Finance in Ireland:

Aligning with Germany to face Europe's Future

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Foreword Konrad-Adenauer-Stiftung

In these uncertain times with the economic impact of the Covid-19 pandemic and Brexit on the European and Irish economy, this publication outlines the potential Ireland has as a great location for financial services in the larger context of Europe's changing landscape.

The Konrad-Adenauer-Stiftung (KAS) is delighted to partner with the German-Irish Chamber of Industry and Commerce (GICC) in Dublin to produce this publication, which is a result of our close working relationship with the Chamber and our increased network as a Foundation in Ireland.

As a German Political Foundation we are firmly committed to liberal, representative democracy, the rule of law, the social market economy and European unification. KAS has a worldwide institutional presence through its foreign offices as well as a broad network of local partners and experts.

With our activities in Ireland we aim to strengthen the friendship and close relationship between our two countries. Ireland and Germany not only enjoy a very strong economic and trade partnership. Above all, we share many common values and goals. German-Irish relations are more important now than ever.

I am very thankful to the authors and contributors of this publication for their informative analysis and valued opinion on Ireland's sustainable finance agenda, on the aspects of German-Irish cooperation and Ireland's influence in the European context.

I wish you a stimulating read!

Matthias Barner

Director

Konrad-Adenauer-Stiftung United Kingdom & Ireland

Foreword
German-Irish Chamber

Dublin, like Frankfurt, is a growing financial services centre. More than 430 Financial Services institutions are currently operating from Ireland – 20 of those among the Top 25 Global players indicating the importance of Ireland in this sector on a larger scale.

This publication, created in co-operation of the German-Irish Chamber of Industry and Commerce and the Konrad Adenauer Foundation, offers insight into Ireland's financial services sector within the context of Europe's overall economy with a particular focus on potential collaboration between Germany and Ireland.

The financial services sector is very important for Ireland and Germany, but also for the EU. Ireland's comparatively high GDP can be partially attributed to foreign investments. Mary Campbell of Deutsche Bank outlines another reason in her article: a large number of US companies set up their EU headquarters in Ireland as the last EU country with English as a native tongue. Additionally, many companies that previously only operated from the UK now also make a shift toward Ireland in order not to lose the connection to the EU. The focus of Ireland's financial sector remains on the EU however, as proven by Minister of Finance Paschal Donohoe's position as president of the Eurogroup and his efforts toward EU-level action on sustainable finance. The newly implemented EU Anti-Tax Avoidance Directive as outlined by Orlaith Kane and Adam Lacey of Arthur Cox in their article is yet another indicator of Ireland's emphasis on their own financial services sector as well as the EU as a whole.

The results, opportunities, and significance of the above-mentioned points are reflected in this publication, within the aforementioned articles by our esteemed contributors.

Ralf Lissek

CEO

German-Irish Chamber of Industry and Commerce

Department of Finance Ireland

Minister Paschal Donohoe

Ireland's Sustainable Finance Agenda

Minister Paschal Donohoe - Department of Finance Ireland

As readers will know, the Paris Agreement sets us a global goal of holding temperature increases to close to 1.5 degrees Celsius. International and domestic, public and private – all actors must pull their weight, using their particular strengths according to their places in society and the economy. Citizens will – rightly – hold us to account.

It is crucial that governments show leadership on this critical agenda by setting out ambitious and specific targets along a pathway to meet this goal. Strategic public investment is vital, as are legal and regulatory frameworks and incentives to encourage environmentally sustainable economic activities and discourage those doing harm; these provide guidance to the market to help it play its part on climate action.

I am pleased to have this opportunity, in my capacity as President of the Eurogroup and as Ireland's Minister for Finance, to set out some key measures that are underway or planned at Irish, EU and international level.

