Guidance on the Interest Limitation Rule

Part 35D-01-01

This document should be read in conjunction with Part 35D of the Taxes Consolidation Act 1997

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A more recent version of this manual is available.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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1 Executive summary

This manual provides an overview of the Interest Limitation Rules ("ILR") in Part 35D Taxes Consolidation Act ("TCA") 1997 introduced in Finance Act 2021. It sets out information in relation to:

1. The introduction of new terms, phrases and definitions which are necessary for the operation of the ILR (section 3).
2. The meaning of interest equivalent and several concepts, including legacy debt, necessary for the operation of Part 35D (section 4).
3. The definition of relevant profit and relevant loss, its scope and application (section 5).
4. The calculation and impact of EBITDA in the operation of the ILR. The usage of an EBITDA limit is also explained (section 6).
5. The calculation and application of spare capacity (section 7).
6. The treatment of a trading lessor's income and expenses and their interaction with the ILR (section 8).
7. The recognition and treatment of long-term public infrastructure projects under the ILR (section 9).
8. The operation of the ILR (section 10).
9. Carry forward of a disallowable amount and total spare capacity (section 11 & section 12).
10. The availability and application of the group reliefs (section 13).
11. The application of the ILR to interest groups (section 14).
12. The reporting obligations of relevant entities and interest groups (section 15).

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2 Introduction

Council Directive (EU) 2016/1164 of 12 July 2016, as amended by Council Directive (EU) 2017/952 of 29 May 2017, ("ATAD") lays down rules against tax avoidance practices that directly affect the functioning of the internal market. Article 4 of ATAD requires Members States to impose a restriction on the interest deductibility of corporate entities up to a limit of 30% of a taxpayer's taxable earnings before interest, tax, depreciation, and amortisation ("EBITDA"). The ILR introduces such a restriction.

The ILR applies to all corporate taxpayers but with certain exemptions and reliefs as provided for in ATAD, where the risk of base erosion and profit shifting is thought to be minimal. A group of Irish companies may, where certain conditions are met, be treated as a single taxpayer when calculating the impact of the restriction.
The ILR applies to accounting periods of a taxpayer (whether that is a single company or an interest group) commencing on or after 1 January 2022. Where the restriction applies, it operates by deferring the deductibility of interest from the accounting period in which the restriction applies to future accounting periods in which there are sufficient earnings to allow an interest deduction.

The new rules do not grant deductibility for interest which would not otherwise be allowed under existing legislation, nor do the rules change the underlying nature of the interest.

The rules contained in Part 35D apply after all other provisions of the Tax Acts and the Capital Gains Tax Acts, apart from section 811C[1].

[1] Refer to the Guidance Note on the GAAR and Protective Notifications for more details.

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3 Important terms and definitions – section 835AY

This section covers the definitions needed to understand the operation of the ILR.

3.1 Entity and enterprise

The definitions of entity and enterprise are taken from Part 35C. Guidance on these terms can be found at Guidance on Hybrid mismatches.

3.2 Relevant entity

For the purposes of Part 35D, a relevant entity is either a company or an interest group. The term interest group is discussed further at section 3.4 below.

3.3 Worldwide group

The definition of worldwide group is important as it helps to define other concepts such as interest group and the group ratios. To understand the definition of worldwide group, a number of other definitions need to be understood. All of these definitions are contained in section 835AY and are outlined below.

A worldwide group consists of the ultimate parent and all consolidating entities in the ultimate consolidated financial statements. Members of this group are known as "members of a worldwide group" for the purposes of Part 35D.

An ultimate parent is an entity that prepares consolidated financial statements in accordance with international accounting standards or current Irish GAAP[2], or an alternative body of accounting standards as defined, and whose results are not fully included in any other consolidated financial statements prepared under such a practice or standard[3]. An ultimate parent entity may be a partnership where the partnership is an entity that prepares consolidated financial statements[4].

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[2] The body of accounting standards and other guidance published by the Financial Reporting Council

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The ultimate consolidated financial statements are the consolidated financial statements prepared by the ultimate parent in accordance with the appropriate accounting standards.

An alternative body of accounting standards are those standards with which accounts of companies must be compliant which are laid down by accounting standard setting bodies in the following countries: Australia, Canada, Hong Kong, Japan, New Zealand, the Republic of Korea, Singapore, the United States of America, the Republic of India and the People's Republic of China.

A consolidating entity is an entity which is included in the ultimate consolidated financial statements, other than a non-consolidating entity.

Where the full amount of the income, expenses, assets, and liabilities of an entity are not consolidated on a line-by-line basis in the ultimate consolidated financial statements, then that entity will be considered a non-consolidating entity.

An entity is a consolidating entity where it is excluded from the consolidated financial statements solely on grounds of size or materiality.

3.3.1 Example: Partial Consolidation

ABC fund is an ICAV that is regulated by the Central Bank of Ireland as an AIF. It is an umbrella scheme which has three sub-funds – sub-fund A, sub-fund B and sub-fund C. In accordance with section 35 of the Irish Collective Asset-management Vehicles Act 2015, the assets and liabilities of each sub-fund are ringfenced from each other.

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[3] This is in contrast with the anti-hybrid rules (refer to TDM Part 35C-00-01 for more details) which only have regard to international accounting standards or Irish GAAP.

[4] For example under the European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019 (SI 597/2019)

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The results of sub-fund A are consolidated in the financial statements of Investor A. ABC fund is a legal entity, whereas the sub-funds are not legal entities. As the results of ABC fund are not consolidated in the financial statements of Investor A (only the results of sub-fund A are consolidated) then ABC Fund and Investor A are not in a worldwide group (and therefore cannot avail of the group reliefs available to members of a worldwide group).

Where a minority interest is held in an entity and the entity is consolidated in the ultimate financial statements, with the claims of the minority interest recognised as a line item in the ultimate financial statements, the entity will be considered to be a consolidating entity in respect of the ultimate parent.

3.4 Interest group

The term "interest group" is a new concept introduced for the operation of Part 35D and is only applicable to the operation of the ILR. It does not apply to any other sections or provisions of the TCA.

An interest group is made up of all companies within the charge to corporation tax, that are

(a) members of the same worldwide group, or

(b) members of a group as defined by section 411 (i.e., the group loss provisions),

where those companies have elected to be in the interest group.

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The creation of an interest group is by election. The election to be a member of an interest group will last for a period of at least three years from the beginning of the accounting period to which the election first relates. However, if the company became a member of the worldwide group or section 411 group at a date later than the beginning of the accounting period to which the election first relates, then the election to be a member of an interest group will last for a period of at least three years from that date. The election must be communicated to Revenue on the Form CT1 or the Form ILR Election (Fund) where a Form CT1 is not filed.

The Form ILR Election (Fund) should be completed and submitted through MyEnquiries. When submitting this form, the following categorisation should be used:

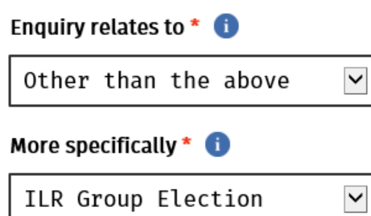

Figure 1: MyEnquiries Dropdown Boxes

Where an election is made to become a member of an interest group, that election will remain in place until such time as the company withdraws that election. An election cannot be withdrawn until the period of three years from the date the election came into effect as noted above has lapsed. The withdrawal will apply for a period of at least three years from the beginning of the accounting period in which the withdrawal was made. The withdrawal must be communicated to Revenue on the Form CT1 or Form ILR Election (Fund).

Where a company, branch or agency, or any activities of a company, branch or agency could fall within two interest groups, it can only elect to be a member of one interest group.

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3.4.1 Example: Interest group election

B Ltd has an accounting period from 1 July 2022 to 30 June 2023. B Ltd is acquired by the CDE Group on 1 September 2022. The companies in the CDE group all have a 30 June 2023 accounting year end. B Ltd made an election to become a member of an interest group with the Irish tax resident companies of the CDE Group who all share a common parent. The election applies for a period of three years from the later of:

- the beginning of B Ltd's accounting period in respect of which the election is made (i.e. 1 July 2022), or
- the date B Ltd became a member of the CDE worldwide group (i.e. 1 September 2022)

On this basis, B Ltd will be a member of the interest group from 1 September 2022 and it will remain a member until at least 31 August 2025 (unless AB Ltd is no longer a member of the worldwide group or loss group under section 411 TCA 1997 during that time). Therefore, for its accounting period 1 July 2022 to 30 June 2023, it will not be a member of the interest group from 1 July 2022 to 31 August 2022 and will calculate any interest limitation based on the rules for a single company. It will be a member of the interest group for the remainder of the accounting period being 1 September 2022 to 30 June 2023 and will calculate any interest limitation based on the rules for a relevant entity being an interest group. For the purposes of these ILR calculations, the results of B Ltd are apportioned on a just and reasonable basis between both periods.

However, on 1 March 2024 B Ltd is acquired by the JKL group and B Ltd, on that date, elects to become a member of the JKL interest group. The accounting period of the JKL interest group is 1 October 2023 to 30 September 2024. B Ltd can only be a member of one interest group. On the acquisition of B Ltd the company is no longer a member of the CDE interest group. The election by B Ltd to be a member of the CDE interest group no longer applies as the company no longer satisfies the requirements of section 835AAK(1)(a) TCA 1997. For the purposes of these ILR calculations, the results of B Ltd for the accounting periods are apportioned on a just and reasonable basis between:

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- The period during which the company was not a member of an interest group (1 July 2022 to 31 August 2022),
- The period during which the company was a member of the CDE interest group (1 September 2022 to 30 June 2023 and 1 July 2023 to 28 February 2024), and
- The period during which the company was a member of the JKL interest group (1 March 2024 to 30 June 2024 and 1 July 2024 to 30 September 2024).

3.5 Associated enterprise

There are two definitions of associated enterprise in Part 35D, one applicable to Chapter 3 only (group and equity ratio) and the other applicable to Part 35D generally (with the exception of Chapter 3).

For the purposes of Part 35D, with the exception of Chapter 3 (see section 13 below), an associated enterprise is defined in accordance with section 835AA subsections (2) and (4) but does not include enterprises that are associated solely as a result of paragraphs (e), (f) or (g) of subsection (2).

These provisions set out that two enterprises are associated enterprises in respect of each other based on a 25% threshold in relation to—

- direct or indirect possession of issued share capital or ownership rights,
- entitlement to exercise voting power, and
- direct or indirect rights to profit distributions

or where there is another enterprise in respect of which the two enterprises are an associated enterprise.

For the purposes of the above tests, any rights, or powers of a nominee for an enterprise are attributed to the enterprise.

Further guidance on the associated enterprise definitions contained in section 835AA can be found at Guidance on Hybrid mismatches.

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3.5.1 Partnerships

An Irish partnership is not regarded as having separate legal personality. Instead, it is regarded as an aggregate of the partners who make up the firm. However, although it does not have legal personality, as a matter of law, it is common for the firm to be treated as distinct from the individual partners comprising the firm in commercial life. This follows from the fact that firms do things which are commonly associated with separate legal entities such as adopting names which are unconnected with the partners, having bank accounts and contracts in that name and having partners come and go without any outward change to that firm.[5] In this context they are regarded as having the capacity to perform legal acts.

Foreign partnerships that are established under laws that are similar to Irish partnership law, in this context, would also fall within this category.

Entities that do not have legal personality are often treated as tax transparent. For example, Irish partnerships are treated as tax transparent in Ireland. Similarly, both English general partnerships and English limited partnerships (both without legal personality) are treated as tax transparent in the UK.

Entities, such as partnerships, that do not have separate legal personality typically cannot own assets. Irish partnership property is, for example, held by the partners as tenants in common. Under Irish partnership law, partners are not legally entitled individually to exercise proprietary rights over any of the partnership assets but rather they are collectively entitled to each and every asset of the partnership, in which each of them has an undivided share.[6] This legal position has implications

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[5] *Twomey on Partnership* Michael Twomey and Maedhbh Clancy 2nd Ed.2019

[6] Hoffmann LJ in *Inland Revenue Commissioners v Gray* [1994] STC 360

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when applying the "associated enterprises" test to an Irish partnership (or similar foreign entity).

Where an enterprise (partner) directly, or indirectly, possesses or is beneficially entitled to not less than 25% of the ownership rights, voting power or rights to profits in an Irish partnership that enterprise (partner) and the Irish partnership shall be "associated enterprises" in respect of each other.

As an Irish partnership does not have separate legal personality, it cannot itself own assets. Irish partnership property is instead held by the partners as tenants in common. Under Irish partnership law, partners are not legally entitled individually to exercise proprietary rights over any of the partnership assets but rather they are collectively entitled to each and every asset of the partnership, in which each of them has an undivided share.[7]

Therefore, in applying the "associated enterprises" test where an Irish partnership holds a subsidiary entity (or entities) it is necessary to look through the partnership to the partners when examining the ownership rights, voting rights and/or rights to profits in that subsidiary entity.

It follows that where a partnership holds an investment of 25 per cent or more in a subsidiary entity **each partner and the subsidiary entity** shall be regarded as "associated enterprises" in respect of each other.

Where an Irish partnership holds an investment of not less than 25 percent in a subsidiary entity, each of the partners and that subsidiary entity shall be regarded as "associated enterprises" in respect of each other. Where one of those partners and the partnership are also regarded as "associated enterprises" in respect of each

[7] Hoffmann LJ in *Inland Revenue Commissioners v Gray* [1994] STC 360

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other where, for example, that partner owns not less than a 25 per cent investment in the partnership then it follows that the partnership, and the subsidiary entity shall also be regarded as "associated enterprises" in respect of each other by virtue of their association with that partner.

3.6 Standalone entity

A standalone entity is an Irish tax resident company that

- is not a member of a worldwide group (see section 3.3 above),
- has no associated enterprises (see section 3.5 above), and
- does not have a permanent establishment in a territory other than Ireland.

There may be situations where a company is not included in any consolidated financial statements, but may not meet the criteria to qualify as a standalone entity as it has an associated enterprise as defined in section 3.5 above (e.g. 25% or more of its share capital is held by another enterprise). In those situations, the company may be considered to be a single company worldwide group (see section 3.7 below).

