# PUBLIC CONSULTATION
## HYBRIDS AND INTEREST LIMITATION

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# INTRODUCTION

## OVERVIEW

At BDO we focus on entrepreneurial and growing businesses in Ireland. As such, our client base consists of Small and Medium Enterprises (“SMEs”), many of whom are involved in international operations, such is the nature of business today, as well as large multi-national operations.

We have prepared our response to this consultation taking into account the potential impact on our clients. It is important that any new changes and provisions introduced strike the right balance between targeted anti-tax avoidance without creating unnecessary and burdensome administration for taxpayers.

Ireland has demonstrated its commitment to adopting best practice in international tax policy in recent years. This includes the implementation of Country-by-Country Reporting, incorporation of the modified nexus rule in our Knowledge Development Box regime, and the introduction of Controlled Foreign Company rules in Finance Act 2018. While we must continue this commitment, we should be mindful not to go beyond what is required under BEPS and EU ATAD. The public consultation document on the Coffey Report states “*Ireland will continue to take the actions needed to meet the highest international standard, while offering a competitive regime that builds our economy and provide jobs for our people*.” It is important to Irish businesses that the Government remains true to that statement.

The deadline for implementation of the EU ATAD compliant Exit Tax regime is not until 1 January 2020, however, Ireland adopted same with effect from 10 October 2018, over a year earlier than required. The early adoption of these rules creates uncertainty among businesses located in Ireland and those considering investing here. For the remaining measures, Ireland must adhere to the timeframes set out in the Directive and refrain from adopting measures earlier than required.

## SUMMARY OF RECOMMENDATIONS

In summary, our recommendations are:

- The drafting of the legislation to implement both the anti-hybrid and interest limitation rules must be clear and unambiguous.
- Given the complexity involved, draft legislation to implement changes should be introduced as early as possible and subject to consultation and discussion with industry and practitioners to ensure that legislation does not have unintended consequences. Draft legislation should be released outside of the current budget process as October – December is too restrictive a timeframe for such extensive legislative changes.
- The anti-hybrid and interest limitation provisions should be adopted in such a way as to give the greatest level of flexibility permitted under the Directive to taxpayers.
- In the interest of maintaining Ireland’s competitiveness internationally, Ireland should opt for all exemptions permitted under the Directive.
- At the commencement of the ATAD discussions, the Minister noted that it is expected that the interest limitation rules will apply from January 2024, the implementation date included in the Directive. For credibility and certainty, it is necessary that the implementation date be January 2024.
- We consider that the introduction of interest limitation rules gives Ireland an opportunity to overhaul the existing rules with regard to the qualification of interest for tax deductibility and remove any existing anti-avoidance provisions which, combined with an ATAD-compliant interest limitation rule, would be duplicitous.

Our response to the consultation has focused on matters of greatest relevance to our current client base. Therefore, we have chosen not to provide responses to all questions at this time. However, we may like to take the opportunity to discuss same with you at a later time.

We envisage that further consultation will be required in advance of the implementation of the legislation for the anti-hybrid and interest limitation rules. We would welcome an opportunity to engage with the Department further in this regard.

# ANTI-HYBRID RULES

## QUESTION 1

*What entities should be within scope of Ireland's anti-hybrid regime?*

**BDO Response:**

The Directive requires that taxpayers in scope are those which are subject to corporate tax in a Member State. Therefore, in our view, Ireland should align the scope with existing rules for entities within the charge to Irish Corporation Tax. Aligning the anti-hybrid rules with existing rules should provide certainty to taxpayers.

## QUESTIONS 2 / 3 / 4

*What foreign taxes should be considered as equivalent to Irish taxes for the purposes of establishing whether or not a mismatch outcome arises? For example, how should municipal taxes, local taxes, taxes on profits under CFC regimes, etc. be treated?*

*Taking into account of the foreign taxes to be included, what outcomes should be included within the concept of "inclusion"? What timings should apply to that test?*

*There are a number of ways that timing mismatches can be dealt with on the implementation of ATAD2. Different methods may be more appropriate for different hybrid mismatches. What issues should be considered when deciding how to treat timing mismatches?*

**BDO Response:**

It is important that the meaning of "inclusion" and decisions regarding whether income has been included or not is implemented into Irish tax law in a manner which provides certainty to taxpayers, and which is practical.