In Ireland, we have agreed a new Climate Action Plan which sets out a pathway for achieving the government's commitment to make greenhouse gas emission reductions of 51% relative to 2018 levels. This follows the enactment of the Climate Action and Low Carbon Development (Amendment) Act in summer 2021, which establishes a legally binding framework for Ireland's climate targets, in addition to strengthening the related governance structure.

In combination with other policy levers, taxation and budgetary policy have an important role to play in supporting Ireland's efforts to transition to a low-carbon economy. The first two budgets under the current government, for 2021 and 2022, contain a range of green expenditure measures and focus on supporting the low-carbon transition. Carbon pricing represents a central building block of our overall national decarbonisation strategy, and to that end, in our 2021 budget I announced a commitment to establish a statutory trajectory for our Carbon Tax to reach €100 per tonne by 2030, with this subsequently enacted in law. The establishment of a trajectory on a statutory basis provides a clear signal as well as price certainty to consumers, businesses and investors alike, and it is symbolic of the government's ongoing commitment to tackle climate change. Moreover, the Irish government has committed that every additional euro raised by the increase in the Carbon Tax will be directed towards achieving Ireland's climate objectives, and will focus on those most impacted by climate change and those most affected by our measures to transition towards a low-carbon future.

Ireland's climate action will be supported by the economic strategies we are putting in place to secure a sustainable future for our country. The National Economic Recovery Plan, which was launched in June, sets out the future direction for a sustainable and resilient Irish economy. It contains renewed supports, investments and policies for a new stage of economic recovery that will help drive a job-rich recovery. We are also completing a review of the National Development Plan which will include an overarching focus on climate across investments to take account of the Programme for Government climate ambitions.

These strategies deliver a strong and clear signal to citizens and to businesses on how we want Ireland to adapt to challenges posed by climate change. In addition, we are developing a national sustainable finance roadmap to set out how Ireland can continue to grow its sustainable finance sector, and ensure that this sector can equip the economy to meet the requirements and challenges it will face over the next number of years during the transition to net zero. More importantly, we are aiming to ensure that Ireland remains a global centre for sustainable finance where international financial services companies can develop and implement solutions to address sustainability and climate challenges on a worldwide basis, especially in developing countries who already face problems such as poverty and indebtedness that are currently exacerbated by Covid-19. I am delighted that Ireland's fourth annual Climate Finance Week, 11–15 October 2021, highlighted such issues for a growing global audience.

Our sustainable finance measures build upon the foundations we have already laid in Ireland over recent years. The designation of Euronext Dublin as a hub for green bonds and ESG bonds is illustrative of Ireland's important role as a green finance centre in the EU. This has been important in developing closer links with industry as well as harnessing broader ESG activity within Ireland's financial services sector, both of which are key ingredients in the advancement of sustainable activities, products and services. Ireland is also a leader in developing the skills and talent required in sustainable finance, with the creation of a dedicated Sustainable Finance Skillnet providing the talent and upskilling needed to service this expanding sector.

Ireland's domestic action is inextricably tied to that of our closest neighbours and partners, in particular the European Union. We must strive for the optimal balance between acting nationally, where subsidiarity is most appropriate, and acting collectively, where it will be most effective to move together with our EU partners.

Our domestic climate strategy fits with and complements the European Green Deal and the Fit for 55 proposals, which set out key targets and investment needs so that, by 2030, we reduce our collective carbon emissions by 55%, and reach net zero emissions by 2050.

Due to the international and interconnected nature of our economies, and in particular the financial services sector, I see clear value in EU-level action on sustainable finance. Ireland is an enthusiastic supporter of joint efforts in this area. The development and agreement of new regulatory frameworks involves key features: science-based expert advice; transparent public consultation; and democratic agreement by the European Parliament and the Council. This is critical for the EU, and Ireland, as we need to introduce practicable requirements to support evidence-based policy-making and help drive behaviour during the carbon transition. These actions have been guided by coherent and comprehensive strategies – first the 2018 Action Plan on Sustainable Finance, and now the strategy for financing the transition to a sustainable economy.