3.6.1 Example: Standalone Entity

The shares in SE Ltd, an Irish tax resident company, are all held by its sole shareholder Mr. Murphy. SE Ltd is not part of any worldwide group and does not have a permanent establishment outside of Ireland. However, SE Ltd is not a standalone entity and cannot avail of the standalone entity exemption as it has an "associate enterprise". An enterprise includes an individual, therefore as Mr. Murphy holds all of the shares in SE Ltd, SE Ltd has an associated enterprise.

3.7 Single company worldwide group

The term "single company worldwide group" (referred to as "SCWG" throughout this TDM) means a company that is not a member of a worldwide group, nor a member of an interest group, nor a standalone entity.

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A SCWG consists of one company only. A SCWG is subject to the ILR but may be able to avail of group reliefs subject to targeted anti-avoidance rules (see section 13 below).

3.8 Rates of tax

Throughout Part 35D there are several instances where amounts need to be grossed up or down to take into account that amounts are taxable or deductible at different tax rates. For the purposes of calculating the interest restriction, the tax value of the interest deduction is taken into account in a similar manner to how losses may be valued for the purposes of loss relief. The legislation contains three definitions relating to the rate of tax used in calculations. They are:

- CGT rate – this definition refers to the rate of CGT, as defined in:
    - section 28(3) being the general rate of CGT on disposals (currently 33%),
    - section 649A(1)(b) being the rate applicable to disposals of development land (currently 33%), and
    - section 747A(4) being the rate applicable to disposals of interests in offshore funds (currently 40%),

  as applicable;
- P Rate – this is the rate of corporation tax specified in section 21A(3)(a) (currently 25%) i.e. the passive rate;
- T Rate – this is the rate of corporation tax specified in section 21(1)(f) (currently 12.5%) i.e. the trading rate.

3.9 De minimis amount

Refer to section 10.1 which deals with the definition and rules relating to the de minimis amount.

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4 Interest equivalent – section 835AY and 835AAB

4.1 Interest equivalent

The ILR applies to interest on all forms of debt as well as to other amounts that are economically equivalent to interest. It also applies to other expenses incurred directly in connection with the raising of finance which could be substituted for interest.

The term "interest" means payment by time for the use of money[8]. The term "interest equivalent" is introduced in Part 35D and includes amounts which are economically equivalent to interest. A non-exhaustive list of amounts economically equivalent to interest has been provided in section 835AY(1), which includes the following:

- where securities are issued at a discount, that discount,
- the portion of a finance lease payment that is treated, based on the finance cost or finance income recognised under accounting standards, as the finance element of finance lease payments,
- the finance income and finance cost element of non-finance lease payments in relation to lessors that carry on a trade of leasing as defined in section 403 (see section 8 below),
- amounts under derivative instruments or hedging arrangements directly connected with the raising of finance,
- the portion of profits and losses on financial assets or liabilities, (both of which are defined in section 76B), to the extent that it would be reasonable to consider that such amounts are economically equivalent to interest. section 76B provides that "financial asset" and "financial liability" have the meanings assigned to them by international accounting standards. In general, the assessment of whether the coupon or return on a financial asset or

[8] Bennett v Ogston 15 TC 374

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financial liability principally comprises interest (or other "interest equivalent") should be determined when the instrument concerned is originated,

- amounts referred to above claimed by a company via group relief as excess charges on income,
- interest or amounts economically equivalent to interest which are claimed under section 420A(3) or section 420B(2), and treated under section 247(4G) as relevant trading charges on income for the purposes of Chapter 5 of Part 12,
- amounts directly connected with the raising of finance including guarantee, arrangement and commitment fees,
- foreign exchange gains and losses on interest or amounts economically equivalent to interest,
- any of the above amounts treated as excess expenses of management under section 83(3), and
- any amount arising from an arrangement, or part of an arrangement, which could reasonably be considered, when the arrangement is considered in the whole, to be economically equivalent to interest.

It will depend on the facts and circumstances surrounding a transaction as to whether it has been entered into for the purposes of raising finance, and therefore whether the return or costs associated with the transaction are economically equivalent to interest.

An example of where an amount may be equivalent to interest includes where an amount is paid by a borrower or received by a lender in connection with a financing transaction and the lender could have chosen to charge additional interest to achieve the same economic outcome.

An amount of negative interest, i.e. where a negative return arises in respect of a debt, may meet the definition of "interest equivalent" for the purposes of the ILR depending on the facts and circumstances of a particular case.

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4.1.1 Example: Discount/Arrangement Fee/Premium

A Ltd is a trading company which raises finance for the purpose of supporting its trade by issuing €20m 6% four-year loan notes on the first day of the current accounting period. The loan notes are issued at a discount of 10% and will be redeemed after four years at a premium of €1.015m. The effective rate of interest is 12%. The arrangement fees were €1m.

The finance cost and movement in the financial liability over four years is illustrated as follows:

	Opening balance	**Finance charge (12% IRR)**	**Payments**	**Closing balance**
Year 1	€17m [(€20m x 90%)-1m]	€2.04m	(€1.2m)	€17.84m
Year 2	€17.84m	€2.141m	(€1.2m)	€18.781m
Year 3	€18.781m	€2.254m	(€1.2m)	€19.835m
Year 4	€19.835m	€2.38m	(€1.2m) (€21.015m)	€nil

The total finance charge over the four years is €8.815m. This is made up of interest paid of €4.8m (€1.2m x 4 years), discount on issue of €2m (€20m x 10%), premium on redemption of €1.015m (€21.015m – €20m) and arrangement fees of €1m. All these amounts meet the definition of “interest equivalent”.

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4.1.2 Example: Guarantee Fee/Directly Connected

B Ltd obtains finance to purchase a vacant property in a city centre. A bank loan is obtained for €100m. A guarantee is provided by B Ltd's UK parent to the bank in respect of the amount borrowed by B Ltd. This results in the bank being willing to lend to B Ltd at a rate of 5%. B Ltd agrees to pay a guarantee fee to its parent of €10m. B Ltd requires a property valuation and pays a fee to engage an independent valuation expert. B Ltd also incurs further legal and registration expenses in respect of the purchase. The guarantee fee is considered "interest equivalent" as it is directly connected with the raising of finance to purchase the property. The valuation and other fees are not "interest equivalent" as they are not directly connected with the raising of finance.

4.1.3 Example: FX gain on interest

C Ltd issues a £100 three year note at par. C Ltd's functional currency is Euro. Over the course of three years the Euro strengthens against the Pound. C Ltd recognises an FX gain on the reduction in the value of its liability. A portion of the FX gain is referrable to the principal and a portion is referrable to the interest expense. The portion related to the interest expense should be considered "interest equivalent".

£	**Liability**	**Finance Charge**	**Payment**	**Closing Liability**
Year 1	100	5	(5)	100
Year 2	100	5	(5)	100
Year 3	100	5	(105)	0

FX rate at year end		
Year 1	**€1**	**£1**
Year 2	**€1**	**£1.20**
Year 3	**€1**	**£1.40**

EUR	**Liability**	**Finance Charge**	**Payment**	**FX Gain**	**Closing Liability**
Year 1	100	5	(5)		100
Year 2	100	4.17	(4.17)	(16.67)	83.33

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Year 3	83.33	3.57	(75)	(11.90)	0

EUR	FX Gain on Interest (treated as "interest equivalent")	FX Gain on Principal	Total FX Gain
Year 1	0	0	0
Year 2	0.83	15.83	16.67
Year 3	1.43	10.48	11.90
Total	2.26	26.31	28.57

4.1.4 Example: Derivative or hedge directly connected with the raising of finance

Two trading companies have the following borrowings in respect of their trade, on which the interest is tax deductible.

- D Ltd €10m at 5%
- E Ltd €10m at €STR plus 2%

D Ltd decides that it would like to benefit from the potential upsides of securing a variable interest rate and E Ltd decides that it would like to fix its interest exposure. D Ltd agrees to pay E Ltd an interest rate of €STR plus 2.5% by reference to a principal of €10m. E Ltd agrees to pay D Ltd an interest rate of 6% by reference to a principal of €10m.

The net position for D Ltd is interest paid at a fixed rate of 5%, swap receipt at a fixed rate of 6% and swap payment of €STR + 2.5%. For the purposes of the ILR, the interest payment and the swap payment will be deductible interest equivalent and the swap receipt will be taxable interest equivalent.

The net position for E Ltd is interest paid at a variable rate €STR + 2%, swap receipt at a variable rate of €STR + 2.5% and swap payment at a fixed rate of 6%. For the purposes of the ILR, the interest payment and the swap payment will be deductible interest equivalent and the swap receipt will be taxable interest equivalent.

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4.1.5 Example: Non-performing loans – expected cashflows

F Ltd carries on a financing trade and acquires a portfolio of loans that are credit-impaired for €600m. If all loan obligations were fulfilled by the borrowers, the contractual cashflows would be €1.1bn, being the sum of accrued and future interest on the loan portfolio and the outstanding principal at the date the portfolio was acquired. However, the expected cashflows arising from accrued and future interest receipts are €75m for four years and €450m principal at the end of year 4. The loans are subsequently measured at amortised cost using a credit adjusted effective interest rate method. A credit-adjusted effective interest rate of 6.857% is calculated as the internal rate of return of the initial purchase price (i.e. €600m) and the cash flows expected to be collected. In effect, F Ltd can be considered to have provided finance of €600m in the expectation of a return of €750m over four years.

	€'m	Year 1	Year 2	Year 3	Year 4
Loan portfolio acquisition price	(600)				
Expected interest receipts		75	75	75	75
Expected principal on maturity					450
	(600)	75	75	75	525
IRR	6.857%				

On initial recognition F Ltd records €600m loan asset and credits cash by €600m. At the end of year 1 the company records €41.2m finance income (being the amortised cost of the loan of €600m at 6.857%).

DR Loan Asset €600m

CR Cash €600m

DR Loan Asset €41.2m

CR Interest Income €41.2

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Assuming no deviations between expected and actual cashflows over the life of the loans the accounting entries are as follows:

	Year 1		Year 2	
	DR	CR	DR	CR
Loan Asset (B/S)	600.0			
Cash (B/S)		600.0		
Loan Asset (B/S)	41.1		38.8	
Finance Income (P&L)		41.1		38.8
Cash (B/S)	75.0		75.0	
Loan Asset (B/S)		75.0		75.0

	Year 3		Year 4	
	DR	CR	DR	CR
Loan Asset (B/S)	36.3		33.7	
Finance Income (P&L)		36.3		33.7
Cash (B/S)	75.0		525.0	
Loan Asset (B/S)		75.0		525.0

In accordance with section 76A(1) TCA, the finance income booked to the income statement forms part of F Ltd's relevant profit. The amount recognised in the accounts of F Ltd as finance income should be considered to be taxable interest equivalent on the basis that it is the profit on a financial asset (being the loan portfolio), the return on which principally comprises interest, which can reasonably be considered to be economically equivalent to interest.

Revenue will accept that the assessment of taxable interest equivalent can be made on a portfolio basis, rather than a loan by loan assessment, where steps or arrangements are not entered into in order to artificially increase taxable interest equivalent.

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4.1.6 Example: Non-performing loans – performance above expectations

The facts of this example are as per example 4.5. However, in year 2, the expectations on payment of interest and principal have improved due to the portfolio performing better than expectations. F Ltd now expects to receive €80m in interest each year for the next three years (instead of €75m) and €500m in principal (instead of €450m). The gain on the revised cashflows is accounted for as a gain in the income statement, discounted using the original effective interest rate ((5 / 1.06857) + (5 / 1.068572) + (5 / 1.068573) + (50 / 1.068573)) = €54.1m. It is not reasonable to consider that any part of this gain is economically equivalent to interest. This is on the basis that it represents a return in excess of the expected financing return on the original acquisition of the loan portfolio which is due to the portfolio performing better than expected.

4.1.7 Example: Non-performing loans – performance below expectations

The facts of this example are as per example 4.5 and 4.6. However, in year 3, the expectations on payment of interest and principal have disimproved. F Ltd now expects to receive €60m in interest each year for the next two years (instead of the original estimation of €75m) and €400m in principal (instead of the original estimation of €450m). The loss on the revised cashflows is accounted for as an impairment loss in the income statement, discounted using the original effective interest rate ((15 / 1.06857) + (15 / 1.068572) + (50 / 1.068572)) = €70.9m. The amount recognised in the accounts of F Ltd as an impairment loss should be considered to be deductible interest equivalent on the basis that it is a reduction in the profit on a financial asset, the return on which principally comprises interest, which can reasonably be considered to be economically equivalent to interest. Where the gain on the revised cashflows in year 2 of €54.1m (which was accounted for as a gain in the income statement) is reversed through the income statement in year 3, this reversal is not economically equivalent to interest.

The examples above apply to companies which use an effective interest rate method of accounting in respect of the loan portfolios acquired. Where the loans are subject

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to fair value accounting through the income statement, taxpayers will be expected to maintain documentation which establishes the portion of the profit or loss that it would be reasonable to consider is equivalent to interest. In such cases, amounts recognised in the income statement may be considered interest equivalent unless

- the movement in fair value reflects an improvement in portfolio performance relative to expectations at the date of acquisition of the portfolio, or
- the movement in fair value reflects a decrease in the value of the loan portfolio below cost.

Where loans that are non-performing are converted to equity or other assets and an impairment loss is recognised in the accounts, such loss should be considered to be deductible interest equivalent unless the impairment loss reduces the fair value of the asset below cost. However, any gain arising from the conversion which is a return in excess of the expected financing return on the original acquisition of the loan portfolio should not be considered taxable interest equivalent.

4.1.8 Example: Receivables factoring

G Ltd issues variable funding notes to a syndicate of investors. G Ltd enters into a receivable purchase transaction and agrees to purchase trade receivables from a trading company on an ongoing basis. The rights of the investors in the variable funding notes will be secured over the receivables acquired from the trading company. G Ltd purchases the receivables at a discount to their face value. G Ltd will receive the proceeds of the receivables from underlying obligors. The profit earned by G Ltd on the receivables (the difference between the price paid to the trading company and the amount collected from the obligors) will be used by G Ltd to pay interest to the investors in respect of the notes. The balance of the receivables will be used to repay principal in respect of the notes.

