10 July 2026

Business Tax Stakeholder Forum (BTSF)

Feedback on Section 110 TCA 1997

Definition of Interest Equivalents and Withholding Tax

Definition of interest equivalents

We refer to the Department of Finance's email of 1 July 2026 requesting specific feedback on a proposed new definition of 'interest equivalent' for the purposes of applying the deductibility rules to such costs as apply to interest (including, but not limited to, section 110 entities and companies using the proposed new financing regime).

We understand that costs not within the new definition will remain deductible where that is permitted under existing rules. In the context of the proposed new financing regime, we note that the ability to deduct interest equivalents will require an amendment to the existing Schedule D, Case III rules insofar as they apply to a qualifying financing activity and for the purposes of this submission, we assume that such an amendment will be made.

By way of general comment on the section 110 regime in particular, as outlined in our discussions with the Department on 25 June, section 110 companies are engaged in a wide range of activities in the financial services sector from loan origination to carbon trading. Section 110 companies are not a homogenous group in line with what was envisaged by the Oireachtas when the relevant legislation was introduced and subsequently widened a number of times as Ireland competed for this activity. This policy has proven successful especially in private credit and leasing.

That said, Ireland is in constant competition with other competitor jurisdictions for such activities and feedback from our members suggests Ireland's narrow range of products

can make it challenging to enhance the country's position in a highly mobile sector. While our members would strongly advocate for significant enhancements to the Irish product offering in the sector, at a minimum, it is critical that policymakers do not implement changes which could risk damaging the existing footprint in the FS sector.

The introduction of a regime which is intended to better facilitate intra-group lending is welcome and while it will allow many groups to have a viable alternative to the section 110 regime for routine intra-group lending, it is important to note that a significant cohort of businesses will remain which will still need access to the existing section 110 regime for other types of activities.

Consequently, we would strongly recommend against simultaneous fundamental reform of the section 110 regime (other than possibly implementing some limited improvements previously suggested in our response to the Funds Review in 2023, such as extending the eight-week notification, amending the requirements to reach the €10 million threshold on the first day of activities rather than over a longer period of time, allowing for the use of foreign tax credits etc). We strongly urge that any more fundamental reform should not occur until the new financing regime has been fully implemented and a period of familiarisation has occurred. This will allow taxpayers and investors to properly understand what can be achieved under the new regime and will also aid the Department's understanding of the landscape post implementation of the new regime.

Regarding the specific question raised, we have outlined our observations in the paragraphs below.

Debt raising costs

In the context of debt raising and other debt-raising transactions, a company engaged in debt raising may incur significant upfront transaction costs in connection with the establishment and execution of a financing or securitisation and the issuance of debt.

These transaction costs commonly include:

- underwriting or arranger fees;
- placement fees;
- credit rating fees;
- commitment fees;
- syndicate participation fees;
- guarantee fees;
- letter of credit fees;
- hedging/derivative arrangement fees;
- legal fees (e.g. relating to loan documentation, implications for other group entities, security arrangements, hedging contracts etc.);
- tax advisory fees (e.g. relating to structuring and its implications for the wider group);
- listing, trustee and security trustee fees;
- placement fees; and
- other transaction execution costs.

Some of the above fees may also recur during the term of the debt raising. Other costs may arise during the term of the debt raising and/or upon (early) termination, such as:

- monitoring fees (i.e. fee for lender oversight);
- servicing fees (i.e. fee paid to loan servicer or administrator);
- amendment fees (i.e. fee for changing terms after closing);
- waiver fees (i.e. fee for covenant waivers);
- extension fees (i.e. fee for extending maturity);
- renewal fees (i.e. fee for renewing debt facilities);
- late payment fees (i.e. charge for overdue payments);
- breakage fees (i.e. compensation for lender funding losses following early repayment);
- make-whole amounts (i.e. compensate lenders for lost future interest);
- exit fees (i.e. fee payable when debt is repaid);

- hedging/derivative termination payments (i.e. amount payable on early hedge termination);
- security release fees (i.e. costs of releasing security);

Other ongoing day to day costs incurred by intra-corporate group lending vehicles include:

- company secretarial costs;
- tax compliance costs (i.e. corporation tax, Pillar Two, iXBRL, withholding tax returns, country-by-country reporting, DAC6, payroll);
- preparation of regular and annual accounts;
- audit fees (which can be material where there are listed notes);
- management of the receivables;
- management of hedging (e.g. FX/interest rate);
- FATCA/CRS compliance;
- transfer pricing compliance;
- annual listing fees/trust fees;
- directors' fees;
- insurance (including for directors and officers); and
- bank charges, transaction fees, SWIFT charges, cash-pooling fees.

We note the Department has already highlighted that it is beyond the scope of its review to consider creating a basis for tax deductions for overhead and administrative costs in the context of a new financing regime but that the scope of its work would potentially cover interest equivalence.

Consequently, while we appreciate that the Department may not be in a position to provide a basis for deducting some of the costs identified above in the context of a new financing regime, nevertheless, we would suggest that the proposed language: *"Amounts arising directly in connection with raising finance, including guarantee fees, arrangement fees, and commitment fees."* be somewhat broadened. For example:

"Amounts arising directly in connection with arranging, raising, maintaining, amending, and terminating finance and associated derivative instruments and

guarantee and hedging arrangements, including (without limitation) guarantee fees, arrangement fees, issuance costs, commitment fees, bank and depositary fees, security and trustee fees, and payment fees."