The European Commission recently proposed a Corporate Sustainability Reporting Directive, and negotiations are ongoing as to the form it will take. The proposal seeks to broaden the nature of transparent sustainability-reporting and increase the number of companies performing it. This aims to contribute to the reduction of systemic risk in the financial system from climate change and other sustainability issues, make companies accountable for their impacts on people and the environment, simplify and reduce costs of reporting for companies, as well as providing coherent and comparable information for investors.

The EU's Taxonomy on Sustainable Activities and the Sustainable Finance Disclosures Regulation constitute the cornerstones of the new European sustainable finance regulatory regime. These measures, when fully in place, will provide essential information to investors by assuring them of the sustainable credentials of their investments while keeping them aware of sustainability-related risks and impacts. Demand for sustainable products and investments is growing and the momentum towards a low-carbon transition is gathering speed because citizens are all too aware of the need for climate action. Governments are listening and taking action to stimulate investments, albeit from a range of different starting points.

At the same time, we need to recognise that the science is evolving rapidly, in tandem with the evidence about good practices and behaviours. Therefore, regular review and updates of the Taxonomy will be required to make sure that our frameworks remain fit for purpose and reflect best practice. As new technology emerges and is put to wider use, we have to give consideration to how innovations such as artificial intelligence, blockchain, big data and the internet of things can play a role in sustainable finance. We must be willing to continually update the Taxonomy and other legislation, to ensure that Europe continues to be a global leader in the sustainable finance agenda.

Furthermore, the EU prioritises the mainstreaming of sustainable finance so that retail investors and SMEs can participate; we will work to facilitate and promote this, including through innovative solutions involving digital tools, and count on industry buy-in to make this truly happen.

We are stepping up attention to climate- and sustainability-related risks in our supervisory systems, and how this can best be supported by policy actions. We have experienced serious physical risks in recent years from extreme weather events and, in light of the Taxonomy and scientific advances, need to increase awareness of transition risks and the potential for stranded assets, which can negatively affect the firm and system levels.

I appreciate that the regulatory framework under development is complex and fast-moving, and there may be some challenges for firms in implementing it in a timely manner. Not least for this reason, I encourage industry participation in consultations during the development of our framework; your expertise is a key ingredient to make it fit for purpose.

However, I trust that the benefits, and indeed the necessity, of such measures are recognised, and that industry actors will rise to any such challenges and overcome them. Reporting requirements stemming from this legislation will help stakeholders – citizens, non-governmental organisations, governments, international organisations – keep track of the progress we are making towards sustainability goals. Alongside the challenges, we must consider the opportunities to meet demand for and invest in emerging technologies that will help us achieve our climate goals, and improve our environment and our society along the way.

The widespread take-up and successful implementation of these measures will further underline the EU's position as a global leader in sustainable finance standards and investments. While we are guided by global goals, and learn from international best practice, we must also strive to influence these processes.

Internationally, bodies such as the Coalition of Finance Ministers for Climate Action, the Task Force on Climate-related Financial Disclosures (TCFD) and the Financial Stability Board are working on and have published useful guidance. Sustainable finance is a priority for the G20, and networks such as the Glasgow Financial Alliance for Net Zero and the Network for Greening the Financial System, are very relevant to our collective efforts.

I am a member of the Coalition of Finance Ministers for Climate Action, which was established at the 2019 World Bank/IMF spring meetings with Ireland and Germany as founding members. The objective of the coalition is to support the use of fiscal policy, public financial management and mobilisation of investment to promote domestic and global action on climate change by facilitating the exchange of best practice. Ireland pays particular attention to the coalition's principle of mobilising private sector financing, sharing experience and best practice, and supporting international standard-setting.