There are already existing provisions in Irish tax law which deal with the concept of "subject to tax". Furthermore, existing Double Tax Agreements ("DTAs") entered into by Ireland provide comprehensive definitions of the meaning of foreign taxes. In adopting new tax legislation it is always preferable, insofar as possible, that existing legislative terms, definitions and provisions are utilised, which taxpayers, their agents and the courts are already familiar with. This provides certainty to taxpayers on the interpretation of new tax law and eases the overall burden of additional tax compliance.

Detailed guidance should be provided as to the level of evidence of inclusion that must be maintained by taxpayers. In practice, it may not be possible in all circumstances to obtain physical evidence of inclusion (for example a copy of the foreign tax filing). Where a taxpayer obtains a written undertaking from the payee that the payment has been included within the required timeframe, in our view, that should be considered sufficient evidence to support the deductibility of the payment by the payer.

The timing for inclusion also needs to be managed in a practical manner. The Directive suggests "a reasonable period of time" being the inclusion of the income within 12 months of the payer's year end. The inclusion will be driven off the payee's year end, rather than the payer's. Therefore, in our view, it is more appropriate to apply the 12 month test to the payee's year end (i.e. included within 12 months of the payee's year end in which the payment is made).

We also need to be mindful of the fact that taxable trading profits are computed in accordance with accounting standards which typically follow an accruals basis. It is conceivable that there will be many instances where tax inclusion is computed by reference to the date of receipt of the payment (rather than the date the income is earned). This may lead to non-inclusion within the prescribed "reasonable period of time". In such instances where deduction is denied but the income is included in the period outside of this timeframe, Irish tax legislation must be prescriptive to allow for the deduction when the payment is included (either in the period in which the income is included or by way of amendment to the prior year return).

Where deduction is allowed via amendment of a prior year return, consideration should be given to allowing the 4-year statutory time limit to apply by reference to the accounting year end in which the income is included, rather than the year end in which deduction is being sought.

## QUESTIONS 5 / 6

*As set out in Ireland's Corporation Tax Roadmap, a public consultation on moving to a territorial regime is to be held in early 2019. If Ireland were to move to a territorial regime what are the relevant considerations to implementing a disregarded PE rule?*

*Where the profits of an otherwise disregarded PE are subject to tax, e.g. under a switchover rule or a CFC charge, is that sufficient for them to then be treated as a PE, rather than a disregarded PE? What are the relevant considerations to deciding whether or not Ireland should implement the defensive rules on disregarded PEs?*

**BDO Response:**

We believe that these matters should be dealt with as part of the public consultation on moving to a territorial regime.

## QUESTION 7

*What are the relevant considerations to deciding whether or not Ireland should implement the defensive rules in the context of these hybrid mismatches?*

**BDO Response:**

In order to maintain competitiveness we believe that Ireland should not implement the defensive rules.

## QUESTION 8

*How should these amounts of income be taxed? A number of options exist, such as including them as a Case IV amount chargeable to corporation tax, charging them to income tax, or having different treatment for different anti-hybrid rules.*

**BDO Response:**

We believe that the tax treatment should follow the circumstances in which the transaction arose. For example, a payment made in the ordinary course of a trading activities which is denied deductibility under the anti-hybrid rules should result in an increase in the taxable measure of accounting profits and not result in a separate corporate or income tax charge.

## QUESTION 9

*What factors should be considered in relation to the implementation of the rules to prevent imported mismatches, specifically in relation to their application where the Irish taxpayer is transacting with a person in an EU country which has implemented ATAD2?*

**BDO Response:**

Our strong recommendation is that Irish taxpayers should not be required to analyse for imported mismatches when transacting with a party resident in a country with effective anti-hybrid rules. This should include all EU Member States as all are bound by the same rules under ATAD 2. For non-EU countries that have implemented BEPS compliant rules Revenue should consider publishing a list of countries that shall be deemed to have equally effective anti-hybrid rules for this purpose.

This approach provides certainty for Irish taxpayers and reduces the administrative burden involved in tracing transactions to which they are not a party.

## QUESTION 10

*What factors should be considered in relation to the concept of dual inclusion income being incorporated into the application of the financial instrument anti-hybrid rules to avoid those rules resulting in double taxation of the same income?*

**BDO Response:**

In order to avoid potential double taxation our strong recommendation is that the concept of dual inclusion income is incorporated into the application of the financial instrument anti-hybrid rules. This is consistent with the overall objective of the directive to neutralise hybrid mismatches.