Although a receivables factoring may be a sale from a legal perspective, it is generally viewed as a financing transaction. It will normally be accounted for as a secured financing in the trading company's financial statements. The discount applied to the receivables is a financing cost for the trading company in this example and, as such, is equivalent to an interest expense of the trading company i.e.an

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amount arising from an arrangement which could reasonably be considered, when the arrangement is considered in the whole, to be economically equivalent to interest.

G Ltd receives income from receivables equal to the discount applied, which should be equivalent to interest, i.e. the return earned by G Ltd for providing financing to the trading company. G Ltd pays interest amounts on the notes to the investors. This is a borrowing cost payable by G Ltd and therefore should be considered "interest equivalent".

4.1.9 Example Securitisation

H Ltd issues variable funding notes to a syndicate of investors. H Ltd uses the funds to purchase mortgages on an ongoing basis from the originator of the mortgages. None of the assets acquired by H Ltd are non-performing at the date of acquisition. To comply with regulatory rules, the originator retains a 5% net economic exposure in the securitisation. The rights of the investors in the notes will be secured over the mortgages. H Ltd enters into derivative contracts with a swap counterparty to reduce the risks that it is exposed to regarding any payment mismatches as a result of interest rates, currency mismatches or timing of payments. Throughout the life-cycle of the mortgages, the profit earned by H Ltd on the mortgages (the difference between the price paid to the originator and the amount collected under the mortgages) will be used by H Ltd to pay interest and principal to the investors in respect of the notes.

In this example, H Ltd holds debt obligations, the acquisition of which it has financed by issuing notes to investors. The income generated from the underlying mortgages is used to pay the principal and interest on the securities. When the arrangement is considered in the whole, the taxable profits arising to H Ltd on the transaction should be considered to be taxable interest equivalent and the deductible payments made to the investors should be considered to be deductible interest equivalent.

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4.1.10 Example: Repo Transaction

I Ltd issues variable funding notes to investors. I Ltd enters into a repo transaction agreement with a bank, within the meaning Chapter 3 of Part 28. Under the repo transaction agreement, I Ltd agrees to purchase shares from the bank which the bank agrees to re-purchase from I Ltd at a future date at a fixed price.
The bank agrees to pay a repo fee to I Ltd as consideration for entering into the transaction. I Ltd receives dividends in respect of the shares and pays equivalent amounts, i.e. manufactured payments, to the bank. I Ltd uses the amounts it receives from the bank during the course of the repo transactions to pay interest in respect of the notes issued to the investors. I Ltd uses the proceeds of the sale of the shares back to the bank to redeem the principal on the notes.

I Ltd receives income from the repo fee from the bank, which should be equivalent to interest, i.e. the return earned by I Ltd for providing financing to the bank. I Ltd pays interest amounts on the notes to the investors. This is a borrowing cost payable by I Ltd and therefore should be considered “interest equivalent”. (Refer to Tax and Duty Manual [TDM] Part 04-06-13 regarding the taxation of repo transactions).

4.1.11 Example: Synthetic securitisations

J Ltd wishes to mitigate its credit risk in relation to a portfolio of performing loans it holds and to reduce the amount of regulatory capital that it must hold against that portfolio, so that it can engage in further lending activities. Rather than selling the portfolio of loans, it decides to purchase credit protection on one or more tranches of the portfolio. To comply with the EU Securitisation Regulation, J Ltd will retain exposure to the portfolio in an amount and manner compliant with the EU Securitisation Regulation.

A securitisation special purpose entity (SSPE) is established. The SSPE issues notes to investors to raise capital at an interest rate set by the market. The SSPE sells the credit protection to J Ltd in return for a fee. SSPE earns a margin based on the

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difference between the rate on the notes issued by the SSPE and the amounts the SSPE is entitled to receive from J Ltd for providing the credit protection to it. The cash raised by the SSPE is invested in deposit accounts and low risk debt so that it collateralises the SSPE's obligations under the credit protection it has written. The SSPE's income comprises: (i) the credit protection fee; and (ii) any return from the collateral, which the SSPE uses to fund its interest expense on the notes to the investors as well as its expenses.

If default events occur on the portfolio of loans, and the resulting losses fall into the protected tranche(s), the SSPE uses its funds to make credit protection payments to J Ltd to compensate it for the resulting losses on the relevant loans. There is a corresponding reduction of the principal amount of the notes issued by the SSPE to the investors. In this way, investors in the notes are the indirect sellers of the credit protection and are exposed to the credit risk of the loan portfolio.

Upon the occurrence of the termination date of the credit protection provided by the SSPE to J Ltd, any of the SSPE's funds that have not been used for the purposes of making credit protection payments to J Ltd in respect of default events are returned as principal on the notes to the noteholders.

"Interest equivalent" includes any amount arising from an arrangement which could reasonably be considered, when the arrangement is considered in the whole, to be economically equivalent to interest. When viewed as a whole, the above described arrangement results in the SSPE (and ultimately the investors) sharing in the credit risk of the loan portfolio. The SSPE by way of the credit protection fee (and the investors by way of interest on the notes) earn a return for taking on the credit risk of the portfolio of loans selected by J Ltd and bear any downside where there is a default in loan repayments and the resulting losses fall into the protected tranche(s). As such, the credit protection fee paid by J Ltd, which is passed on as a return to the investors, can be reasonably considered to be economically equivalent to interest (as an expense for J Ltd and income for the SSPE). In addition, interest received by the SSPE on amounts invested in deposit accounts and/or low risk debt by the SSPE is

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also likely to be "interest equivalent". As noted above the amount of any default in the portfolio of J Ltd leads to a payment of that amount by the SSPE to J Ltd. To the extent the default relates to a write down of principal on the loan portfolio, the payment by the SSPE to J Ltd would not be "interest equivalent" as it is not referable to interest but to principal and the corresponding write down of the principal amount of the notes issued by the SSPE should not be "interest equivalent". To the extent the default relates to a write down of interest receivable on the loan portfolio, the payment by the SSPE to J Ltd would be "interest equivalent" as it is referrable to interest and the corresponding write down of the principal amount of the notes issued by the SSPE should be "interest equivalent".

4.1.12 Example: Commodities

K Ltd issues variable funding notes to a syndicate of investors. K Ltd acquires commodities using the proceeds of the variable funding notes. The rights of the investors in the variable funding notes will be secured over the commodities acquired. The profit earned by K Ltd on the commodities will be used by K Ltd to pay a return to the investors in respect of the notes. The return earned by K Ltd on the commodities should not be considered to be 'interest equivalent'. It is not 'interest' as it is not a payment by time for the use of money. It is also not economically equivalent to interest. In particular, the return earned by K Ltd is not directly connected with the raising of finance by K Ltd

4.1.13 Example: Specified Financial Transaction

Company A, a finance company, acquires an asset valued at €100m which it agrees to sell to Company B for €120m. The terms of the agreement are such that the price of €120m will be paid in 5 years' time, consistent with the principles of Shari'a law (refer to TDM Part 08A-01-01 for more details on Shari'a compliant transactions). The increase in price from €100m to €120m constitutes a credit return for the provision of the asset under the secured financing arrangement. The margin of €20m is treated as interest for the purposes of the Tax Acts and is "interest equivalent" for the purpose of the ILR.

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4.1.14 Example: Stock Lending

An Irish tax resident bank enters into a stock-lending transaction with SL Ltd to lend stock with a value of €100m. Under the terms of the stock-lending agreement between the parties the Bank will earn an arrangement fee of €1m plus ongoing flows under the stock loan. SL Ltd makes manufactured payments to the Bank for any dividends received during this period.

The Bank enters into a derivative contract to hedge against the risk of movements in the stock valuation during the period of the stock loan. The Bank pays a fee of €500k to enter the derivative contract. Under the derivative contract the Bank is required to make a payment equalling any increase in value of the stock plus any dividend paid during the period. If the stock decreases in value the Bank receives this amount under the derivative contract.

At the end of the stock-lending agreement the stock is returned and is now worth €105m. A dividend of €1m was paid during the term of the stock loan. On termination of the derivative, the Bank pays €6m on the derivative contract.
The above is an example of a financing transaction from the Bank's perspective. The alternative to the above transaction would be that the Bank lends cash to SL Ltd to allow SL Ltd to purchase the stock. Therefore, the return on the arrangement for the Bank, being the arrangement fee, can reasonably be considered to be economically equivalent to interest. The gain on the stock and the manufactured payment received by the Bank in respect of the dividend on the stock are not interest or interest equivalent as these are returns associated with holding the stock and not in respect of the financing transaction. Likewise, the payments on the derivative are in respect of hedging exposures related to holding the stock, are not directly connected with the raising of finance. As such in this scenario these amounts under the derivative instrument are not interest equivalent.

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4.2 Deductible interest equivalent

The deductible interest equivalent of a relevant entity is the amount in respect of "interest equivalent" which is deducted in the calculation of the relevant entity's relevant profit or loss (see section 5 below).

4.3 Taxable interest equivalent

The taxable interest equivalent of a relevant entity is the amount in respect of "interest equivalent" income, profits or gains which is included in the calculation of the relevant entity's relevant profit or loss. Where an amount was included in deductible interest equivalent in an accounting period, but the expense is subsequently reversed in a future accounting period, that amount is included as taxable interest equivalent in the accounting period in which it is reversed.

4.4 Legacy debt

The term legacy debt is used to describe debt the terms of which were agreed before 17 June 2016 (the date as set out in ATAD), together with any contract entered into for the sole purpose of reducing interest rate risk on that debt. However, where the terms of the debt include provision for an amount of principal not yet drawn down at 17 June 2016, such principal will only be considered an agreed term of the debt where there is a legal obligation on the lender to make the funds available upon the happening of milestones as set out in the terms agreed before 17 June 2016.

A milestone means a pre-determined deliverable or project phase defined in the terms of the debt which is connected with the drawdown of the principal but does not include a call by the borrower for the drawdown of that principal.

Where deductible interest equivalent is in respect of a legacy debt, that amount of deductible interest equivalent is excluded from the scope of the ILR. Where an amount of interest is surrendered via group relief to a claimant company and that interest is in respect of legacy debt of the surrendering company, that amount of

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deductible interest equivalent is excluded from the scope of the ILR for the claiming company.

Where part of a debt which consists of both legacy debt and non-legacy debt is repaid, the amount repaid shall be treated as being a repayment of the legacy debt amount in priority to the part of the debt which is non-legacy debt.

For the purpose of calculating the amount of deductible interest equivalent in respect of legacy debt in an accounting period, consideration must be given to any modifications to that debt. The amount to be considered as deductible interest equivalent in respect of a legacy debt, and therefore not subject to the ILR, is the lower of

a) the deductible interest equivalent that arises on the legacy debt, or
b) an amount of deductible interest equivalent that would have arisen based on the terms of the legacy debt at 17 June 2016.

Where a modification does not result in an increase in the deductible interest equivalent (relative to the amount that would have been deductible in that accounting period under the terms of the loan agreed before 17 June 2016), then that modification will not result in the interest on the legacy debt coming within the scope of the ILR. Where the modification does result in an increase in the deductible interest equivalent (relative to the amount that would have been deductible in that accounting period under the terms of the loan agreed before 17 June 2016) then it is the amount of the increase in deductible interest equivalent that is in scope of the ILR.

4.4.1 Example: Changing reference rate

During 2015, K Ltd borrowed at EURIBOR + 2%. In 2022 K Ltd and its lender agreed to change the reference rate from EURIBOR to €STR. This involves re-opening the loan agreement. The lender takes the opportunity to increase the interest rate being charged to reflect a slight deterioration in K Ltd's credit worthiness.

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To identify how much of the interest on the loan can be excluded from the ILR as legacy debt, K Ltd must identify the €STR equivalent of EURIBOR + 2%, at the date the new terms are effective. The portion of the new interest expense that reflects an increase over EURIBOR + 2% will be subject to the ILR.

4.4.2 Example: Legacy debt – phased draw down

L Ltd, as lender, entered into a loan agreement with M Ltd, as borrower, on 1 June 2016. M Ltd is engaged in a long-term construction project over three phases with funding requirements throughout the course of the build. The loan agreement provided for a drawdown of funds at the date of the agreement with further drawdowns at the completion of phases 1 and 2. M Ltd completed phase 2 on 30 June 2020 and as such was legally entitled to draw down the remaining principal on the loan at that date. As the drawdown of principal was agreed in the terms of the loan agreed prior to 17 June 2016, interest arising on that principal is not taken into account in the calculation of exceeding borrowing costs

4.4.3 Example: Legacy debt – facility agreement

N Ltd, as lender, entered into a facility agreement with O Ltd, as borrower, on 1 June 2016. The facility allowed for the drawdown of principal at any date in the next 50 years up to a maximum amount of €1bn, at an agreed interest rate. There was no pre-determined deliverable or project phase defined in the terms of the facility linked to the drawdown of principle. O Ltd availed of the facility and borrowed €5m on 2 June 2016 and €10m on 30 June 2020. As the drawdown on the facility in June 2020 does not meet the definition of “legacy debt”, to the extent that the interest is tax deductible for O Ltd, and N Ltd and O Ltd are not in an interest group, then it is included in the calculation of O Ltd’s exceeding borrowing costs.

O Ltd repays €3m in December 2023. This should be considered a partial repayment of the drawdown on 2 June 2016 such that €2m of the total remaining drawdown of €12m is considered legacy debt and only interest relating to that €2m portion of the debt falls under the exemption.

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4.5 Net interest equivalent

"Net interest equivalent" of a relevant entity for an accounting period is calculated as:

(Deductible interest equivalent) – (Deductible interest equivalent related to legacy debt) - (Taxable interest equivalent)

The result of the calculation, if greater than or equal to zero, is an amount referred to as "exceeding borrowing costs" and if lower than zero, is an amount referred to as "interest spare capacity".

4.6 Allowable amount and disallowable amount

The allowable amount represents the amount of exceeding borrowing costs which may be deducted in an accounting period without limitation under this Part. It is calculated by multiplying the EBITDA of the relevant entity by the EBITDA limit (explained in section 6 below).

The disallowable amount is the amount of exceeding borrowing costs to which the restriction applies. It is calculated as an amount by which the exceeding borrowing costs is greater than the allowable amount.