Ireland coming of age as a European financial centre

Deutsche Bank

Mary Campbell

Ireland coming of age as a European financial centre

Mary Campbell - Country Head Ireland - Deutsche Bank

The Irish financial sector has undergone an impressive journey since the 1980s. As the landscape continues to evolve in the wake of Brexit and the Covid-19 pandemic, the parallel growth of the country's financial services, technology and wider corporate sectors, along with its strong regulatory and government support, is helping make Ireland an increasingly popular destination for trade and investment in Europe.

Over the last few decades, from humble beginnings, Ireland has built itself an internationally renowned financial services sector. Although the country's International Financial Services Centre (IFSC) first opened in 1987, it now provides total direct employment to more than 38,000 people and accounts for 10% of multinational employment in Ireland. It's a development that has played out in step with the rise of numerous industries across the country, building on its strong relationship with the rest of Europe – not least the continent's economic superpower (and fellow export economy), Germany.

As one of our long-term partners in Ireland, Kieran Donoghue, Global Head of Strategy, Public Policy and International Financial Services at IDA Ireland, notes, "Germany is one of Ireland's largest trading partners. The connection between these two countries is underpinned by the fact that Ireland is home to 90 international companies of German origin, employing over 14,000 people across key sectors including engineering, technology and financial services."

Riding these developments, Ireland has positioned itself as a vibrant hub for financial services and fintechs. There are now more than 9,000 global financial services companies operating in Ireland, led by an impressive array of industry leaders across a range of sub-sectors, including 11 of the world's top insurance companies, 17 of the top 20 global banks and, diving down even deeper into areas of specialist expertise, 14 of the top 15 global aircraft lessors. Together, these firms accounted for over €5.2 trillion in assets under management in 2020, according to PwC.

With this contemporaneous development of Ireland's financial and corporate sectors, the country is now a leading destination for trade and investment across Europe.

Talent, community and robust infrastructure

But what has driven this rapid growth? What has made Ireland so attractive for financial services companies? This focus on inward development was initially driven by the Irish government in the 1980s, as it looked to tempt educated young Irish graduates into returning home after many had emigrated to find work in European cities, the United States and Australia to escape high unemployment rates in Ireland. The government's bid to lure back its graduates was based on a concerted effort to support inward investment – establishing governmental bodies and advanced education systems to increase its capacity to house new and experienced talent in Ireland.

These efforts have seen Ireland turn the old narrative on its head. Once on the receiving end of a "brain drain", the country has been able to turn its skilled and experienced talent pool into one of its biggest strengths. With 33.3% of the population under 25 years old, many of them hailing from the country's well-known and top-ranking universities, Ireland offers business in the financial services sector and beyond a highly attractive market for specialist talent.

From high unemployment in the 1980s, Ireland has become one of the best-performing countries in the world on the World Bank's Human Capital Index, which highlights how improvements in current health and education outcomes shape the productivity of the next generation of workers. Source: World Bank[7]

Closely related to this is the compact ecosystem of fintechs in the country that is now rapidly emerging – and reaching a critical mass. Some of the largest banks and technology companies in the world are located in Ireland – from Deutsche Bank, Citigroup, Bank of America, BNP Paribas, and J.P. Morgan to Amazon, Facebook, Google and Microsoft – as well as many new and innovative players such as PayPal, Revolut and Stripe. Add to this the fact that Ireland and its capital city, Dublin, are still relatively small compared to other countries and cities, and the community effect is compounded. Multinationals work in close proximity to one another, with many located in the Dublin docklands, or the "Silicon Docks", as they have come to be known. It's an environment that naturally fosters social interaction between the companies' young, international workforces, who often end up forming relationships and networks that pay serious dividends in a hard business setting. The result is an exciting, harmonious and world-class ecosystem from which multinationals of all kinds can benefit.

This is something that we certainly value at Deutsche Bank. "I think it is a huge benefit having access to so many different kinds of people who speak different languages, have different skills and experiences and enjoy living in Ireland," reflects Johnny Grimes, Deutsche Bank's Global Head of Liquidity Product, Transactional FX & Head of the Corporate Bank for Ireland. "As a result, we have amazing, multicultural and multilingual staff in Deutsche Bank Ireland that is critical to helping us succeed."