## QUESTION 11

*While there is symmetry in allowing the deferral of an adjustment, the practicalities of tracking deferred adjustments must be considered. How could such timing differences be dealt with, from a practical perspective, in the implementation of the anti-hybrid rules? This question is linked to the question on timing issues in "subject to tax" above.*

**BDO Response:**

Please refer to our response to Questions 2 / 3 / 4 above.

## QUESTION 12

*What factors should Ireland consider when determining, as permitted, whether or not to apply the deduction without inclusion rules to such trades by financial traders?*

**BDO Response:**

In order to maintain competitiveness internationally we believe that Ireland should incorporate a financial trader exemption into Irish tax law.

## QUESTION 13

*What factors should be considered when implementing the concept of consolidated accounting group in hybrid mismatch measures?*

*Should a version of section 432 Taxes Consolidation Act 1997 ("TCA") be used to define associated enterprises? Or, rather than referring to section 432 or relevant accounting standards, should the concepts of a group under accounting principles be imported into domestic tax legislation using, for example, section 7 Companies Act 2014 as a template?*

**BDO Response:**

We believe that section 11 TCA 1997 is the most appropriate definition already contained in domestic tax legislation to be used for determining "control" for the purposes of the anti-hybrid rules.

The definition in section 432 TCA 1997 is very broad and captures as "participators" persons who cannot direct how the affairs of a company can be carried on. Section 11 links control with those who have the ability to direct that the affairs of the company are conducted in accordance with their wishes. We believe that this is a more appropriate definition of control for the purpose of these rules and is in line with ATAD requirements.

## QUESTION 14

*Is the current case law clear enough to give taxpayers certainty on the treatment of an entity, when it comes to applying the anti-hybrid rules?*

**BDO Response:**

We strongly believe that the current approach of following case law in determining the treatment of an entity does not provide sufficient certainty and clarity to taxpayers.

In order to provide certainty, consideration should be given to following the tax treatment of the entity in the foreign jurisdiction. Alternatively (or additionally), it may be appropriate to publish a list of common foreign entity types and Ireland's position regarding their tax treatment, as is currently done in other jurisdictions (e.g. UK).

## QUESTION 15

*Should a single concept be used to encompass both investor and payee when determining both if a payment has been deducted and included in income?*

**BDO Response:**

For simplicity, we believe that a single concept should be used to encompass both investor and payee when determining both if a payment has been deducted and included in income.

## QUESTION 17

*What rules could be described as Ireland's rules for taxing debt, equity or derivative returns? Is it sufficient to describe them as debt, equity or derivative instruments? There are a number of definitions of "financial assets" in the TCA: should they be used as a basis for this definition? Alternatively, could financial instruments be defined in line with IAS 39?*

**BDO Response:**

We believe that it is sufficient to describe them as "debt, equity or derivative instruments". Any areas of uncertainty can be addressed via Revenue guidance.

## QUESTION 20: WHAT IS TESTED FOR HYBRIDITY?

*Should regard be had to the transaction, to the actual circumstances of the taxpayer or to the laws of the foreign jurisdiction? Should this vary depending on the type of hybridity being neutralised?*

**BDO Response:**

We believe that regard should be had to the laws of the foreign jurisdiction. This is consistent with the approach taken in other areas of Irish tax law and should provide the most clarity and ease of administration for taxpayers.

We believe that it is not appropriate to look at the circumstances of the taxpayer itself. Payments made to a taxpayer which is exempt from tax due to their own circumstances (for example, pension funds, investment funds, charities, etc.) should not be treated as giving rise to hybridity. This is consistent with the Directive.

## QUESTION 21: EXISTING DOMESTIC PROVISIONS

*Bearing in mind both the interest limitation and anti-hybrid requirements of ATAD, what amendments, if any, should be made to these domestic provisions? (see also, Question 44)*

**BDO Response:**

Please refer to our response to question 44.

## QUESTION 22: EXISTING DOMESTIC ANTI-HYBRID PROVISIONS

*Should the domestic anti-hybrid rules be maintained in their current form or should they be amended and replaced with a single anti-hybrid rule which applies to both cross border and domestic transactions?*

**BDO Response:**

We believe that existing provisions which apply to domestic hybrid mismatches should be maintained and that the anti-hybrid rules should apply to cross-border transactions only.

## QUESTION 23: TREATMENT OF DISALLOWED PAYMENTS

*Should adjustments under the anti-hybrid rules cause payments to be treated as distributions or simply as non-deductible expenses?*

**BDO Response:**

We recommend that adjustments under the anti-hybrid rules should cause payments to simply be treated as non-deductible expenses, and should retain their character. Re-characterising payments as distributions leads to complexity and adds administrative burden for taxpayers.