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5 Relevant profit or relevant loss – section 835AZ

Relevant profit is an important concept for the ILR as it is the starting point for the calculation of EBITDA, upon which any interest limitation is based. The starting point is the amount of profits on which corporation tax falls finally to be borne, which is defined in section 4 TCA 1997. It is a reference to the amount of those profits after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against those profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes.

That amount of profits is then adjusted for gains or losses on development land, relief for excess trade charges, relief for trading losses on a value basis, and relief for non-trade charges surrendered by way of group relief that are treated as a trade charge by section 247(4G), which would have been claimed but for the application of Part 35D.

A relevant loss is to be calculated in the same manner as a relevant profit and a reference to the amount of profits on which corporation tax falls finally to be borne is read as reference to an amount of loss arising after all reliefs and deductions for the purposes of corporation tax. Please see Appendix 1 below for a sample calculation of relevant profit and loss.

In adjusting the profits, each element of the calculation that is taxable or deductible at a rate greater than 12.5% is grossed up such that it gives the same result were the amount taxable or deductible at the 12.5% rate. This is necessary as, to calculate EBITDA and the interest limitation, amounts are needed that have comparable values when considering Ireland’s different tax rates. The amount is calculated by multiplying the amount of the charge, income, expense, gain or loss by the relevant rate (e.g. 25%) and dividing it by the T rate (12.5%).

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In calculating the relevant profit, no account is to be taken of losses carried forward or back from other accounting periods or amount claimed or surrendered under group relief. However, where interest that is treated as a charge on income would be surrendered to a group company but for Part 35D or expenses of management that may be surrendered to a group company but for Part 35D, the charge is to be taken into account in the calculation of the relevant profit or loss of the company which would have claimed the charge but for Part 35D.

The legislation provides an exclusion from the calculation of relevant profit or loss for income or expenses (including interest) directly connected with qualifying long-term infrastructure projects (see section 9 below). Income or expenses directly connected with qualifying long-term infrastructure projects are those income and expenses incurred by the relevant entity that is carrying on the project and the amounts are in respect of that project, i.e. the entity that is providing, upgrading, operating or maintaining a large-scale asset.

Where a relevant entity carries on both a qualifying long-term infrastructure project and activities that do not fall within the definition of qualifying long-term infrastructure projects, the income and expenses of the relevant entity shall be apportioned between the activities on a just and reasonable basis.

5.1.1 Example: Long-Term Infrastructure Project

P Ltd contracts to develop and operate a long-term infrastructure project in Ireland. The company obtains finance from Q Ltd to fund the project and incurs interest on the amount borrowed. The interest expense paid by P Ltd is directly connected with a long-term infrastructure project and therefore is excluded from the calculation of relevant profit or loss. However, the interest income of Q Ltd is directly connected with the provision of finance and not directly connected with a long-term infrastructure project, and therefore not excluded from the calculation of relevant profit or loss.

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6 EBITDA and EBITDA limit – section 835AY and 835AAB

6.1 Calculation of EBITDA

The calculation of EBITDA for an accounting period is provided in section 835AAB which expresses the calculation as a formula:

$$R + I + FT + [(Cap_{allow} - IE_{ded\ allow}) - (Cap_{charge} - IE_{ded\ charge})] + IE_{LD\text{-}ded}$$

"R" represents the relevant profit or relevant loss of the relevant entity. The definition of relevant profit or relevant loss is dealt with at section 5 above.

"I" is the amount of net interest equivalent for the relevant entity being an amount of exceeding borrowing costs (being a positive amount) or interest spare capacity (being a negative amount). The definition of net interest equivalent is dealt with at section 4.5 above.

"FT" is the amount of any foreign tax that has reduced the income of the relevant entity in arriving at the relevant profit or relevant loss for that accounting period.

$[(Cap_{allow} - IE_{ded\ allow}) - (Cap_{charge} - IE_{ded\ charge})]$ is the part of the calculation that provides for the add back of any capital allowances or charges (being a negative amount) made to or on the relevant entity under Parts 9, 24 and 29, but excluding any amount of such allowance or charge referrable to deductible interest equivalent (so that there is no double counting of an amount already included in "I" above). The amount of the non-finance element of finance lease payments, included in calculating the relevant entity's relevant profit or loss for the accounting period, is also included.

"$IE_{LD\text{-}ded}$" represents the amount of deductible interest equivalent in respect of legacy debt.

Where the calculation for a relevant entity for an accounting period results in an amount less then nil then the EBITDA is nil for the purposes of Part 35D. Refer to Appendix 1 below for a sample calculation of EBITDA.

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6.2 EBITDA Limit

The allowable amount is calculated by multiplying the EBITDA of a relevant entity by the EBITDA limit. The EBITDA limit is the higher of 30%, or where an election is made to apply the group ratio, the group ratio (see section 13 below).

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7 Spare capacity – section 835AY and 835AAB

There are two different types of spare capacity under the ILR – interest spare capacity and limitation spare capacity. The aggregate of these amounts is total spare capacity.

Limitation spare capacity arises when the allowable amount is greater than the exceeding borrowing costs (see section 4.6). Where there are no exceeding borrowing costs, the limitation spare capacity is the allowable amount.
Interest spare capacity arises when the taxable interest equivalent is greater than the deductible interest equivalent net of any deductible interest equivalent that relates to legacy debt.

Total spare capacity is available for carrying forward to future accounting periods for a maximum of 60 months from the end of the accounting period in which it arises. Details regarding the carry forward of total spare capacity are discussed in section 12 below.

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8 Leasing – section 835AY

For the purposes of the ILR, a "finance lease" is a lease[9] which is treated as a finance lease in accordance with international accounting standards or Irish generally accepted accounting practice. If a lease does not fall to be treated as a finance lease as outlined, it is a non-finance lease for ILR purposes.

For the purposes of the ILR, the "finance element of finance lease payments" is treated as "interest equivalent". In addition, the finance income element and finance cost element of non-finance lease payments of a company that carries on a trade of leasing (that is treated for the purposes of the Tax Acts as a separate trade carried on by the company under section 403(2) TCA 1997) are also treated as "interest equivalent".

The "finance element of finance lease payments" is the fraction of the deductible or taxable finance lease payment or receipt obtained by dividing the total finance cost or finance income of the lease recognised in the accounts over the life of the lease by the total expected cost or income of the lease. Where the terms of the lease are amended during the life of the lease, the amounts used in the calculation must be calculated as if a new lease was entered into at the date of the amendment.

Lease agreements may include elements which are contingent (e.g. linked to floating interest rates). In such circumstances, the calculation of the total finance cost or finance income of the lease recognised in the accounts over the life of the lease and the total expected cost or income of the lease, will be the best estimates of the amounts as determined at the commencement of the lease.

[9] Note that this does not include other contracts, such as hire purchase contracts, which are not leases but which are accounted for as finance leases.

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8.1.1 Example: Finance Leases

R Ltd agrees to enter into an arrangement to lease an item of machinery from S Ltd. The lease transfers substantially all the risks and rewards incidental to ownership of the machinery. The expected cost of the lease is €2,200,000 over 5 years. The total expected finance cost which will be recognised in accounts of R Ltd over the course of the lease is €200,000. Payments of €440,000 are due on 1 January each year commencing on 1 January 2022. R Ltd claims a tax deduction for accounting period ending 31 December 2022 of €440,000. To determine the “finance element of finance lease payments” for R Ltd, the calculation is as follows:

$$\frac{440,000 \times 200,000}{2,200,000} = 40,000$$

The “finance income element of non-finance lease payments” is the portion of the taxable operating lease payments obtained by dividing the difference between

- the total expected income of the lease, and
- the value of the leased asset recognised in the accounts on the date the lease was entered into less the expected depreciated value of the leased asset at the end of the lease,

by the total expected income of the lease. Where the terms of the lease have been amended during the life of the lease, the amounts used in the fraction must be calculated as if a new lease was entered into at the date of the amendment.

8.1.2 Example: Finance income element of non-finance lease payment

On 1 January 2022 T Ltd, a company engaged in the trade of leasing assets, leases a machine under a non-finance lease to U Ltd. The asset is valued at €200m and is expected to have a depreciated value of €160m in the accounts of T Ltd at the end of the lease. The lease is for a period of 2 years with annual payments of €25m (i.e. €50m in total). To determine the “finance income element of non-finance lease payments” for T Ltd, the calculation is as follows:

$$\frac{\text{€}25m \times (\text{€}50m - (\text{€}200m - \text{€}160m))}{(\text{€}50m)} = \text{€}5m$$

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The "finance cost element of non-finance lease payments" is the fraction of the deductible operating lease payment that is obtained by dividing the difference between

- the total expected cost of the lease, and
- the right of use asset recognised in the accounts of the lessee (or would be recognised if accounts were prepared under international accounting standards),

by the total expected cost of the lease. Where the terms of the lease are amended during the life of the lease, the amounts used in the fraction must be calculated as if a new lease was entered into at the date of the amendment.

8.1.3 Example: Finance cost element of non-finance lease payment

V Ltd leases a machine under a non-finance lease to W Ltd, a company engaged in a trade of leasing assets, commencing on 1 January 2022. W Ltd recognises a right of use asset in its accounts of €45m. The lease is for a period of 2 years with annual payments of €25m (i.e. €50m in total). To determine the "finance cost element of non-finance lease payments" for W Ltd, the calculation is as follows:

$$\frac{€25m \times (€50m - €45m)}{€50m} = €2.5m$$

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9 Long-term Public Infrastructure Project – section 835AAA

The legislation provides an exemption from the ILR for qualifying long-term public infrastructure projects. To avail of this exemption the project must be to provide, upgrade, operate or maintain a large-scale asset. A large-scale asset is an asset as defined in section 835AY with a minimum expected life span of 10 years. In addition to the asset coming within the definition of a large-scale asset, the project must also meet the following conditions:

- the project operator must be established and tax resident in a Member State,
- the asset must be situated in a Member State, and
- the income (when it arises) and deductible interest equivalent costs must arise in a Member State.

Large-scale assets specified in section 835AY include:

a) certain energy, transport, environmental and health care infrastructure,
b) electricity transmission lines,
c) strategic gas infrastructure,
d) railway works,
e) road works,
f) strategic housing developments,
g) an asset constructed pursuant to a public private partnership arrangement,
h) an installation generating energy from renewable sources,
i) an asset specified by the Minister for Finance in regulations made under section 835AAA(1), or
j) large-scale residential developments.

The relevant sections of the Planning and Development (Housing) and Residential Tenancies Act 2016 Act upon which the definition of “strategic housing developments” relied were repealed by the passing of the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021. Finance Act 2022 introduced a definition of “large-scale residential developments”

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within the meaning of the Planning and Development Act 2000, as amended. Developments meeting either definition in Section 835AY will be considered to be a large scale asset.

As set out under section 5 above, where a relevant entity carries on a qualifying long-term infrastructure project, income and expenses directly connected with the qualifying long-term infrastructure project are ignored for the purposes of calculating relevant profit or loss (and therefore ignored for the purposes of the ILR including the calculation of deductible or taxable interest equivalent). Where a relevant entity carries on both a qualifying long-term infrastructure project and other activities, income and expenses are apportioned between the qualifying long-term infrastructure project and the other activities on a just and reasonable basis. Refer to section 13 with regard to the exclusion of amounts in respect of qualifying long-term public infrastructure projects from the calculation of the Group Ratio.

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10 The Interest Limitation – operation of the restriction – section 835AAC

An interest limitation will apply to any relevant entity (companies or interest groups as set out in section 3.2 above)

- that is within the charge to corporation tax in Ireland (other than a standalone entity)
- that has a disallowable amount in respect of the accounting period, and
- whose exceeding borrowing costs exceed the de minimis amount (subject to the equity ratio exemption detailed at section 13 below).

Where the ILR applies, the amount of tax payable, or where there is no tax payable the amount of the tax loss or excess incurred by a relevant entity, in an accounting period is adjusted by reducing the amount of "interest equivalent" that would have been deducted, but for the operation of Part 35D, by the disallowable amount, until such time as the disallowable amount has been exhausted i.e. the amount of tax payable is recalculated taking into account the interest limitation. The taxpayer will be required to recalculate the tax computation taking into account the impact of the interest limitation.

Where "interest equivalent" would have been deducted from profits chargeable to corporation tax at 25%, or treated as reducing the corporation tax payable on profits chargeable to corporation tax at 25%, then the amount by which the "interest equivalent" will be reduced by the disallowable amount as outlined above is calculated by multiplying the disallowable amount by the T rate (i.e. 12.5%) divided by the P rate (i.e. 25%). As the disallowable amount is an amount that has been 'grossed up', the gross up must be reversed for the purposes of reducing the amount of "interest equivalent" that is deducted from profits chargeable to corporation tax at the 25% rate.

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Where “interest equivalent” would have been deducted from chargeable gains chargeable to tax at a rate higher than 12.5%, then the amount by which the “interest equivalent” will be reduced by the disallowable amount as outlined above is calculated by multiplying the disallowable amount by the T rate (i.e. 12.5%) divided by the applicable CGT rate (i.e. 33% or 40%). As the disallowable amount is an amount that has been ‘grossed up’, the gross up must be reversed for the purposes of reducing the amount of “interest equivalent” that is deducted from chargeable gains.

A disallowable amount may reduce the amount of interest deductible in connection with the provision of a specified intangible asset. For the purposes of calculating the aggregate of capital allowances and deductible interest for an accounting period in connection with the provision of a specified intangible asset under section 291A(6), the amount of interest as reduced by the disallowable amount is taken into account.

10.1.1 Example: Interest Limitation at different rates

For the accounting year ended 31 December 2022, PT Ltd had Case I income of €20m with Case I non-interest deductions of €10m and trading interest deductions of €5m to give a net Case I profit of €5m taxable at 12.5% before any interest restriction. PT Ltd also had Case V income of €10m with Case V deductions of €6m and €1m deductible interest to give a net Case V profit of €3m taxable at 25% before any interest restriction.