Together with this community, Ireland pairs a strong supporting infrastructure through industry groups, research hubs and government-sponsored organisations, such as Enterprise Ireland and IDA Ireland – the country's inward investment agency. These state-sponsored organisations partner with potential and existing investors from countries in Europe and further afield to help them establish or expand their operations in Ireland.

A robust response to recent developments

Ireland has continued to position itself well as a destination for businesses in response to more recent developments. Since the Brexit vote in 2016, Ireland has benefited from financial services companies shifting their European headquarters into the country from the UK. In fact, a recent report from New Financial entitled Brexit and the City: The Impact So Far identified Dublin as the financial centre that has experienced the largest influx of financial services companies in response to Brexit. For example, large banking groups such as Barclays and Bank of America have moved significant parts of their organisations into the Irish capital – many helped by the fact that Ireland benefits from a very similar legal system to the UK.

"As an export economy, Ireland's place in and access to Europe remains central to its success," explains Grimes. "As a small country with a population of just under five million, it has little choice but to export high-quality goods and services to other countries. This is where it's affinity with Germany comes from, with both having established themselves as hubs for outward-looking businesses to target markets in Europe and beyond. You can see that now with the preponderance of fintechs setting up in Ireland to gain straightforward access to Europe, backed up by a supportive environment and close partnership with national organisations used to helping businesses go global from a local base."

Data from the World Bank showing the rapid increase of Ireland's exports as a percentage of GDP since the 1970s and 80s[9]

More recently still, the Irish government has moved quickly to support the work-from-home environment and address its impact on globalisation. With workers no longer needing to make compromises in their personal lives in order to be located close to their place of work, companies are now competing for talent not only on the quality of career opportunities, but also on the flexibility and quality of life the role affords. In view of this, Ireland has committed to invest in the necessary infrastructure: from remote working hubs, alignment with childcare facilities, and the National Broadband Plan, through to a review of tax arrangements to incentivise remote working. These measures are designed to ensure that Irish-based indigenous and global companies retain and grow their multinational talent pool.

What does this mean for European corporates?

Without doubt, Ireland's ability to adapt to new demands is one of the qualities that has made it an attractive destination for business in Europe. "Ireland is good at adapting and being flexible," notes Dympna Donnelly, a former President of the Irish Association of Corporate Treasurers (IATC) and an Ireland-based Treasury Director at key Deutsche Bank client SAP Business Objects – the leading German enterprise software company. "One of the reasons Ireland is so attractive to us at SAP is because the specialist infrastructure that we require is already fully established. As a US dollar denominated business, it is hugely valuable to us that there is already a well-trodden path to follow in Ireland when it comes to tax filing, legal systems and revenue streams in US dollars – and this is not the case in most other European countries."

The SAP treasury team has also seen first-hand the benefits of Ireland's expanded talent pool. "Years ago, treasury was predominately based in the UK, but now many big names are choosing Ireland for their treasury operations," explains Donnelly.

All of this has helped strengthen the relationship between Ireland and both Germany and the rest of Europe. Businesses on the continent are increasingly recognising the contribution that the Irish workforce can make to their groups, thanks to its expertise and infrastructure.

And the signs point to further investment from European companies into Ireland as they look to relocate or establish specialist teams. From its arrival into the European Union as a primarily agricultural economy in the 1970s to its evolution into a technology and research-based economy today, Ireland's relationship with Germany and the rest of Europe has blossomed – and the resultant ecosystem is one in which both financial institutions and their corporate clients can continue to grow together.