## QUESTION 24: ORDER OF APPLICATION

*In what order should the rules in ATAD and ATAD2 apply? Are there any other order of applications issues which should be considered in the implementation of ATAD and ATAD2?*

**BDO Response:**

We recommend that anti-hybrid rules are applied first in priority to interest limitation rules. In addition, transfer pricing and CFC rules should apply after anti-hybrid rules and before interest limitation rules.

We strongly recommend that clarity in the order of the various provisions is provided in the legislation.

## QUESTION 29: THE REVERSE HYBRID RULE

*Any and domestic law changes necessary to Part 8A TCA, or any special considerations necessary to the implementation of the anti-hybrid and interest limitation rules to ensure that those measures apply to Part 8A TCA equivalent transactions?*

**BDO Response:**

We do not see any policy reason why the same “subject to tax” definition should not apply for reverse hybrids as for all other hybrid mismatches.

# INTEREST LIMITATION RULES

## QUESTION 31: APPLICATION TO GROUPS

*What are the relevant considerations in determining whether Ireland should implement Article 4 in such a manner as would allow application of the interest limitation rules on a local group basis?*

**BDO Response:**

In our view, the option to apply interest limitation rules on a group basis should be adopted into Irish law. There are many commercial reasons why group activities may be carried out in separate legal entities within a group. It is important that taxpayers are not be penalised for structuring their activities in separate entities to meet their commercial objectives.

Furthermore, we believe that Irish taxpayers should have the option of applying the rules on either a single entity or group basis is order to provide the greatest level of flexibility in determining taxable profits.

## QUESTION 32: APPLICATION TO GROUPS

*As Ireland does not have tax consolidation for groups, what are the practical issues that might arise in applying the interest limitation rule on a group basis? For example, how should the allowable quantum of interest deductions, after the application of the interest restriction, be allocated to the group members? How should companies joining and leaving groups during an accounting period be dealt with? What happens if members of the local group do not have corresponding tax periods? What filing obligations should each member of the local group have?*

**BDO Response:**

Groups should have the greatest level of flexibility in allocating deductible interest. Where interest limitation is computed on a group basis, the group EBITDA should be calculated and the quantum of deductible interest computed thereon. The group should then have full discretion in determining the allocation of deductible interest among group members. Similar to the operation of R&D tax credits, groups should be entitled to elect to allocate deductions as they see fit, with a pro-rata allocation being the fall-back position in the absence of a specific election.

There is no provision in the Directive which seeks to limit the timeframe in which claim for interest deductions should be made. In our view, it is important that the statutory four-year time limit is maintained for interest deductibility claims and that no additional restrictions are imposed.

The application of interest limitation should be subject to standard self-assessment rules and no additional filing obligations should be imposed. It is important that the administrative burden for taxpayers applying interest limitation rules is kept to an absolute minimum.

## QUESTION 33: APPLICATION TO GROUPS

*Ireland has a number of different definitions of “group” within our national tax law. Taking account of paragraph 4.4.1 above, how should a “group” be defined for the purposes of implementing Article 4? Should a local group include those members of a consolidated group that are within the charge to Irish corporation tax or should other criteria apply for determining the existence of a group?*

**BDO Response:**

In our view, the existing definition of “group” provided in section 410 TCA should apply for the purposes of the interest limitation rules.

## QUESTION 34: *DE MINIMIS* THRESHOLD

*Are there any reasons why Ireland should not make provision for a de minimis threshold?*

**BDO Response:**

We do not see any reason why Ireland should not make provision for a *de minimis* threshold. Our strong recommendation is that the full €3m *de minimis* threshold is adopted into Irish legislation.

We do not believe that the risk of base erosion and associated impact on tax revenues would justify the administrative burden that not having a *de minimis* threshold would impose on SMEs.

## QUESTION 35: STANDALONE ENTITIES

*What are the relevant factors that should be taken into account in defining a "standalone entity"?*

**BDO Response:**

The meaning of "standalone entity" should be clearly defined when incorporated into Irish tax law.

The current drafting of the definition in the Directive could be interpreted that a company wholly owned by one individual who has no >25% interest in other companies would not meet the definition of a "standalone entity". This interpretation appears illogical and would mean that in practice only a very small minority of companies would fall within this exemption. This would inadvertently lead to an increased compliance burden on companies with any expected increased tax yield likely to be low.