PT Ltd’s EBITDA for the purposes of ILR was €18m (€10m from the Case I trade and €8m from the rental business as amounts taxable/deductible at 25% are grossed up i.e. (€10m - €6m) x 25% / 12.5%). Therefore, PT Ltd’s allowable amount was €5.4m (€18m x 30%). PT Ltd’s disallowable amount was €1.6m ((€5m trading interest expense + (€1m Case V interest expense x 25%/12.5%) - €5.4m)).

The amount of tax payable by PT Ltd is adjusted by reducing the amount of interest equivalent that, but for the application of the ILR, would have been deducted in the calculation of that tax payable, by the disallowable amount. PT Ltd decides to reduce

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the interest equivalent deducted against its Case V profits in priority to the interest equivalent deducted against its Case I profits. As the interest equivalent deducted against its Case V profits is deducted against profits taxable at the 25% rate, the amount by which the interest equivalent is reduced in respect of the disallowable amount is calculated as €1.6m * 12.5%/25% = €0.8m. Therefore, PT Ltd's revised computation of the amount of tax payable is:

- Case I Profits €5m @12.5% = €625k
- Case V Profits (€3m+€0.8m) @ 25% = €950k
- Total tax liability €1.575m

Refer to Appendix 1 below for a sample calculation of the interest restriction.

10.2 De minimis amount

The legislation allows for a de minimis amount of exceeding borrowing costs of €3,000,000 in respect of a relevant entity for an accounting period of 12 months in length, i.e. the de minimis of €3,000,000 applies to an interest group. Where the period is less than 12 months, the de minimis amount is adjusted accordingly in proportion to the length of the accounting period. Where the exceeding borrowing costs are less than the de minimis amount, the ILR will not apply to a relevant entity for an accounting period.

As the exceeding borrowing costs have been calculated on a grossed up basis to take account of income and expenses taxable and deductible at different tax rates, the gross up must be reversed for the purposes of assessing whether the de minimis threshold has been breached so that it is the actual amount of net interest equivalent which is tested. The reversal of the gross up provisions apply to

a) deductible interest equivalent which was deducted in calculating the profits chargeable to tax at a rate greater than 12.5%,

b) taxable interest equivalent chargeable to tax at a rate greater than 12.5%, and

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c) deductible interest equivalent which was deducted in calculating the chargeable gains of the company chargeable to tax at a rate greater than 12.5%.

10.2.1 Example: De Minimis

DM Ltd had exceeding borrowing costs of €3.5m for the tax year ending 31 December 2022. This was made up of deductible interest equivalent of €8m and taxable interest equivalent of €4.5m.

The deductible interest equivalent of €8m arose from €2m of trading interest and €3m of interest deductible against case V profits (which was grossed up for the purposes of the relevant profit calculation to give €6m of deductible interest equivalent). The taxable interest equivalent of €4.5m arose from €2.25m of non-trading interest income (which was grossed up for the purposes of the relevant profit calculation to give €4.5m of taxable interest equivalent). For the purposes of determining whether the exceeding borrowing costs of DM Ltd exceeds the de minimis amount, the deductible interest equivalent and taxable interest equivalent are adjusted as follows:

- Deductible interest equivalent = €2m + (€6m x 12.5%/25%) = €5m
- Taxable interest equivalent = €4.5m x 12.5%/25% = (€2.25m)
- Exceeding borrowing costs as adjusted = €2.75m

As €2.75m is less than €3m the de minimis exemption applies.

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11 Carry forwards – section 835AAD

Where a relevant entity incurs a disallowable amount, and the interest limitation applies, that amount is carried forward to succeeding accounting periods. When carried forward, the amount is referred to as "deemed borrowing cost". There are three scenarios that may arise in relation to a disallowable amount. They are:

- the company pays more tax,
- the company incurs a lesser loss or excess of deductions, or offsets a greater amount of loss or excess of deductions against income under section 396(1), 399(1) or 399(2), or
- the company incurs a lesser amount of excess expenses of management.

The relevant rules for each scenario are discussed below.

11.1 Where the company pays more tax

The following bullet points deal with an amount of deemed borrowing cost arising from a disallowable amount that resulted in the company **paying more tax** in respect of the accounting period in which the disallowable amount arose, or the accounting period prior to that accounting period.

- Subject to a company having sufficient spare capacity, a company can, on the making of a claim, deduct the deemed borrowing cost from its total profits or chargeable gains for an accounting period after the accounting period that the disallowable amount arose, or to create a loss where there is an insufficiency of profits.
- The deduction claimed applies after all other claims for relief have been made in respect of that accounting period.

11.1.1 Example: Deemed borrowing cost (company pays more tax)

X Ltd has Case I trading income of €40m and associated expenses of €10m. The company also incurred €15m in interest expenses allowable under Case I. The company has a Case I profit of €15m (€40m-€10m-€15m). For the purpose of the ILR, the company's EBITDA is €30m. Applying the EBITDA limit of 30% gives an allowable

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amount of €9m. The company's disallowable amount is €6m (€15m-€9m). The Case I profit of the company after applying the disallowable amount is €21m (€15m+€6m). As a result of the company having a disallowable amount, the tax liability (calculated at 12.5%) has increased from €1.875m to €2.625m. The deemed borrowing cost carried forward arises from a disallowable amount that resulted in the company paying more tax in respect of the accounting period in which the disallowable amount arose.

In the following year, X Ltd has Case I trading income of €30m and associated expenses of €25m giving Case I profits of €5m taxable at 12.5%. The company also granted a loan resulting in Case III profits made up of interest income of €5m taxable at 25%. The company had no interest expense. For the purpose of the ILR, the company's EBITDA is €5m. Its limitation spare capacity is €1.5m (€5m x 30%). Its interest spare capacity is €10m (€5m x 25%/12.5%). Therefore, its total spare capacity is €11.5m.

X Ltd uses €5m of the available €6m of deemed borrowing cost to reduce its Case I profits to nil. This means it has €1m of deemed borrowing cost remaining to shelter its Case III profits. As X Ltd only has €1m of deemed borrowing cost remaining, the maximum amount of deduction from Case III profits is €0.5m (€1m x 12.5%/25%).

Case I Profits	Deemed Borrowing Cost	Net Case I Profits
€5m	(€5m)	Nil
Case III Profits	Deemed Borrowing Cost	Net Case III Profits
€5m	(€0.5m)	€4.5m

Deemed borrowing cost brought forward	€6m
Deemed borrowing cost deducted from Case I profits	(€5m)
Deemed borrowing cost deducted from Case III profits	(€1m) [0.5m x 25%/12.5%]
Deemed borrowing cost carried forward	€nil

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Where a deemed borrowing cost is deducted from profits chargeable to corporation tax at 25%, when calculating the amount of deemed borrowing cost utilised in reducing the profits chargeable to tax at the 25% rate, the amount of deemed borrowing is multiplied by 25% divided by 12.5%. This reflects the tax value of the deemed borrowing cost, being 12.5%, such that where the deemed borrowing cost is deducted from profits chargeable to corporation tax at 25%, more deemed borrowing cost is utilised than where the deemed borrowing cost is deducted from profits chargeable to corporation tax at 12.5%.

Total spare capacity utilised	€6m
Total spare capacity carried forward	€5.5m

Where a deemed borrowing cost is deducted from chargeable gains chargeable to tax at the CGT rate, when calculating the amount of deemed borrowing cost utilised in reducing the chargeable gains chargeable to tax at the CGT rate, the amount of deemed borrowing cost is multiplied by the CGT rate divided by 12.5%. This reflects the tax value of the deemed borrowing cost, being 12.5%, such that where the deemed borrowing cost is deducted from chargeable gains chargeable to tax at the CGT rate, more deemed borrowing cost is utilised than where the deemed borrowing cost is deducted from profits chargeable to corporation tax at 12.5%.

11.1.2 Example: Deemed borrowing cost – tax paying company (taxable at different rates)

Y Ltd had a disallowable amount of €5m for the accounting period ended 31 December 2022. As a result of this disallowable amount, Y Ltd paid €625k more tax than it would have paid were it not for the application of the ILR. For the accounting period ended 31 December 2023 Y Ltd has total spare capacity of €4m. This means that Y Ltd may take a deduction up to €4m of its deemed borrowing cost carried forward and must carry forward the other €1m of deemed borrowing cost.
For the accounting period ended 31 December 2023 Y Ltd has Case III profits of €1.5m and Case I profits of €2m. Y Ltd makes a claim to deduct its deemed borrowing cost from its total profits. It uses €2m of the available €4m of deemed

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borrowing cost to reduce its Case I profits to nil. This means it has €2m of deemed borrowing cost remaining to shelter its Case III profits. If Y Ltd deducts deemed borrowing cost of €1.5m from its Case III income the amount of deemed borrowing cost which will have been applied is €1.5m x (25%/12.5%) = €3m. As Y Ltd only has €2m of deemed borrowing cost remaining, the maximum amount of deduction from Case III profits is €1m.

Case I Profits	Deemed Borrowing Cost	Net Case I Profits
€2m	(€2m)	Nil
Case III Profits	Deemed Borrowing Cost	Net Case III Profits
€1.5m	(€1m)	€0.5m

Deemed borrowing cost brought forward	€5m
Deemed borrowing cost deducted from Case I profits	(€2m)
Deemed borrowing cost deducted from Case III profits	(€2m) [1m x 25%/12.5%]
Deemed borrowing cost carried forward	€1m
Total spare capacity utilised	€4m
Total spare capacity carried forward	Nil

11.2 Where the company incurs a lesser loss

The following bullet points deal with an amount of deemed borrowing cost arising from a disallowable amount that resulted in the company **incurring a lesser loss or lesser excess, or offsetting a higher amount of loss or excess against income under section 396(1), 399(1) or 399(2)** in respect of the accounting period in which the disallowable amount arose or the accounting period prior to that accounting period.

- Subject to a company having sufficient spare capacity, the deemed borrowing cost is treated as a loss arising in the period in which the disallowable amount arose and relief for the loss is given under section 31, 396(1) or 399, as the case may be, and section 397, 400 and 401 shall apply to the amount of deemed borrowing cost in the same manner as they apply to a loss.
- Where a deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 25%, when calculating the amount of

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deemed borrowing cost treated as a loss or excess utilised in reducing the profits chargeable to tax at the 25% rate, the amount of deemed borrowing cost treated as a loss or excess is multiplied by 25% divided by 12.5%. This reflects the tax value of the deemed borrowing cost treated as a loss or excess, being 12.5%, such that where the deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 25%, more deemed borrowing cost treated as a loss or excess is utilised than where the deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 12.5%.

- Where a deemed borrowing cost treated as a loss or excess is deducted from chargeable gains chargeable to tax at the CGT rate, when calculating the amount of deemed borrowing cost treated as a loss or excess utilised in reducing the chargeable gains chargeable to tax at the CGT rate, the amount of deemed borrowing cost treated as a loss or excess is multiplied by the CGT rate divided by 12.5%. This reflects the tax value of the deemed borrowing cost treated as a loss or excess, being 12.5%, such that where the deemed borrowing cost treated as a loss or excess is deducted from chargeable gains chargeable to tax at the CGT rate, more deemed borrowing cost treated as a loss or excess is utilised than where the deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 12.5%.

11.2.1 Example: Deemed borrowing cost – losses

Z Ltd is a trading company that was carrying forward trading losses of €5m as at 31 December 2021. For the accounting period ended 31 December 2022, it had Case I profit of €3m following the deduction of interest expense of €6m, but before any relief for losses carried forward. Its EBITDA for the period was €9m therefore its allowable amount of interest was €2.7m. The disallowable amount of interest was €3.3m. Therefore, after the application of the ILR (restriction of €3.3m) and claim for losses carried forward (deduction of €5m) its taxable Case I profits were €1.3m (€3m+€3.3m-€5m). But for the application of Part 35D, Z Ltd would have taxable profits of nil and would have carried forward trading losses of €2m. Therefore, the

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deemed borrowing cost arises from a disallowable amount of €2m that would have, but for the operation of Part 35D, resulted in the company offsetting a lower amount of loss against its trading income under section 396(1) and a disallowable amount of €1.3m that would have, but for the operation of Part 35D, resulted in the company paying less tax in respect of the accounting period in which the disallowable amount arose. Therefore €2m of deemed borrowing cost is carried forward under section 835AAD(7) and €1.3m of deemed borrowing cost is carried forward under section 835AAD (3). The €2m of deemed borrowing cost carried forward under section 835AAD(7) is treated as a loss to which s396(1) applies subject to Z Ltd having spare capacity of €2m in a future period.

11.3 Where the company incurs a lesser amount of expenses of management

The following bullet points deal with an amount of deemed borrowing cost arising from a disallowable amount that resulted in the company **incurring a lesser excess expense of management under section 83**, in respect of the accounting period in which the disallowable amount arose.

- Subject to a company having sufficient spare capacity, a relevant entity's deemed borrowing cost will be treated as if it were expenses of management disbursed in the accounting period in which the disallowable amount arose, and section 83 will apply accordingly.
- Where a deemed borrowing cost treated as an expense of management is deducted from profits chargeable to corporation tax at 25%, when calculating the amount of deemed borrowing cost treated as an expense of management utilised in reducing the profits chargeable to tax at the 25% rate, the amount of deemed borrowing cost treated as an expense of management is multiplied by 25% divided by 12.5%. This reflects the tax value of the deemed borrowing cost treated as an expense of management, being 12.5%, such that where the deemed borrowing cost treated as an expense of management is deducted from profits chargeable to corporation tax at 25%, more deemed borrowing cost treated as an expense of management is

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utilised than where the deemed borrowing cost an expense of management is deducted from profits chargeable to corporation tax at 12.5%.

- Where a deemed borrowing cost treated as an expense of management is deducted from chargeable gains chargeable to tax at the CGT rate, when calculating the amount of deemed borrowing cost treated as an expense of management utilised in reducing the chargeable gains chargeable to tax at the CGT rate, the amount of deemed borrowing cost treated as an expense of management is multiplied by the CGT rate divided by 12.5%. This reflects the tax value of the deemed borrowing cost treated as an expense of management, being 12.5%, such that where the deemed borrowing cost treated as an expense of management is deducted from chargeable gains chargeable to tax at the CGT rate, more deemed borrowing cost treated as an expense of management is utilised than where the deemed borrowing cost treated as an expense of management is deducted from profits chargeable to corporation tax at 12.5%.

