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Belfius Ireland UC is an Irish company, set up in the IFSC in 1989. It is involved in lending and bond investments on its own account.
It is 100% owned By Belfius Bank s.a, a leading Belgian bank and insurance group.

Having read the Feedback Statement of December 2020 on ATAD Implementation - Article 4 Interest Limitation, we would like to respond to a selected number of questions that are raised in this document.

We are available for further discussion or in case of any questions.

Kind regards,

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Question 4: Comments are invited on this possible definition of 'interest equivalent'.

In the ATAD directive, 'borrowing costs' are defined as "*interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance as defined in national law, including (…)* ***guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds***"

We agree that guarantee fees should relate to the borrowing of funds. A typical example would be an external loan taken up by a subsidiary which is guaranteed by the parent company; in exchange, the subsidiary has to pay an arm's length guarantee fee to the parent company
A totally different situation arises if a company concludes a credit default swap or financial guarantee in relation to a bond investment, in order to protect the company against a default on its investment.
This credit protection is not linked to the borrowing of funds, hence the fees paid to the financial counterparty of the swap/financial guarantee would not qualify as interest equivalent borrowing costs under the above definition.
We would propose that <u>definition be clarified to explicitly exclude</u> costs of buying protection against credit risk.

"Question 15: Comments are invited on the above approaches to defining and exempting "legacy debt" and more generally on the concept of a 'modification' in the context of legacy loans."

We understand that the purpose of the legacy debt exemption is to avoid a possible restriction on interest deductibility for historical debt (to the advantage of the company).
However, such a grandfathering could also have adverse consequences if it were to apply mandatory to the interest income side, which is illustrated via the following example:

- a company has invested in a long term bond issued of 500mEUR before 2016 with an interest rate of 3% , generating an annual interest income of 15mEUR

- The investment is funded by a short term loan which is renewed/rolled on a short term basis (e.g. every 2 years). The funding cost equals 2,5% or 12,5 mEUR
- The company realises a recurring positive interest margin of 2.5 m EUR.

In this example, if no legacy debt exemption exists, there is **no** exceeding borrowing cost.
If a legacy debt exemption kicks in, then the short term loan would not qualify as legacy debt since it is rolled over on a regular basis.
However, if the bond (and related interest income) would need to be grandfathered (since pre-existing before 17/06/2016), the company would have an exceeding borrowing cost of 12,5 mEUR which is clearly in contrast with economic reality and to the disadvantage of the company.

Therefore, if the legacy debt exemption would be included in the Irish legislation, we propose that is either optional for the taxpayer and/or that is does not mandatory apply to the interest income side

Question 18: If Ireland were to provide only one of the two "group ratios", which would be preferred?

The equity ratio rule is preferred, because it can be easily determined based on the consolidated accounts and does not require complex and extra computations of the group EBITDA / net borrowing cost

Question 22: How would the application of "group ratios" work, in practical terms, where an exempt 'financial undertaking' (see 8.5) is a member of a 'worldwide group'?

Belfius Ireland is a subsidiary of a banking and insurance group. The big majority of the group's income/assets/equity is realised at the level of the excluded financial undertakings.
If the group ratio (equity/total assets) calculation were to exclude the financial undertakings, then the ratio would give a very distorted view (since limited to certain subsidiaries of the bank and insurer) and would no longer respect the economic and financial reality of the whole group.

Therefore, we recommend that the equity ratio can be calculated **including** the financial undertaking(s), especially for groups where these financial undertakings account for more than 50% of the global consolidated P&L or balance sheet total.