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[1] https://www.ifsc.ie/page.aspx?idpage=6

[2] https://www.idaireland.com/newsroom/publications/why-ireland-for-insurance.pdf

[3] https://www.idaireland.com/newsroom/publications/why-ireland-for-banking.pdf

[4] https://www.idaireland.com/doing-business-here/industry-sectors/financial-services

[5] https://www.pwc.ie/industries/asset-management.html

[6] http://newslab.ie/ddjucd/ireland-the-youngest-country-in-ageing-eu/

[7] https://data.worldbank.org/country/ireland?view=chart

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The Finance Bill 2021: Ireland's approach to the implementation of the Interest Limitation Rules pursuant to the EU Anti-Tax Avoidance Directive

Arthur Cox

Orlaith Kane and Adam Lacey

The Finance Bill 2021:
Ireland's approach to the implementation of the Interest Limitation Rules pursuant to the EU Anti-Tax Avoidance Directive

Orlaith Kane and Adam Lacey - Arthur Cox LLP

Introduction

Finance Bill 2021 was published on 21 October 2021[1] and contains draft legislation for the introduction of a new interest limitation rule ("**ILR**"), as required by the EU Anti-Tax Avoidance Directive ("**ATAD**").[2] The ATAD ILR, which is based on the recommended approach outlined in the OECD BEPS Action 4 2015 Final Report, is intended to limit base erosion through the use of interest expenses to create excessive interest deductions.

Broadly speaking, the ILR is a fixed ratio rule that seeks to link a taxpayer's allowable net borrowing costs directly to its level of earnings by limiting the maximum net deduction in a given period to 30% of tax-adjusted EBITDA. While the default fixed ratio is set at 30%, in certain circumstances a taxpayer may deduct an amount in excess of this. The new rules will apply to accounting periods commencing on or after 1 January 2022.

The Irish Department of Finance adopted an iterative approach to developing the draft legislation by launching a series of public consultations to ensure the views of stakeholders were considered in shaping the new rules. This approach was widely welcomed given the extensive use of debt financing across different industries and sectors in Ireland and the potential for the ILR to significantly impact a wide range of existing and future structures.

This article will discuss the key features of the new rules as well as their potential impact on Ireland's well-established and effective securitisation regime. It will also discuss some of the derogations and exemptions available under ATAD which Ireland intends to adopt.

Key features of the ILR

"Interest equivalent"

An important feature of the regime is that it operates to restrict only net or "exceeding" borrowing costs, being the amount by which a taxpayer's deductible interest equivalent expense exceeds its taxable interest equivalent income. For this reason, the term "interest equivalent" is key to the operation of the ILR. Helpfully, the term is defined symmetrically from both an income and an expense perspective. Where a taxpayer's deductible interest equivalent expense does not exceed its taxable interest equivalent income, no restriction should arise under the ILR.

The term "interest equivalent" has been defined relatively broadly to mean interest and "amounts economically equivalent to interest". This latter term expressly includes, among other things:

(i) amounts under derivative instruments directly connected with raising finance;

(ii) amounts incurred directly in connection with raising finance such as guarantee fees, arrangement fees and commitment fees;

(iii) the finance element of finance lease payments and the finance element of operating lease payments in certain circumstances; and

(iv) foreign exchange gains and losses on interest or amounts economically equivalent to interest.

The term also helpfully has a general sweeper provision to include "*any amount arising from an arrangement, or part of any arrangements, which could reasonably be considered, when the arrangement is considered in the whole, to be economically equivalent to interest*". Given the importance of this definition to the operation of the ILR, we expect that the Irish Revenue Commissioners will publish guidance providing examples of the types of amounts they envisage falling within the various limbs and, in particular, the general sweeper provision.

Local groups

The draft legislation permits a taxpayer to apply the ILR either using a single approach (i.e. on a company-by-company basis) or to elect to apply it using a group approach (i.e. on the basis of a local notional group for ILR purposes). This local notional group for ILR purposes would comprise all companies within the charge to Irish corporation tax that have elected to be members of the interest group and are either:

(i) members of the same financial consolidation group; or

(ii) deemed to be members of the same corporation tax group for loss relief purposes.