## QUESTION 36: PRE-EXISTING LOANS

*What factors should be taken into account in determining whether or not to apply the interest restriction to loans entered into prior to 17 June 2016?*

**BDO Response:**

Grandfathering is important as it means that new tax legislation does not have retrospective effect, which is key in ensuring stability and certainty in tax law. It also allows time for taxpayers to assess the impact of changes in tax law on their business, and prepare for new administrative requirements.

We therefore recommend that the interest limitation rules apply only to loans entered into from 17 June 2016, or loans issued prior to that date which are subsequently modified (as provided for in the Directive).

In the interest of providing certainty to taxpayers, in deciding whether or not a grandfathered loan is "subsequently modified" the same principles as applied on the introduction of Transfer Pricing rules should apply.

## QUESTION 37: LONG TERM INFRASTRUCTURE

*What factors should be taken into account in determining whether or not to apply the interest restriction to long term infrastructure loans? If the exemption was to apply, how should long term infrastructure projects be defined, in Irish legislation, for the purposes of this exemption?*

**BDO Response:**

We strongly believe that it is appropriate to incorporate the exemption for long term infrastructure projects into Irish law.

Ireland has a strong history of using Public-Private Partnerships (PPPs) to finance the development of Schools, Roads, and Social Housing. Such projects are for the benefit of the State and are paid for by the State through annual availability payments to the PPP company.

The projects are typically funded by senior bank debt, shareholder loan debt and minimal equity. There is typically no "residual value" in the infrastructure at the end of the project, at which stage the State typically takes ownership.

In a typical PPP project, the annual interest costs (on senior bank debt and shareholder loans) will exceed 30% of EBITDA annually. If the interest costs are restricted for tax deductibility purposes, it will mean that the overall return is diminished to the private sector because of higher annual tax charges. This will inevitably lead to higher availability payments being sought from the State. Therefore, while the imposition of the restriction may have the effect of increasing tax revenues, the benefit would be offset by the cost of additional availability payments from the State.

Also, due to the involvement of the public sector in projects, we believe that such arrangements present little or no base erosion or profit shifting risk.

Furthermore, we believe that there is merit in defining "long-term infrastructure projects" in such a way that it is not limited only to projects with State involvement. The definition included in the Directive does not make any reference to a requirement for State ownership or involvement, but requires that projects must be "*considered in the general public interest by a Member State*".

We need to be mindful of the commercial impact of the introduction of interest limitation rules. Ireland is currently experiencing a shortage in the supply of residential properties. The development of large-scale housing projects requires substantial debt funding. Driving up the tax burden of such activities will either have the impact of driving up the pricing of houses or will make certain projects commercial unfeasible.

This is just one example of an instance where it is in the country's interest to exempt specific projects and/or activities from the interest limitation rules. We believe that the definition should be drafted in such a way as to broaden the exemption beyond projects with State involvement. Where there are concerns regarding potential abuse of the rules, it may be appropriate to consider incorporating a provision requiring pre-approval of specific activities/projects by the relevant Government department.

## QUESTION 38: CONSOLIDATED GROUP RATIO RULE

*What are the relevant considerations in determining whether Ireland should make provision for a consolidated group ratio rule?*

*What are the key factors to consider in determining which consolidated group ratio rules should be implemented in Ireland?*

**BDO Response:**

In our view, the Directive allows for a taxpayer to choose which of the consolidated group ratio rules should be applied. Thus, Ireland does not have to choose which of the consolidated group ratio rules to be adopted in legislation.

Our strong recommendation is that both ratio rules are adopted in Irish legislation and that taxpayers have the ability to choose which ratio to apply in practice.

In the event that the preference is for only one of the consolidated group ratio rules be implemented into Irish law, our preference is for option (b).

Regardless of which option is chosen we believe that further consultation will be required on the drafting of the legislation, and that legislation will need to be supported by detailed guidance on the operation of the rules.

## QUESTION 39: FINANCIAL UNDERTAKINGS

*What factors should be taken into account in determining whether or not to apply the interest restriction to financial undertakings? If the exemption is to apply, should it apply only to regulated financial undertakings or should it apply also to non-regulated undertakings which carry on the same activities?*

**BDO Response:**

Our recommendation is that the interest limitation rules should not apply to financial undertakings.

We further recommend that the exemption should apply also to non-regulated undertakings which carry on the same or similar activities to regulated entities. For example, many groups have captive financing companies which are not regulated but which provide similar activities to third party financial institutions (for example, provision of loan financing, hedging services, etc.). Such entities should be afforded the same treatment as undertakings providing such services to third parties.