11.4 Further rules regarding deemed borrowing cost

The total of relief available in an accounting period in respect of:

a) a deemed borrowing cost under section 835AAD(3), (8) or (12), and
b) relief in respect of an amount of interest that was carried forward under section 291A having been restricted under the ILR (see 11.5 below),

cannot exceed the amount of total spare capacity in that accounting period. Where the total relief exceeds the total spare capacity, relief is given under subsection (8) in priority to subsection (3) or (12).

When calculating the amount of relief available for deemed borrowing cost under subsections (3), (8) and (12), the amount is reduced by any amount relieved in prior accounting periods.

Any amount of deemed borrowing cost carried forward will not form part of the relevant entity's deductible interest equivalent for that accounting period.

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11.5 Interaction with section 291A

A disallowable amount which reduced the amount of interest deductible in connection with the provision of a specified intangible asset in an accounting period cannot be deducted as a deemed borrowing cost in a future period, but rather may be available for relief under section 291A and carried forward as an amount of interest for which relief cannot be given by virtue of section 291A(6)(a).

It should be noted that in calculating the aggregate amount of capital allowances and interest deductible under section 291A, section 835AAC(6) provides that the amount is calculated using the amount of interest which remains deductible in the period after the application of the interest restriction.

11.5.1 Example: Interaction of ILR and section 291A

A company carries on a relevant trade under section 291A with the following results:

- Trading income of the relevant trade (before interest
- and capital allowances) €100m
- Capital allowances relating to the relevant trade €48m
- Interest relating to the provision of specified intangible assets €32m
- Taxable income (before the application of the ILR) €20m

The EBITDA of the company is €100m and the EBITDA limit is 30%, resulting in a disallowable amount of €2m (€32m-(€100m*30%)). The deemed borrowing cost carried forward arises from a disallowable amount which reduced the amount of interest deducted in connection with the provision of the specified intangible asset. Therefore, the deemed borrowing cost is treated as an amount of interest for which relief cannot be given under section 291A(6)(a). This means that the amount of €2m is carried forward and treated as interest for the succeeding accounting period to be added to the amount of any interest for which relief can be given under section 291A for that succeeding accounting period.

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12 Carry forward of total spare capacity – section 835AAE

A relevant entity can carry forward its total spare capacity for a period of 60 months from the end of the accounting period in which it arose. This period is referred to as the “relevant period”.

Where a relevant entity incurs a disallowable amount in an accounting period during the relevant period, a claim can be made to reduce the disallowable amount by the total spare capacity carried forward from prior accounting periods.

Where a claim is made to reduce the disallowable amount by the total spare capacity, the disallowable amount for the accounting period concerned is reduced by the amount of total spare capacity carried forward from previous accounting periods. Any amount of total spare capacity not used to reduce the disallowable amount is carried forward to subsequent accounting periods (subject to the 60-month restriction).

Relief granted on foot of a claim mentioned above must be given in respect of total spare capacity arising in earlier accounting periods in priority to relief for total spare capacity arising in later accounting periods.

Where an accounting period and a relevant period do not coincide, the amount of total spare capacity which may be relieved against a disallowable amount is reduced by multiplying it by the following fraction:

$$\frac{\text{the length of the period common to the relevant period and accounting period}}{\text{the length of the accounting period}}$$

To determine the amount of relief available for total spare capacity to be carried forward, the amount is reduced by the amount of any claims under section 835AAE (2) or under sections (3), (8) or (12) of section 835AAD (refer to section 11).

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Where an amount of interest carried forward under section 291A as a result of the operation of section 835AAD(19) is deducted in a subsequent accounting period, then the amount of total spare capacity available for any subsequent claims or deductions shall be reduced by the amount deducted.

12.1 Example: Carry forward of spare capacity

TSC Ltd is a trading company with some Case III interest income and had the following results for the years ended 31 December 2022, 2023 and 2024:

€'m	2022	2023	2024
EBITDA	100	150	30
Case III interest income	10	15	5
Trading interest expense	0	0	60

In 2022, TSC Ltd's limitation spare capacity is €30m (€100m@30%). It has interest spare capacity of €20m (€10m*25%/12.5%). Therefore, its total spare capacity for carry forward at the end of 2022 is €50m.

In 2023, TSC Ltd's limitation spare capacity is €50m (€150m@30%). It has interest spare capacity of €30m (€15m*25%/12.5%). Therefore, its total spare capacity for 2023 is €80m. TSC Ltd carries forward total spare capacity of €50m in respect of 2022 and total spare capacity of €80m in respect of 2023 to 2024.

In 2024, TSC Ltd has deductible interest equivalent of €60m arising from interest deducted against its trading profits. TSC Ltd has taxable interest equivalent of €10m (€5m*25%/12.5%) arising from its Case III interest. Therefore, TSC Ltd has exceeding borrowing costs of €50m. The allowable amount for 2024 is €9m (€30m@30%) therefore the disallowable amount for 2024 is €41m (€50m-9m). TSC Ltd may reduce the disallowable amount by making a claim to deduct the total spare capacity it has

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carried forward. It does this by using the total spare capacity arising from 2022 in priority to the amount arising in 2023. Therefore, the disallowable amount for 2024 is reduces to nil and TSC Ltd carries forward total spare capacity from 2022 of €9m (€50m-€41m) and total spare capacity from 2023 of €80m.

12.2 Interaction with section 400/401

Section 400(7A) provides that relief for deemed borrowing cost and total spare capacity carried forward by the predecessor company is available for use by a successor company where there is a transfer of a trade without a change of ownership to which the provisions of section 400 apply.

Section 401 denies relief for total spare capacity carried forward by a company where there is both a change in ownership of the company and a major change in the nature or conduct of its trade within a three-year period.

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13 Group and Equity Ratios – section 835AAG - 835AAJ

13.1 Group Ratio

In applying the interest restriction, the indebtedness of the worldwide group to which the taxpayer belongs may be taken into account when calculating the percentage of a company's EBITDA that may be treated as an allowable amount. This is in recognition that some industries are more highly leveraged than others.
The group ratio is calculated as the group exceeding borrowing costs divided by the group EBITDA expressed as a percentage. Where the group ratio exceeds 30%, the relevant entity may make an election to substitute this percentage for the EBITDA limit.

Group EBITDA is the amount included in respect of profit or loss,

- before taking into account any amount of income tax, finance income, finance costs, depreciation, amortisation, or impairments (of a capital nature), and
- excluding any amount in respect of a qualifying long-term infrastructure project,

in the ultimate consolidated financial statements of the group (either a worldwide group or SCWG) of which the relevant entity is a member for the period in which the relevant entity's accounting period ends.

The group exceeding borrowing costs are the net finance expense in the ultimate consolidated financial statements of the group (either a worldwide group or SCWG) of which the relevant entity is a member for the period in which the relevant entity's accounting period ends. It excludes any finance income or finance expenses relating to a qualifying long-term infrastructure project.

The classification of an item of income or expense as exceptional in the accounts of the taxpayer or worldwide group should be ignored.

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13.2 Equity Ratio

Where the taxpayer is part of a worldwide group, the indebtedness of the overall group may be considered for the purpose of assessing whether the ILR applies. This is in recognition that some industries are more highly leveraged than others. Where the conditions of the equity ratio are satisfied by a relevant entity, the entity may make a claim such that the ILR does not apply.

The "ratio of equity over total assets" for a relevant entity and a group (worldwide group or SCWG) is calculated as equity over total assets expressed as a percentage. For the purpose of this calculation, equity is the share capital, share premium and reserves (as recognised under the relevant accounting standards) of a relevant entity, worldwide group or SCWG, as applicable. The figures to be used are those disclosed in the financial statements of the relevant entity, worldwide group or SCWG which were prepared in accordance with international accounting standards or current Irish GAAP, or an alternative body of accounting standards.

Where the relevant entity is an interest group which is not otherwise required to prepare consolidated financial statements, the relevant entity may use non-statutory consolidated financial statements which it prepares for this purpose so long as they conform to international accounting standards, current Irish GAAP or an alternative body of accounting standards, as appropriate.

As this involves a comparison of the equity ratio of the relevant entity to the worldwide group or SCWG, the accounting standards and policies used must be equivalent. Therefore, adjustments may be required to the amounts contained in the financial statements of the relevant entity to comply with the accounting standards applied to the financial statements of the group before applying the equity ratio test.

Where an Irish subsidiary of an international group prepares its financial results under accounting standards different to those used to prepare the ultimate consolidated financial statements, typically an accounting system will be set up so as

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to be able to produce a set of accounts under local GAAP (which will go on to be audited for local purposes) and a Reporting Pack prepared under the GAAP of the ultimate parent which is provided to the parent entity. This Reporting Pack would typically be prepared prior to any group consolidation adjustments being made and, therefore, would represent a 'Parent GAAP' version of the results of the Local entity on a standalone basis. Revenue are prepared to accept the results of the Reporting Pack (as adjusted for any local or applicable group audit adjustments that arise after the Reporting Pack is produced) as the basis for a comparison under the Equity Ratio Rule. Similarly, a Reporting Pack may be used as the basis for the preparation of a local consolidation of an interest group (see section 14), subject to any audit adjustments as noted above. Whether or not a Reporting Pack is produced, a reconciliation from local statutory accounts to accounts used for the purposes of the equity ratio test must be maintained.

In order to decide if the equity ratio applies, a comparison must be made between the equity ratio of the relevant entity and the equity ratio of the worldwide group or the equity ratio of the SCWG, as the case may be.

For the equity ratio to apply, the relevant entity's equity ratio must be no lower than two percentage points below the worldwide group or single company worldwide group's equity ratio, as applicable, based on the financial statements for the period in which the relevant entity's accounting period ends. It may be the case that the equity ratio is a negative amount in which case the same principles apply, i.e. the relevant entity's equity ratio must be no lower than two percentage points below the worldwide group or single company worldwide group's equity ratio, as applicable.

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13.2.1 Example: Equity Ratio

M Ltd is a member of the LMNOP Group. The total assets and equity of the company and the group are:

	M Ltd		LMNOP Group	
Total Assets		50,000		172,000
Equity				
Share capital	10,000		50,000	
Share premium	5,000		100,000	
Reserves	(30,000)	(15,000)	(200,000)	(50,000)

The ratio of equity over total assets of M Ltd is calculated as minus 30% and the ratio of equity over total assets of the LMNOP Group is calculated as minus 29%. The equity ratio of M Ltd is less than the equity ratio of LMNOP Group, but it is not more than 2 percentage points lower than the equity ratio of LMNOP Group. Therefore, M Ltd may make a claim to apply the equity ratio exemption.

If in the last 6 months of an accounting period, a scheme or arrangement is put in place which results in an increase in the equity of the relevant entity, the effect of that scheme or arrangement is ignored for the purposes of calculating the relevant entity's ratio of equity over total assets for that accounting period. However, if it can be shown that the scheme or arrangement was put in place for bona fide commercial reasons and does not form part of any scheme or arrangement of which the main purpose, or one of the main purposes, is to ensure the application of the equity ratio then this treatment will not apply. For example, if an amount owed by an Irish company to a related party is capitalised before the end of its accounting period (resulting in a reduction in liabilities and an increase in equity of the Irish company), and the debt is reinstated after the end of its accounting period, then the transactions will be disregarded unless it can be shown that the transaction was carried out for bona fide commercial reasons and does not form part of any scheme

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or arrangement of which the main purpose, or one of the main purposes is to ensure the application of the equity ratio.

Where the equity ratio test has been met, an election can be made on the Form CT1, the effect of which is the non-application of the ILR in respect of the accounting period for which the equity ratio test is met.

13.3 Elections regarding ratios

Where a relevant entity makes an election under the group ratio or the equity ratio provisions, the election must be made on or before the specified return date for the accounting period to which it relates. The election must be made on the Form CT1. An election cannot be made under both the group ratio and the equity ratio for the same accounting period.

Where a relevant entity is an interest group, and its members include a company which is not a member of a worldwide group, an election cannot be made under the group ratio or equity ratio provisions.

13.4 Joiner and leavers of worldwide group

Group EBITDA, group exceeding borrowing costs and equity ratio are defined with reference to the ultimate consolidated financial statements of the group of which the relevant entity is a member for the period in which the relevant entity's accounting period ends. Therefore, where a relevant entity leaves a worldwide group before the end of its accounting period, the group ratio or equity ratio will not apply. Where a relevant entity joins a worldwide group prior to the end of its accounting period, the relevant amounts are calculated with reference to the ultimate consolidated financial statements of the worldwide group of which the relevant entity is a member for the period in which the relevant entity's accounting period ends.

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13.5 Special rules for SCWG

Where a company that is a SCWG (refer to section 3.7) transacts with associated enterprises, it can have an impact on the application of the group ratio and equity ratio. Therefore, it is important to identify associated enterprises of a SCWG.

13.5.1 Group Ratio

With regard to the group ratio, where the relevant entity is a SCWG, the group exceeding borrowing costs and group EBITDA are calculated based on the financial statements of the relevant entity as prepared in accordance with international accounting standards or current Irish GAAP, and adjusted by disregarding transactions with associated enterprises. In calculating group exceeding borrowing costs, finance income paid to or received from an associated enterprise would therefore be excluded.

13.5.2 Equity Ratio

When calculating the ratio of equity over total assets for a SCWG, the equity amount must be increased by an amount in respect of the debt owing to associated enterprises by the relevant entity recognised in the accounts which gives rise to deductible interest equivalent. Where any accrued and unpaid interest is added to such debt as an increase in principal, then the unpaid interest should be considered to be debt owing to associated enterprises for this purpose, otherwise an amount of unpaid interest should not be considered as debt for this purpose.

13.5.3 Association

For these purposes, the definition of associated enterprises is extended to the same meaning as it has in Part 35C Guidance on Hybrid mismatches other than in chapters 2, 3 and 8 of that Part and in the application of that part to hybrid entities (i.e. references to 50% in the association tests are ignored). This means that in addition to the tests set out for association in section 3.5 above, two enterprises are associated enterprises in respect of each other where:

a) where both enterprises

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   i) are entities, and
   ii) are part of the same consolidated group for financial accounting purposes,

b) where both enterprises
   i) are entities, and
   ii) would, if consolidated financial statements were prepared under international accounting standards, be part of the same consolidated group for financial accounting purposes, or

c) where one enterprise has significant influence in the management of the other enterprise.

