt used for genuine business purposes is permitted, in line with other competitor jurisdictions. Unnecessary complexity should be avoided, and the provisions adopted should seek to minimise the cost of compliance and mitigate the administrative burden where possible.

#### Domestic Legislation

The implementation of the Interest Limitation Rules (ILR) should not be considered in isolation but rather should be taken together with any necessary reconstruction of Ireland's existing rules on interest deductibility. Further to our previous comment, we are concerned that the layering of additional ILR onto existing interest deductibility and the anti-avoidance rules in sections 130, 247, 249 and 840A TCA, as well as the capital allowances provisions in 291A TCA, will result in additional complexity. Furthermore, rules should be consider the potential introduction of a territorial regime in the future.

It is challenging to understand how the new ILR will operate in totality and we are concerned that there may be unintended consequences affecting other provisions within Ireland's Tax Code arising

from the proposals included in the Feedback Statement. We would appreciate the opportunity to continue our engagement with the Department as this brief develops.

#### Seven Stage Approach

We strongly welcome the inclusion, and proposed structure, of the €3m **de minimis exemption**. A de minimis exemption is imperative to ensure the operability of the final provisions.

We understand that the calculation of **EBIDTA** is driven by consideration of the de minimis exemption and the necessity to adjust for tax losses. This approach to the calculations is quite complicated. We ask that consideration be given to dealing with the de minimis exemption and tax losses as a final adjustment rather than being done iteratively throughout the calculations.

We would appreciate the inclusion of further guidance on the imposition of a tax charge under **Case IV**. Imposing a tax charge under Case IV is a novel approach rather than a tax deduction. It is important that the final provision clarifies that there is no cash tax charge where there would not be a tax cost if there was not one by virtue of just denying the deduction- including making provision for to offset net operating loss, and removing the proposal to ringfence the Case IV charge.

Our members are in favour of the **carry forward period** Option C of Article 4(6) of ATAD. We believe that Option C will provide the greatest flexibility for businesses as they adopt to the new rules.

#### Legacy Debt

Consideration of pre-existing creditor/debtor commitments has been an important features of Ireland's reform process and we strongly welcome the inclusion of the ATAD provisions on **legacy debt** with the Feedback Statement. We also appreciate the clarity provided on the *modifications* included within the consultation document.

We would ask that further guidance on the operability of the interest rate increase modification be included in the final provisions. In particular, we would welcome clarification that if the rate increases from 4% to 5%, the interest limitation only applies to the modification i.e., increase of 1%. We would also appreciate clarification on whether the interest on a drawdown from a pre June 2016 facility agreement, which had undrawn amounts prior to June 2016, falls within the definition of legacy debt in the final provisions.

#### Long-term public infrastructure project' exemption

Given the important role that long-term public infrastructure plays in the economic development of Ireland, we welcome the inclusion of Article 4(4) of ATAD. Long-term public infrastructure projects need certainty of treatment, especially as they are priced to secure return over long term and any unforeseen costs are borne by the State. The imposition of a restriction on long-term infrastructure loans and the increase in costs would inevitably discourage future projects.

#### Treating a notional local group as a single taxpayer

We acknowledge that further guidance on the treatment of Groups will be the focus of a Future Feedback Statement. ATAD provides significant flexibility in how a Member State chooses to introduce the broad concept of a domestic ATAD Group which should be treated as a single taxpayer.

It is not necessary that this national ATAD Group be based on financial consolidation in the same way as the worldwide groups may be considered. Consideration should be given to broad groups defined by shareholding arrangements and including all Irish resident members of the group (whether locally financially consolidated or not) and permanent establishments. All definitions should be worded to allow for interest income and expense to offset within that group. Furthermore, we suggest that the restriction should be calculated at an Irish group level with the parent (or nominated) entity reporting the case IV charge (if any) on its tax return.

Interaction with preliminary tax

Careful consideration is necessary to ensure that taxpayers should not be penalised for incorrect preliminary tax. Often, consolidated accounts may not be available or the amount that is deductible by reference to the group ratio may not be determinable in time for preliminary tax. We ask that final provisions provide the option of calculating the “allowable amount” based on the current year or prior year numbers.

Given that many organisations’ financial year does not follow calendar year as their financial year, we would appreciate if a dynamic approach to introduction of the rules was adapted, so that the rules are applicable to financial years starting on or after 1 January 2022.

We appreciate the Department’s consultative approach to transposing the ATAD Directive in to Irish law. The Chamber would be please to discuss our recommendations further, and we look forward to working with you as the second Feedback Statement is developed later this year.

Yours sincerely,



Conor Neylan, Head of Advocacy and Communications