31 July 2026

Business Taxes Stakeholder Forum (BTSF)

Reform of Ireland's Taxation Regime for Interest

Sections 247 and 249 TCA 1997 - Mergers, Reorganisations and Liquidations

Introduction

The Institute welcomes the engagement through the BTSF on potential reforms to sections 247 and 249 of the Taxes Consolidation Act (TCA) 1997. We note that it is intended to progress the section 247/249 matters outlined in the Department of Finance's email of 2 July relating to mergers, reorganisations and liquidations for consideration in the context of Finance Bill 2027. While we understand the proposed discrete amendments to both sections which were circulated by the Department on 17 June, which we provided feedback on 1 July, may be progressed as part of Finance (No.2) Bill 2026, subject to the approval of the Tánaiste and Minister for Finance.

Overall, the feedback we have received from our members is that the proposed changes to the interest deductibility rules which are currently being contemplated by the Department of Finance do not represent meaningful reform of sections 247 and 249. While the potential amendments to sections 247 and 249 would be a positive step, many of these are considered by our members as merely clarificatory or correcting practical difficulties with the existing legislation. What has been proposed thus far falls short of addressing the significant underlying issues with section 247 and the recovery of capital provisions in section 249. In particular, the proposed reforms do not recognise and take account of the extensive tax reforms that have been implemented in Irish legislation in recent years to eliminate opportunities for base erosion through excessive borrowings. These include the Interest Limitation Rule, controlled foreign company

rules, anti-hybrid rules, which were implemented as part of the Anti-Tax Avoidance Directive (ATAD) and expanded transfer pricing rules.

Sections 247 and 249 do not recognise the role of debt financing in facilitating foreign direct investment and mergers and acquisitions activity with many of the conditions in these sections developed in response to perceived concerns amongst policymakers about base erosion risks. We consider the complexity of the rules, as written, acts as a deterrent for international investors investing into Irish businesses. Where debt is required to invest in an Irish group, any subsequent transactions within the group can give rise to, or create, uncertainty as to whether capital has been recovered under section 249 despite no economic recovery of capital occurring. This typically arises where, after the investment or acquisition, groups may merge entities, rationalise group structures, or repay intragroup balances.

At this juncture, we would strongly urge that a meeting is convened between relevant stakeholders, including Department of Finance officials, Revenue officials and tax advisers to afford an opportunity for an in-person technical discussion on the tax policy objectives which the proposed reform of section 247 and section 249 is attempting to achieve and to clarify how the amendments under consideration are intended to resolve the fundamental issues which exist with the current interest deductibility provisions.

We have outlined our feedback on the specific issues raised in the Department's email of 2 July below.

Recovery of Capital Rules

Section 249 TCA 1997 is intended to operate to deny interest relief under section 247 as a charge on income where, economically, the group has recovered capital and the funds have not been applied to repay the original borrowings or for a qualifying purpose. However, as we have set out in previous submissions, whilst the amendments to section 249 have sought to achieve this, they have introduced complexity and

uncertainty as to how the rules operate. In addition, they deny section 247 relief where ultimately, there has been no economic recovery of capital.

The provisions apply not just to actual recoveries of capital by the group but also to recoveries of capital that are deemed to arise on the occurrence of certain events. These include:

- The assignment of connected party debt (even if the debt is wholly unrelated to the qualifying borrowing of the investor company or the investment made because of the deployment of the proceeds of the qualifying loan).
- The settlement of intragroup debt.
- Liquidation of a chain of holding companies, apart from permitted exclusions.

We believe that in reforming section 249, the overriding principle should be that the recovery of capital rules only apply if there is an economic recovery of capital by the group and the funds are no longer used for a qualifying purpose.

Our members highlight the rules relating to double holding company structures in section 249, which were introduced in Finance Act 2017, should be reformed as they are unnecessarily complex and give rise to unintended application. While there were discussions regarding these provisions at TALC following the publication of Finance Bill 2017, the policy rationale for many of the provisions was not stated at the time and remains unclear. In our view, section 249(2)(ac) should be deleted as it is unnecessary given the protection afforded by the other capital recovery provisions contained in section 249.

Section 247(2) TCA 1997 - Merger Transactions

The email from the Department notes that it has previously received representations that section 247 relief does not provide for some acquisition structures including that of a merger, whereby the acquiring company would merge with the target company.

We understand from the Department that the proposed changes relating to the removal of the 'defray money applied' condition in section 247(2) TCA 1997 should put the existing Revenue practice regarding the application of section 247 to Companies Act 2014 court-approved schemes of arrangement on a legislative basis. However, this change would not deal with the issues which arise in the case of mergers.

While the Department's email of 2 July refers to representations seeking an extension of section 247 relief for mergers by absorption, the transaction outlined appears to be a merger by acquisition rather than a merger by absorption.