Where an enterprise acts together with another enterprise with respect to voting rights, share ownership rights or similar ownership rights, the enterprises are treated as possessing, holding or being entitled to, as the case may be, the rights of the other enterprise. Further guidance with regard to "acting together" can be found at Guidance on Hybrid mismatches.

A company may be set up as bankruptcy remote, meaning that the assets of the company are ringfenced against the liabilities of that company. In such instances the shares in the company will often be held on trust by a nominee or trustee such that the company should be considered to be a SCWG. Two enterprises will not be considered to be associated solely by the fact that their shares are held on trust by the same nominee or trustee, where there is no other association, as defined, between the enterprises.

13.5.4 Partnerships

Where an Irish partnership prepares consolidated accounts all entities that are **fully included** in the consolidated group will be "associated enterprises" in respect of the Irish partnership. Alternatively, where another entity prepares consolidated accounts and the results of an Irish partnership are fully included in that group, the Irish partnership and all other entities **fully included** in the consolidated group will be "associated enterprises" in respect of each other.

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Applying a hypothetical test, **if** IFRS consolidated accounts were prepared by an entity, the Irish partnership and all other entities who would be fully consolidated in those consolidated accounts would be "associated enterprises" in respect of each other.

Where an enterprise has significant influence in the management of an Irish partnership that enterprise and the Irish partnership shall be "associated enterprises" in respect of each other.

Although an Irish partnership is regarded as having the capacity to perform legal acts it would not follow that an Irish partnership could be said to have "significant influence in the management" of another enterprise so the "associated enterprises" test would not apply in that instance.

The application of the "acting together" test is illustrated in the following example

13.5.5 Example: Partnership – Acting together

Company A and Company B enter into a partnership agreement. The companies are not otherwise associated with one another. The partnership assets include a 20% shareholding in Company C. Company A has a 5% shareholding in Company C, which it holds separately to it partnership interests.

Company A is associated with Company C as the aggregate of its 5% shareholding in Company C and its undivided share in the partnership asset consisting of the 20% shareholding in Company C means that, in total, it has 25% direct possession of the issued share capital in Company C.

Company B is not associated with Company C. Company B has an undivided share in the partnership asset consisting of the 20% shareholding in Company C. Therefore, it has not reached the ownership threshold for association.

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Companies A and B should not be considered to be 'acting together' with respect to Company A's 5% shareholding in Company C solely as a consequence of Company A and Company B being in partnership with respect to the 20% shareholding in Company C.

13.5.6 Anti-avoidance

With regard to the group ratio, section 835AAG(3) provides that where it is reasonable to consider that the main purpose or one of the main purposes of an arrangement, or part of an arrangement, is to avoid the adjustment to the group ratio which is required for transactions between a SCWG and its associates, the arrangement or the part of the arrangement is ignored as if it had not been entered into. For example, where a SCWG pays interest to an unconnected party who passes that amount of interest to an enterprise which is associated with the SCWG in a back-to-back transaction, then in applying the group ratio, the interest payment will be treated as if it had been paid directly to the associated enterprise.

With regard to the equity ratio, where it is reasonable to consider that the purpose or one of the main purposes of an arrangement, or part of an arrangement, is the avoidance of the adjustment to equity for a SCWG, the arrangement is ignored and the increase in equity mentioned above is applied. For example, where a SCWG owes an amount to an unconnected party on which deductible interest equivalent arises, and the unconnected party lends that amount to an enterprise associated with the SCWG in a back-to-back transaction, then the amount owed to the unconnected party will be treated as owed directly to the associated enterprise for the purposes of calculating the equity ratio of the SCWG.

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14 Application of provisions to interest groups – section 835AAK and 835AAL

Section 835AAL will apply where a company is a member of an interest group. This section details how the provisions of earlier sections of Part 35D apply to an interest group.

Where the interest limitation in section 835AAC, as outlined in section 10, applies to an interest group, references to a disallowable amount of a relevant entity are to be read as references to a disallowable amount of a member of an interest group, calculated or allocated under subsections (6), (7) or (8) of section 835AAL (see section 14.2 and section 14.3 below).

With the exception of the calculation of the equity ratio of an interest group (see section 14.5 below), an amount to be calculated in respect of an interest group for the purposes of Part 35D will comprise the results of all members of the interest group. Below is an example as to how an interest group may calculate the amounts that comprise the results of the interest group members. The methodology used should be applied on a consistent basis.

14.1.1 Example: Interest group

A Ltd and B Ltd are in an interest group. A Ltd makes sales to B Ltd during the accounting period of €25m. The amounts to be calculated in respect of an interest group that will comprise the results of all members of the interest group may be calculated under either of the following methods:

	A Ltd €m	B Ltd €m	Interest group €m
Revenue	100	200	300
Interest Expense	(40)	(70)	(110)
Other Expense	(20)	(60)	(80)
Profit	40	70	110
EBITDA	80	140	220
30% of EBITDA (allowable amount)	24	42	66

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Disallowable amount	16	28	44

	A Ltd	B Ltd	Consol adj.	Interest Group
	€m	€m		€m
Revenue	100	200	(25)	275
Interest Expense	(40)	(70)		(110)
Other Expense	(20)	(60)	25	(55)
Profit	40	70		110
EBITDA	80	140		220
30% of EBITDA (allowable amount)	24	42		66
Disallowable amount	16	28		44

14.1.2 Example: Carry forward of deemed borrowing cost under the interest group provisions

Hi Ltd and Fi Ltd are in an interest group ("the HIFI group"). In the accounting period ended 31 December 2022, the HIFI group had a disallowable amount of €5m. The disallowable amount was allocated €2m to Hi Ltd and €3m to Fi Ltd. As a result of this disallowable amount, Hi Ltd paid €250k more tax and Fi Ltd paid €375k more tax than they would have paid were it not for the application of the ILR. For the accounting period ended 31 December 2023, the HiFi group has total spare capacity of €4m. The total spare capacity was allocated €2m to Hi Ltd and €2m to Fi Ltd. This means that Hi Ltd may take a deduction of its full deemed borrowing cost carried forward of €2m. Fi Ltd may take a deduction of €2m of its deemed borrowing cost carried forward of €3m and must carry forward the remaining €1m of deemed borrowing cost as it has insufficient spare capacity.

For the accounting period ended 31 December 2023 Hi Ltd has Case III profits of €1.5m and Case I profits of €2m. Hi Ltd makes a claim to deduct its deemed borrowing cost from its total profits. It uses the €2m of deemed borrowing cost available to it to reduce its Case I profits to nil. It then has no deemed borrowing cost or spare capacity to carry forward.

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14.2 Accounting period of an interest group

The accounting period of an interest group is the period that is common to most members of the interest group, and if no such period exists, it is the accounting period of the reporting company (refer to section 15).

Where the accounting period of a member of an interest group does not coincide with the accounting period of the interest group, then the income and expenses of the group member for the purposes of Part 35D are those that arose during the accounting period of the interest group, apportioned on a just and reasonable basis. In addition, all balance sheet amounts of the group member for the purposes of Part 35D are those amounts which would be reflected in the balance sheet of the member of the interest group on the final day of the accounting period of the interest group.

14.3 The disallowable amount of the interest group

In applying section 835AAD (carry forward of disallowable amount) to an interest group, the references to relevant entity are read as references to a member of an interest group.

The disallowable amount of a member of an interest group for an accounting period is calculated as a fraction of the disallowable amount of the interest group, by reference to the deductible interest equivalent of the member and of the interest group. However, a reporting company and each member of the interest group concerned may jointly notify the Revenue Commissioners of an allocation of disallowable amount (other than the allocation described) by reporting the alternative allocation in their Form CT1. This allocation to a member of the interest group cannot exceed the deductible interest equivalent of that group member for the accounting period.

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14.4 The total spare capacity of the interest group

In applying section 835AAE (carry forward of total spare capacity) to an interest group, the references to relevant entity are read as references to a member of an interest group.

The total spare capacity of a member of an interest group for an accounting period is calculated as a fraction of the total spare capacity of the interest group by reference to the taxable interest equivalent of the member and of the interest group.

However, a reporting company and each member of the interest group concerned may jointly notify the Revenue Commissioners of an allocation of total spare capacity (other than the allocation described) by reporting the alternative allocation in their Form CT1. Where the taxable interest equivalent for a group is nil, then the allocation of total spare capacity must be notified to the Revenue Commissioners by the reporting company and each member of the interest group concerned, as otherwise the apportionment would be nil.

An amount of total spare capacity that is being carried forward by a member of an interest group may be reallocated to other members of an interest group for an accounting period where the reporting company and the members of the interest group concerned notify the Revenue Commissioners in the Form CT1.

Refer to Appendix 1 below for a sample calculation of the interest restriction as it applies to an interest group.

14.5 Equity ratio for the interest group

When calculating the equity ratio for an interest group, it is calculated on the basis of a consolidation of the results of the members of the interest group as if each member of the interest group had a common ultimate parent resident in Ireland. The consolidation is prepared using the same body of accounting standards and the same accounting policies as applies to the ultimate consolidated financial statements

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of the worldwide group of which the interest group is a member. For this purpose, where members of an interest group hold investments in companies which are not members of an interest group, those investments are to be accounted for at cost, measured at the lower of their carrying amount and fair value less costs to sell.

The following example and diagrams illustrate this point.

14.5.1 Example: Equity Ratio Interest Group Consolidation

Irish Cos 1-5 form an interest group. For the purposes of calculating the equity ratio for the interest group they have a fictional Irish resident common ultimate parent. The balance sheets of Irish Cos 1-5 are consolidated at the level of the fictional Irish resident common ultimate parent. The investments in the other subsidiaries which are not members of the interest group are accounted for at cost (lower of carrying amount and fair value less costs to sell) at the level of the fictional Irish resident common ultimate parent. As one of these subsidiaries, Hold Co 2, has an investment in a company that is a member of the interest group (Irish Co 5), the portion of the cost of investment in Hold Co 2 that relates to Irish Co 5 recognised by the fictional Irish resident common ultimate parent is eliminated (as Irish Co 5 has been consolidated).

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Group Structure

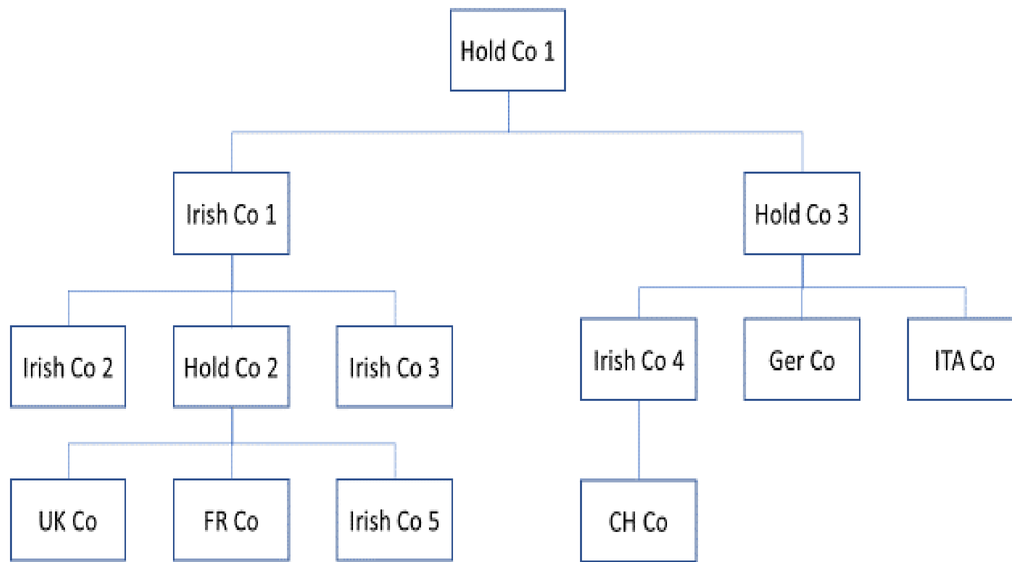
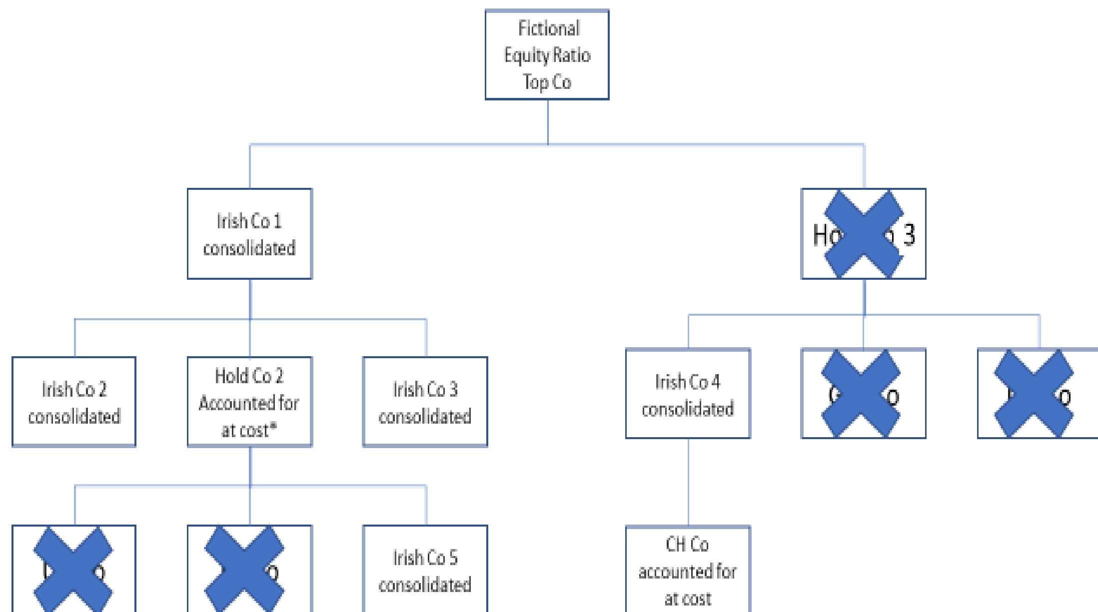


Figure 2: Example Group Structure

Interest group consolidation



*The portion of the cost of investment in Hold Co 2 that relates to Irish Co 5 should be eliminated.