## QUESTION 40: CARRY FORWARD

*What are the key considerations in deciding which of the three policy options should be implemented in Ireland?*

**BDO Response:**

We believe that Ireland should maintain flexibility and should implement option (b).

Where restricted interest is carried forward, there should be full flexibility in the allocation of interest deductions and no ring-fencing should apply.

## QUESTION 41: BORROWING COSTS AND EXCEEDING BORROWING COSTS

*What are the factors that should be taken into account in defining borrowing costs in Irish legislation? What practical difficulties may arise in applying such a wide definition and what can be done to ameliorate them?*

*What types of income / expenses should fall to be treated as economically equivalent to interest for the purposes of the application of the interest limitation rule? Issues raised in the anti-hybrid portion of this document should also be considered in this context.*

**BDO Response:**

In our view, borrowing costs should be narrowly defined and should be limited only to interest and payments which are economically equivalent to interest. Furthermore, it is important that the drafting of the definition in Irish law is clear and unambiguous so as to provide certainty to taxpayers.

It is important that the definition of “borrowing costs” is narrowly defined and limited only to expenses in the nature of interest. In particular, legal and professional fees and other similar costs associated with the raising of finance should not be considered as equivalent to interest.

The definition of “*income economically equivalent to interest*” should be similarly drafted so that there is symmetry between the meaning of both income and expenses so as not to lead to mismatches in determining the quantum of exceeding borrowing costs.

## QUESTION 42: EBITDA

*What are the key considerations in defining EBITDA in Irish tax legislation, particularly in relation to the application of the interest restriction on a group basis? For example, where a company within the local group has a negative EBITDA how should this be treated when calculating the EBITDA of the local group?*

**BDO Response:**

EBITDA should be computed by reference to the taxable measure of profits and gains, as required under the Directive. Where a company within the local group has a negative EBITDA, the EBITDA of such company should be regarded as "nil" for the purposes of the interest limitation rules.

## QUESTION 43: EXEMPT INCOME

*Irish companies are exempt from tax on dividends received from Irish companies. As the scheme of double tax relief for certain foreign dividends is designed to effectively mirror that exemption through the availability of credits and additional credits, if Irish dividends are treated as "exempt income" should foreign dividends that are fully sheltered from Irish corporation tax by double tax relief also be treated as "exempt" and therefore excluded from EBITDA?*

**BDO Response:**

Under current rules, foreign dividend income is not exempt income and therefore should not be excluded from EBITDA. The full amount of dividend income, before any foreign tax credits, should be included in EBITDA. While the legislation may seek to afford exemption through the availability of credits it does not always do so and therefore we see no argument for excluding foreign dividend income.

Furthermore, there are other instances where foreign income may be sheltered by foreign tax credits, for example, interest, royalties, branch profits. We do not see any justification for excluding foreign dividend income while including other foreign income.

Where a territorial system is introduced in the future, we would expect that at that stage foreign dividends, to the extent that they are fully exempt from Irish tax, are excluded from EBITDA. This matter should be addressed as part of the consultation to be launched on moving to a territorial system.

## QUESTION 44: SCHEME OF RELIEF FOR INTEREST

*How should the provisions of Article 4 of ATAD interact with existing provisions in Irish tax legislation dealing with qualification for interest relief and with the anti-avoidance provisions relating to interest?*

**BDO Response:**

Ireland's stated position is that our national targeted rules for preventing BEPS risks are equally effective to the interest limitation rules set out in Article 4 of ATAD and thus implementation of the interest limitation rules would be delayed until 1 January 2024.

These existing rules include:

- Section 130(2)(d)(ii)/(iii)/(iv)/(v)
- Section 247(4A) / (4)(E)
- Section 817A
- Section 817C
- Section 840A

Furthermore, qualification rules for interest deductions, most notably those provided under section 247, are very restrictive.

Where ATAD compliant interest limitation rules are introduced we believe that these should replace the existing anti-avoidance provisions for loans within the scope of the ATAD rules. Furthermore, in order to maintain competitiveness internationally it may be appropriate to consider widening the qualification for interest deductions.

## FOR MORE INFORMATION:


**KEVIN DOYLE**

+353 1 4700 301
kdoyle@bdo.ie

**ANGELA FLEMING**

+353 1 4700 281
afleming@bdo.ie




**www.bdo.ie**