Section 463 Companies Act 2014 defines a 'merger by acquisition' *as "an operation in which a company acquires all the assets and liabilities of one or more other companies that is or are dissolved without going into liquidation in exchange for the issue to the members of that company or those companies of shares in the first-mentioned company, with or without any cash payment."* A 'merger by absorption' is defined in section 463(2) as "*an operation whereby, on being dissolved and without going into liquidation, a company transfers all of its assets and liabilities to a company that is the holder of all the shares representing the capital of the first-mentioned company*."

Merger by acquisition into investor company

If the investing company borrows to pay money to the shareholders of the target company, and does not acquire its shares, but its assets (through the merger), then that would appear to have certain consequences under section 247, although it is not clear that these are intended.

If the assets of the target company consist wholly of shares in a trading company, a holding company or an intermediate holding company, then it would appear that the condition in section 247(2)(a)(i), (iii) or (iv) is met. The loan represents borrowings incurred to acquire those shares (and this informs how to approach the requirements regarding 'material interest', 'company concerned' etc). We understand from our members that this is an issue which Revenue has occasionally confirmed in the past on

a case-by-case basis and therefore, is a matter which could perhaps be dealt with by way of guidance. Similarly, if the assets of the target company consist wholly of an ongoing trade, then a deduction for the interest as a trade expense should apply.

Merger by absorption into the investor company

Mergers by absorption have become more common as they can be commercially more time and cost efficient than a formal winding up process. Mergers by absorption allow assets and liabilities to transfer directly by operation of law and allow for the continuity of contracts. However, significant issues arise under section 247 where there is a merger by absorption. This would appear contrary to the objective of the legislation which was intended to allow such mergers to occur in a tax neutral manner.

Where an investing company borrows to invest in two trading companies, and subsequently, both trading companies are merged by way of merger by absorption, section 247 relief is denied in respect of the funds that had been used to acquire shares in the transferor (now dissolved). Economically, there has not been a recovery of capital. The investing company continues to own shares in a trading company, and the loan continues to be used for a qualifying purpose. However, section 247 relief is denied.

The email from the Department of 2 July outlines the concern that an extension of section 247 relief for mergers by absorption could allow for an asset acquisition to be structured so as to obtain relief for interest paid under section 247 TCA 1997, rather than by way of a trading deduction for interest incurred in acquiring trading assets. We assume that the scenario which is envisaged by the Department is one that falls within the scope of section 247(2)(a)(i) where the investing company has borrowed to invest in a trading company and there is then a merger by absorption of that trading company into the investing company.

There is little commercial or economic difference between this and the scenario for a merger by acquisition described above, but the application of the language of section 247 to such a transaction is less clear because the investing company acquires the

shares of the target. Considering the target company as the company whose shares are acquired would not prevent the condition in section 247(2)(a) to be initially satisfied, but the subsequent merger by absorption would break the 'material interest' condition and may also constitute a recovery of capital.

The feedback we have received is that this scenario is unlikely to arise in practice because section 247 relief is rarely claimed by a trading company. A potential approach which could be considered to address such a scenario, should it arise, would be to restrict the section 247 relief permitted in those circumstances so that relief would be given at the 12.5% rate.

Any amendment to section 247 to cater for mergers by absorption should equally apply to cross-border mergers, including mergers of non-Irish companies.

Merger involving a Bidco

It is not uncommon for an Irish investing company to establish a company (Bidco) to be the acquisition vehicle for the target. The Bidco may be financed in a number of ways, including the possibility that the investing company borrows to inject equity into the Bidco. The Bidco may then execute the transaction to acquire the target, which may be done by merger.

In such a scenario, it would seem reasonably clear that the Bidco is the company that the investing company acquires shares in for the purposes of section 247(2)(a)(iii) or (iv). However, the application of the legislation is unclear in circumstances where the Bidco merges into the target with the target surviving. For example, in that scenario, is Bidco considered to be the company that the investing company acquires shares in for the purposes of section 247(2)(a)(iii) or (iv)? It is also unclear how section 247(2A) should be interpreted in this scenario.

Section 249(2)(ab) TCA 1997 - Reorganisations

Uncertainty arises as to whether group reorganisations can result in a recovery of capital. At its core, an internal group reorganisation should not fall within scope of the recovery of capital rules. Economically, the group has not recovered capital. As recognised in several other sections of the Corporation Tax Acts and the Capital Gains Tax Acts, a group reorganisation should be tax neutral.

The current drafting of section 249(2)(ab) is not aligned with how groups approach reorganisations and therefore, the recovery of capital rules may be triggered where there is a reorganisation despite no economic recovery of capital by the group. We consider that reorganisations should be permitted at all levels within the group, including at the company concerned and investing company levels and we would welcome such clarification to be provided in the legislation.

Reorganisations at the level of the investing company

Section 249(2)(ab) facilitates a share for share exchange where shares are issued to the company concerned. Where the election is made by the investing company such that the reorganisation is not treated as a recovery of capital, the newly inserted company becomes the company concerned for the purposes of sections 247 and 249.