Figure 3: Group structure the purposes of calculating the equity ratio for the interest group

14.6 Payment for relief

The term payment for relief means a payment made by one member of an interest group to another member of an interest group, on foot of an agreement between them for the allocation of a disallowable amount or total spare capacity. The payment for relief must not exceed the tax value of the relief being paid for[10].

Where a payment is made for the allocation of a disallowable amount or total spare capacity from one member of an interest group to another, that payment will not be taken into account in calculating the profits or losses of either company. Similarly, the payment will not be regarded as a distribution or a charge on income for the purposes of the Corporation Tax Acts where the value of the payment does not exceed the tax value of the amount allocated.

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[10] It should be noted that 'payment for group relief' under section 411(5) means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by means of group relief, **being a payment not exceeding that amount.** This differs to 'payment for relief' as defined in section 835AY which cannot exceed the reduction in tax payable in the current or successive accounting periods as a result of the allocation to the member of the interest group making the payment.

15 Reporting requirements – section 835AAF and 835AAM

Section 835AAF outlines the reporting requirements for companies and section 835AAM outlines the reporting requirements for groups. The provisions of section 835AAF also apply to members of a SCWG.

The reporting of the required information is on the Form CT1 for the accounting period concerned.

An interest group must elect a member of the group to be designated as the reporting company. This reporting company must be a chargeable person within the meaning of Part 41A.

Where a company is a member of an interest group, the company will provide abridged information as the reporting company will report the EBITDA, allowable amount, and disallowable amount of the interest group for the accounting period and information in relation to the group ratio and equity ratio.

The reporting company must report all group members in the return made to Revenue in its Form CT1. This provision operates exclusive of the group member receiving any allocations of a disallowable amount or spare capacity.

Where a company is a standalone entity, it will not be required to report information in relation to the ILR other than to indicate its status as a standalone entity.

Where the de minimis exemption or equity ratio exemption applies, reporting of the components of the ILR calculation is optional (e.g. a company availing of these exemptions may want to report attributes that it wishes to carry forward).

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16 Preliminary tax – section 959AR / section 959AS

It is anticipated that, due to the complexity of the ILR calculation, initially, some companies may not be in a position to accurately forecast their expected corporation tax liability for an accounting period by the time their preliminary corporation tax payments falls[11]. To alleviate this problem, a provision has been introduced to allow a 'top-up' payment to be made up to 6 months after the end of the accounting period where there is an underpayment of preliminary tax caused by the ILR. Where this top-up payment brings the total preliminary tax paid for an accounting period up to at least 90% of the final liability for the period, then no interest will arise on underpayment. This temporary measure is designed to allow sufficient time for companies and advisors to familiarise themselves with the operation of the ILR. It will cease to be in effect for accounting periods ending after 31 December 2027.

Revenue's position is that the ability for top-up tax payments to be made to preliminary tax in respect of gains on disposals of assets, or in respect of profits or gains on financial assets or liabilities in accordance with section 959AR or 959AS is unchanged.

16.1.1 Example: Preliminary Tax – Small company

Company A has a tax liability of €190k for the accounting period ended 31 December 2021 and a tax liability of €180k for the accounting period ended 31 December 2022. The tax liability for Company A for the period ending 31 December 2022 would have been €150k absent the application of the ILR.

Company A paid preliminary tax of €155k on 21 November 2022. As this is less than 100% of the corporation tax liability for 2021 and less than 90% of the corporation

[11] TDM 41A-07-02 outlines the requirement of companies to pay preliminary tax, including the due dates for such payments

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tax liability for 2022 (90% of €180k = €162k), Company A has not met its preliminary tax obligations in respect of the period ending 31 December 2022.

However, Company A can make a top up payment of €7k (€162k-€155k) on or before 23 June 2023 in order to meet its preliminary tax obligations.

16.1.2 Example: Preliminary Tax – Large company

Company B has a tax liability of €500k for the accounting period ended 31 December 2021 and a tax liability of €700k for the accounting period ended 31 December 2022.

The tax liability for Company B for the period ending 31 December 2022 would have been €400k if no amount were included in the company's profits in respect of chargeable gains on the disposal of an asset in December 2022 and absent the application of the ILR. The tax liability for Company B for the period ending 31 December 2022 would have been €500k if no amount were included in the company's profits absent the application of the ILR.

Company B paid preliminary tax of €250k on 21 June 2022. Company B paid a second instalment of preliminary tax of €110k on 21 November 2022. As the total preliminary tax paid (€360k, being 90% of €400k) is less than 90% of the corporation tax liability for 2022 (90% of €700k = €630k), Company B has not met its preliminary tax obligations in respect of the period ending 31 December 2022.

However, Company B can make a top up payment of €90k ((€500,000 x 90%)-€360,000) on or before 31 January 2023 in order to meet its preliminary tax obligations with respect to the amount of preliminary tax owed absent the application of the ILR. Company B can make a further top up payment of €180,000 on or before 23 June 2023 in order to meet its preliminary tax obligations for the period ending 31 December 2022 ((€700,000 x 90%)-€450,000, being €360,000 plus €90,000).

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Appendix 1: Sample ILR calculation

Trade Co 1, Trade Co 2, Trade Co 3, Property Co and Hold Co are in an interest group for the purposes of the ILR.

- Trade Co 1 has a trading loss,
- Trade Co 2 has a trading profit,
- Trade Co 3 has a trading profit and a rental profit,
- Property Co has a rental profit, and
- Hold Co has excess non-trade charges over passive interest income.

Trade Co 1, Trade Co 2 and Trade Co 3 all have interest expense deductible against their trading income. Trade Co 3 and Property Co have interest expense deductible against their rental profits.

But for the application of Part 35D, Trade Co 1 would surrender its trading loss to Trade Co 2 and Trade Co 3 against their trading profits and Hold Co would surrender its excess non-trade charges to Trade Co 3 to shelter its rental profits.

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FINANCIAL STATEMENTS	**Trade Co 1**	**Trade Co 2**	**Property Co**	**Trade Co 3**	**Holding Company**	
Operating profit/loss	5,000,000	10,000,000	0	10,000,000	0	
Interest Income	0	0	0	0	6,000,000	
Rental income	0	0	10,000,000	10,000,000	0	
Trade interest payable	(10,000,000)	(4,000,000)	0	(4,000,000)	0	
Interest payable – non-trade charge (s247)	0	0	0	0	(10,000,000)	
Rental interest	0	0	(4,000,000)	(6,000,000)	0	
ACCOUNTING PROFIT/(LOSS)	(5,000,000)	6,000,000	6,000,000	10,000,000	(4,000,000)	

TAX COMPUTATION pre ILR	**Trader Co 1**	**Trader Co 2**	**Property Co**	**Trader Co 3**	**Holding Company**	
Profit/(Loss) per FS	(5,000,000)	6,000,000	6,000,000	10,000,000	(4,000,000)	
Deduct Interest income	0	0	0	0	(6,000,000)	
Deduct Rental income	0	0	(10,000,000)	(10,000,000)	0	
Add back Interest – non-trade charge	0	0	0	0	10,000,000	
Add back Rental interest	0	0	4,000,000	6,000,000	0	
Losses (surrendered)/claimed as group relief*	5,000,000	(2,000,000)	0	(3,000,000)	0	
CASE I TAXABLE PROFIT/(LOSSES)	**0**	**4,000,000**	**0**	**3,000,000**	**0**	
* the group has choice of apportionment						
Rental income	0	0	10,000,000	10,000,000	0	
Rental interest	0	0	(4,000,000)	(6,000,000)	0	
Case V Taxable Profits	0	0	6,000,000	4,000,000	0	
Case III Taxable profits	0	0	0	0	6,000,000	
Interest – non-trade charge	0	0	0	0	(10,000,000)	
Non-trade charge interest (surrendered)/claimed as group relief	0	0	0	(4,000,000)	4,000,000	

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NON-CASE I TAXABLE PROFITS	**0**	**0**	**6,000,000**	**0**	**0**	
Taxed @ 12.5%	0	500,000	0	375,000	0	
Taxed @ 25%	0	0	1,500,000	0	0	
	0	**500,000**	**1,500,000**	**375,000**	**0**	**2,375,000**

CALCULATION OF RELEVANT PROFITS/(LOSS) - S.835AZ	**Trade Co 1**	**Trade Co 2**	**Property Co**	**Trade Co 3**	**Holding Company**	
Taxable profits - Case I	0	4,000,000	0	3,000,000	0	
S835AZ(4)(c) - Adjust for amounts surrendered/claimed as group relief (other than s420(6))	(5,000,000)	2,000,000		3,000,000		
Taxable profits - Case III	0	0	0	0	6,000,000	
Taxable profits - Case V	0	0	6,000,000	4,000,000	0	
Non-trade charge interest claimed/claimed as group relief				(4,000,000)	(6,000,000)	
Gross up per S.835AZ (2)						
S.835AZ (2) - Case III income	0	0	0	0	6,000,000	
S.835AZ (2) - Case V income	0	0	6,000,000	4,000,000	0	
Non-trade charge interest (surrendered)/claimed as group relief	0	0	0	(4,000,000)	(6,000,000)	
RELEVANT PROFIT/(LOSS)	**(5,000,000)**	**6,000,000**	**12,000,000**	**6,000,000**	**0**	

NET INTEREST EQUIVALENT (S.835AAB (3))	**Trade Co 1**	**Trade Co 2**	**Property Co**	**Trade Co 3**	**Holding Company**	**Total**
Deductible interest equivalent - 12.5%	(10,000,000)	(4,000,000)	0	(4,000,000)	0	(18,000,000)
Deductible interest equivalent - 25%			*(4,000,000)*	*(10,000,000)*	*(6,000,000)*	*(20,000,000)*
Gross up per S.835AZ (2)						

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Deductible interest equivalent - 25%	0	0	(4,000,000)	(10,000,000)	(6,000,000)	(20,000,000)
Total deductible interest equivalent	(10,000,000)	(4,000,000)	(8,000,000)	(24,000,000)	(12,000,000)	(58,000,000)
Less taxable interest equivalent - 25% (Grossed up per S.835AZ(2)	0	0	0	0	12,000,000	12,000,000
Exceeding borrowing costs (S.835AAB (4))	**(10,000,000)**	**(4,000,000)**	**(8,000,000)**	**(24,000,000)**	**0**	**(46,000,000)**

EBITDA (S.835AAB (5))	**Trade Co 1**	**Trade Co 2**	**Property Co**	**Trade Co 3**	**Holding Company**	**Total**
Relevant profits	0	6,000,000	12,000,000	6,000,000	0	
Relevant (Loss)	(5,000,000)	0	0	0	0	
Net Interest Equivalent	10,000,000	4,000,000	8,000,000	24,000,000	0	
EBITDA	**5,000,000**	**10,000,000**	**20,000,000**	**30,000,000**	**0**	**65,000,000**

DISALLOWABLE AMOUNT	**TraderCo 1**	**TraderCo 2**	**PropertyCo**	**TraderCo 3**	**Holding Company**	**Total**
Exceeding Borrowing costs (See above)	10,000,000	4,000,000	8,000,000	24,000,000	0	46,000,000
EBITDA (See above)	5,000,000	10,000,000	20,000,000	30,000,000	0	65,000,000
Allowable amount (EBITDA * 30%)						19,500,000
Disallowable amount - Exceeding borrowing costs less Allowable Amount						26,500,000
Allocation per formula in 835AAL(6)	**4,568,966**	**1,827,586**	**3,655,172**	**10,965,517**	**5,482,759**	**26,500,000**

REVISED COMPUTATION	**Trade Co 1**	**Trade Co 2**	**Property Co**	**Trade Co 3**	**Holding Company**	**Total**
Profit/(Loss) per FS	(5,000,000)	6,000,000	6,000,000	10,000,000	(4,000,000)	
Deduct Interest income	0	0	0	0	(6,000,000)	
Deduct Rental income	0	0	(10,000,000)	(10,000,000)	0	
Add back Interest – non-trade charge	0	0	0	0	10,000,000	
Add back Rental interest	0	0	4,000,000	6,000,000	0	

Adjustment per S835AAC(3)	4,568,966	1,827,586		4,000,000		
Losses (surrendered)/claimed as group relief	431,034	(431,034)	0		0	
CASE I TAXABLE PROFITS/(LOSSES)	**0**	**7,396,552**	**0**	**10,000,000**	**0**	
Case V income			10,000,000	10,000,000		
Rental Interest			(4,000,000)	(6,000,000)		
Less non-trade charge interest claimed				(4,000,000)		
Adjustment per S835AAC(4) (grossed down)			1,827,586	3,482,759		
Case V income/(loss)			7,827,586	3,482,759	-	
Case III income				-	6,000,000	
Non-trade charge Interest				-	(6,000,000)	
Adjustment per S835AAC(4) (grossed down)				-	2,741,379	
Taxable Case III income				-	2,741,379	
Tax at 12.5%	0	924,569	0	1,250,000	0	
Tax at 25%	0	0	1,956,897	870,690	685,345	
Tax after ILR	**0**	**924,569**	**1,956,897**	**2,120,690**	**685,345**	**5,687,500**
Carry forward deemed borrowing cost (S835AAD(2))	4,568,966	1,827,586	3,655,172	10,965,517	5,482,759	
Check:						
Disallowable amount of €26.5m x 12.5% = €3,312,500						
Increase in total tax liability after ILR = €5,687,500 - €2,375,000 = €3,312,500						

The reporting company of the group and the other group members concerned could notify Revenue of a reallocation of disallowable amount under section 835AAL (7) as between group members if, for example, Hold Co does not have the funds to pay the tax liability due.

more recent version of this manual is available.

Appendix 2: Schedule of Material Updates

August 2022	Created.
February 2023	Updated in sections 4.1, 4.4, 5, 9, 11.4 and 12 for Finance Act 2022 changes.
July 2023	Example 3.4.1 updated to include where a company leaves one interest group and joins another. Line spacing changed from single to 1.5 line spacing to assist readability. This has increased the page count from 69 to 85.

A more recent version of this manual is available.