



Review of the Corporation Tax Code – Public Consultation,
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Public Consultation Paper - Review of Ireland's Corporation Tax Code

This contribution to the “Public Consultation Paper - Review of Ireland's Corporation Tax Code” is being made on behalf of the Irish Debt Securities Association (IDSA).

By way of introduction IDSA is an industry organisation, established to promote and develop Ireland as the premier European location for activities to support the global structured finance, debt securities and the specialist securities industries. The membership of the IDSA includes corporate administrators, trustees, audit firms, legal advisors, listing agents, and other parties involved in the structuring and management of Securitisations and SPVs in the industry in Ireland. The IDSA promotes a responsible, sustainable and effective environment within which debt securities and other specialist securities can be used to facilitate transactions, to create investment products and to raise capital funding, similar to that of the European Commission's Capital Markets Union (EC CMU) initiative.

The overall industry in Europe has been boosted by support from the EU Commission, which seeks to encourage the development of the securitisation industry as an effective means to build stronger and more diversified capital markets capable of increasing funding options for Small and Medium Sized Enterprises (SMEs), homeowners and customers. Furthermore, and significantly, the sector's legislative framework supports and underpins the other main international financial services sectors in Ireland including aircraft leasing, investment funds and reinsurance by enabling companies in these industries to establish financing companies and manage risk appropriately through the deployment of Special Purpose Vehicles (SPVs).

Ireland is now the leading European jurisdiction for the establishment and servicing of SPVs, securitisation structures and debt securities. In total, there are in excess of 1,600 (SPVs) registered in Ireland, representing almost one-quarter of the European industry by asset value. The sector employs 1,100 people directly and many multiples of this through the facilitation of the other industry sectors i.e. aircraft leasing, investment funds and reinsurance (these three industries are the main sources of employment in the IFSC).

Article 4 of the Anti-Tax Avoidance Directive (ATAD) provides for the introduction of interest limitation rules into Ireland for the first time and the manner in which these are implemented will be extremely important for the securitisation industry. We note that as the implementation of this Article has been delayed until 1 January 2024 comments are not being invited at this point, but we strongly recommend that a public consultation be held on the implementation of Article 4 at the appropriate time.

Article 9 of ATAD caters for the introduction of anti-hybrid rules on intra-EU payments, while ATAD 2 extends those hybrid mismatch rules to third countries. ATAD 2 delays the implementation date for the introduction of anti-hybrid rules to 1 January 2020 and allows a longer period, until 1 January 2022, to implement the elements of the rules dealing with reverse hybrids. As with Article 4 the manner in which Article 9 is implemented will be very important for our industry.

Hybrid mismatches occur due to disparities between the tax treatment of certain income or entities in different countries. This gives rise to the potential for cross border payments to be tax deductible in one jurisdiction and not be subjected to tax in the recipient location. The Directive seeks to eliminate the potential for such “deduction without inclusion” situations by denying a deduction in the payer jurisdiction. It should be noted that in the context of Irish securitisation companies Finance Act 2011 amended Section 110 TCA 1997 (the enabling tax legislation for securitisation companies here) to limit the deduction of cross border payments to situations where the payment is subject to tax (without any reduction computed by reference to the amount of such payment) in a country that has a tax treaty with Ireland. Because the Finance Act 2011 changes have already incorporated the principle of no deduction without inclusion into Irish law for securitisation companies, in our view very limited change, if any, should be required to implement Article 9 of ATAD for Section 110 companies.

In the context of the introduction of the hybrid mismatch rules more generally, given their inherent complexity we would strongly recommend that an Exposure Draft of any proposed legislation would be made available at least 12 months before the commencement date to allow sufficient time for public consultation and to enable restructuring of existing arrangements, if necessary, to occur.

We would be very happy to engage with the Department of Finance and the Revenue Commissioners in the drafting of anti-hybrid rules that meet Ireland’s policy objectives and ATAD requirements.

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