As noted above, we understand that while the Department is contemplating applying the existing rules applicable to interest deductions to interest equivalent expenses, nevertheless, it is not proposed that there will be any new prohibitions introduced in relation to expenses incurred by a company engaged in debt issuance that are already deductible. Therefore, we understand that other costs which might be incurred by a section 110 company or bank or treasury company carrying on a financing trade will continue to be tax deductible (subject to other legislative limitations which might be applicable). In either event, we would recommend that the new financing regime includes a clear and separate legislative basis which confirms the deductibility of interest equivalents within the regime.

In addition, we understand that the intent would not be to treat such payments of interest equivalents as interest for withholding tax purposes. However, we note that if interest equivalent payments were within scope of section 130 TCA 1997 and treated as deemed distributions, careful drafting may be needed to ensure that they do not come within the scope of dividend withholding tax.

Consequential implications for interest equivalent expenses

Whether the Department is considering making the proposed changes to the treatment of interest equivalents applicable generally or just solely for the purposes of the new financing regime, the Department should give due consideration to other consequential implications that could arise if all rules applicable to the treatment of interest expenses were applied to interest equivalent expenses, as it would entail the extension of the following provisions:

- Deductions under section 77 (trading profits)
- Deductions under section 97 (rental profits)
- Deductions under section 76E (QFC profits)

- Interest as a charge under section 247
- Deemed distributions under section 130
- Specified Person under section 110
- Specified Property Business under section 110
- Financing of intangible assets under section 291A
- Restrictions under sections 817A, 817B and 817C
- Connected party debt restrictions under section 840A
- Restrictions on payments to directors/participators of close companies under section 437
- Qualification for Sharia treatment (Part 8A)

Given the potential breadth of the above (and in the absence of a wider consultation of potentially affected industries and taxpayers), it may be prudent to limit the application to the new financing regime.

Consequential implications for interest equivalent income

An important aspect of the planned new financing regime is that it provides for net taxation taking account of interest equivalent expenses. In some cases, a company applying this regime may be in receipt of interest equivalent income/gains, such as receipts under a hedging agreement. We therefore expect that the regime will seek to include in its taxable profits the income and gains arising from interest equivalents.

As with our comments above in respect of interest equivalent expenses, we are not clear on whether the Department is considering making the proposed changes to the treatment of interest equivalents solely for the purposes of the new financing regime, or for all purposes. If it were the latter, then this could have quite wide-ranging implications as it would entail the extension of the following provisions:

- Anti-avoidance under sections 812, 813, 814, 815
- Unilateral relief in Schedule 24
- Bond-washing under Part 28
- Encashment tax

Similarly, given the potential breadth of the above (and in the absence of a wider consultation of potentially affected industries and taxpayers), it may be prudent to limit the application to the new financing regime.

Withholding Tax

We refer to the Department's email of 1 July 2026 requesting further information on the withholding tax treatment of section 110 companies compared with the withholding tax provisions which apply to ordinary Irish companies under section 246(3)(h) TCA 1997. We have included a comparative table outlining the practical application of the relevant provisions in the appendix. As discussed, we suggest that the exemptions available to section 110 companies are applied to interest payable under the new financing regime.

The Institute would welcome the opportunity to discuss the matters raised in this submission. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in this regard.

Appendix

Comparison: section 110 company versus ordinary Irish company relying on section 246(3)(h) TCA 1997

Issue	Section 110 company	Ordinary Irish company relying on section 246(3)(h)	Practical Withholding Tax Effect
Inbound Irish-source interest	Section 246(3)(cc) disapplies section 246(2) for interest paid in the State to a qualifying company within section 110.	An ordinary Irish company receiving Irish-source interest needs another exemption, such as the bank exemption, investment-undertaking exemption, or the finance/treasury company exemption in section 246(3)(bb) read with section 246(5).	This is a specific section 110 advantage on the receivables side, particularly where an Irish loan is assigned from a bank to a non-bank SPV.
Outbound interest recipient class	Section 246(3)(ccc) applies to interest paid by a section 110 qualifying company to a "person" resident for tax purposes in a relevant territory, subject to the Irish branch/agency carve-out where the recipient is a company.	Section 246(3)(h) applies to interest paid to a "company", not to persons generally.	Section 246(3)(ccc) is broader because it is not framed as a company-only exemption noting that there are also anti-hybrid and other requirements also to be met.

Payor-side business condition	Section 246(3)(ccc) does not require the interest to be paid in the ordinary course of a trade or business; it requires that the payor be a qualifying company within section 110.	Section 246(3)(h) requires the interest to be paid by a relevant person in the ordinary course of a trade or business carried on by that person.	Section 246(3)(ccc) reduces the need to analyse whether the relevant borrowing and interest payment are in the ordinary course of the payor's trade or business.
Foreign tax regime condition	Section 246(3)(ccc) does not require the recipient's jurisdiction to impose a tax that generally applies to foreign-source interest receivable by companies.	Section 246(3)(h)(I) requires the recipient company to be resident in a relevant territory whose tax regime imposes a tax that generally applies to interest receivable by companies from sources outside that territory, unless the treaty-exemption limb in section 246(3)(h)(II) applies.	Section 246(3)(ccc) is materially easier to apply for recipients in jurisdictions with remittance-basis or territorial features, because Revenue guidance identifies those features as problematic under section 246(3)(h)(I).