It is difficult to comprehend the policy rationale for not extending the relief at the level of the 'company concerned' to the situation where the investor company enters into a share exchange. The feedback we have received is that in practice this is at least as common as the situation provided for in section 249(2)(ab). It can apply to intra-group scenarios, but it is also relevant when two independent parties come together to try to expand their respective businesses. Taxpayers find it difficult to comprehend why interest relief might be lost because they did not have an extra holding company in their structure.

As outlined in the Department's email, applying such a provision at the level of the investing company would involve a company issuing shares to the investing company in return for the shares in the company concerned. In such a scenario, for the purposes of applying the recovery of capital provisions to any future transactions, we believe a similar approach to that contained in section 249(2)(ab) could apply, in that either the newly inserted company becomes either the investing company or the company concerned going forward.

Clarity is also sought that an election to disapply the recovery of capital rules is available where the share for share exchange involves a non-Irish tax resident entity. Where the company disposing the shares is not within scope of Irish tax, it is unclear that the criteria required in section 249(2)(ab)(i)(II) can be met.

Section 249(2)(ac)(iii)(IV) - Liquidations

Businesses that have had multiple owners often have this reflected in their corporate ownership charts resulting in tiers of Irish holding companies which no longer serve any commercial purpose. These holding companies are difficult to remove without disturbing interest deductibility. The policy objective of the rules which create this situation is difficult to comprehend.

Section 249(2)(ac)(iii)(IV) TCA 1997 deems a recovery of capital not to occur when an intermediate holding company is liquidated and certain conditions are met. This exception from the recovery of capital rules was initially introduced to recognise that rationalisations of group structures do not give rise to an economic recovery of capital. However, due to the conditions of this exception, other types of transactions involving liquidations can give rise to a recovery of capital under section 249 where no economic recovery of capital has arisen.

Where a group wishes to streamline its structure by transferring its trading assets and liabilities into an intermediate holding company and then liquidating the trading company, a recovery of capital is triggered. Similarly, a recovery of capital is triggered if

a group wishes to remove all intermediate holding companies from its structure so that the investing company owns the trading company directly. In both instances, there has been no disposal of assets outside of the group and no economic recovery of capital. However, the recovery of capital rules apply because the reorganisation did not fall within the exception in section 249(2)(ac)(iii)(IV) TCA 1997.

An issue may also arise in this scenario under section 249(1)(a)(iii). As outlined in our submission to the Department of 1 July, we believe the proposed amendment to section 249(1)(a)(iii) provides helpful clarification to ensure that a recovery of capital or deemed recovery of capital does not restrict relief where the recovered capital is applied by the investing company for a qualifying purpose. It would be important that any reinvestment provision is drafted in a way which permits the effective reinvestment of the funds.

For example, reinvestment should not be limited to the investing company exchanging shares in the company concerned for shares in another qualifying company. It could also include the investing company converting its qualifying investment from a loan into shares of a qualifying company. In both circumstances, the result of the transaction is that a reinvestment has been achieved, and the interest continues to fund a qualifying investment.

It is unclear why the dissolution provisions in the section 249(2)(ac)(iii)(IV) do not also apply to section 247 companies and companies concerned. In addition, it is unclear why the reinvestment provisions available to companies concerned and to intermediate holding companies are also not available to section 247 companies.

Reapplication of funds

The recovery of capital rules can result in multiple deemed recoveries of capital arising even though there has been only one economic recovery of capital. This arises because the rules stipulate that it is the company that recovers the funds that must reapply those funds for a qualifying purpose. Groups may wish to use the funds in another part of its business, and to do so, the funds must typically be returned to the investing

company. However, where the group seeks to have a different company reapply the funds for a qualifying purpose, relief may not be available.

To enable groups to have a different company reapply the funds for a qualifying purpose, we believe that where there is a recovery of capital further up the group structure subsequent to the first recovery of capital, and both recoveries of capital are in relation to the same funds, the subsequent recovery of capital should offset the initial recovery of capital (i.e., the subsequent recovery of capital eliminates the initial recovery of capital). This would give groups the ability to reapply the funds for a qualifying purpose further up the group structure, retain relief for the interest as a charge and not trigger multiple recovery of capital events in relation to the same funds.

Conclusion

The Institute would welcome the opportunity to discuss the matters raised in this submission and please contact Anne Gunnell of this office at agunnell@taxinstitute.ie for further information in this regard. As outlined above, we consider a meeting of policymakers and relevant stakeholders is urgently needed to discuss the tax policy objectives which the proposed reform of sections 247 and 249 is attempting to achieve and to clarify how the amendments under consideration are intended to resolve the fundamental issues which exist with the current interest deductibility provisions. Without such a discussion, we do not believe it will be possible at this stage for the Department to deliver the required simplification of the interest deductibility rules which it recognises as necessary to help safeguard Ireland's competitiveness and give greater certainty to Irish businesses.