An election to be a member of an interest group will apply for a period of at least three years. Under the group approach, the ILR is applied as if the "interest group" is a single entity. Therefore, in circumstances where the interest group as a whole falls within the 30% tax-adjusted EBITDA limit for any given period, the ILR should not operate to restrict the deductibility of interest payments made by any individual member.

The draft legislation permits disallowed amounts and total spare capacity to be allocated to individual members of an interest group, provided that disallowed amounts can be allocated to another interest group member only to the extent that it has deductible interest expense for that accounting period.

Importantly, the de minimis threshold exemption for exceeding borrowing costs of up to €3 million for a 12-month tax period (described in further detail below), will apply only to an "interest group" as a whole (rather than to the individual members of the group).

Carry forward amounts

In line with ATAD, disallowed amounts (i.e. exceeding borrowing costs which cannot be deducted in a current tax period) can be carried forward and deducted as an interest deduction in subsequent years so long as there is sufficient capacity in that subsequent year to claim it. However, where the disallowed amount would have created (or increased) a loss in the period that it arises absent the application of the ILR, then that disallowed amount is treated as a loss in that period and relief for it is given only in accordance with the existing carried forward loss relief provisions. This is intended to ensure that the disallowed amount cannot be used more broadly to shelter a charge to tax than would have been the case had the ILR not been implemented.

Similarly, the draft legislation provides for unused total capacity to be carried forward for a maximum of 60 months (or five years) from the tax period in which it arises. Unused total capacity will comprise either:

(i) interest spare capacity (being the amount by which taxable interest equivalent exceeds deductible interest equivalent); or

(ii) limitation spare capacity (being the amount by which exceeding borrowing costs fall below the relevant allowable amount [i.e. 30% of tax-adjusted EBITDA or the higher group ratio, where applicable]).

Group relieving measures

Where a taxpayer is a member of a consolidated group for financial accounting purposes, the taxpayer can opt to use either an equity ratio rule or a group ratio rule to mitigate the impact of the ILR.

Equity ratio rule

The equity ratio rule allows a taxpayer on election to fully deduct its "exceeding borrowing costs" if it can demonstrate (based on relevant financial statements) that the ratio of its equity over its total assets is equal to, higher than or not more than two percentage points lower than the equivalent ratio of the consolidated group.

Group ratio rule

The group ratio rule calculates the consolidated group's exceeding borrowing costs as a percentage of its tax-adjusted EBITDA using the group's consolidated financial statements. If the consolidated group's percentage is higher than 30%, then the taxpayer can elect to use this higher percentage when computing its interest restriction amount.

Potential impact of the ILR on Ireland's securitisation regime

Section 110 of the Taxes Consolidation Act 1997 ("**Section 110**") is the cornerstone of Ireland's securitisation regime which permits qualifying Irish resident SPVs to engage in an extensive range of financial and leasing transactions in a tax neutral manner. The scope of the regime is accommodating, applying to companies involved in the holding or management of a wide category of financial assets, and includes the leasing of plant and machinery, and the holding or management of commodities and carbon offsets issued under voluntary as well as compulsory schemes.

Under the Section 110 rules, the cost of funding and other related expenditure is generally tax deductible and is structured so that the SPV's net taxable profit is generally maintained at a negligible level as there is no minimum profit required for tax purposes. In particular, Section 110 relaxes the rules regarding payments of interest on securities, the return on which depends on the results of the SPV, so that, subject to certain anti-avoidance provisions, such payments will not automatically be deemed to be distributions (and therefore non-deductible). Please refer to the Appendix for a more detailed overview of Ireland's Section 110 securitisation regime.

The draft ILR legislation provides for a "single company worldwide group" ("**SCWG**") rule that should apply to a typical bankruptcy-remote Section 110 company that is not consolidated. Under the draft ILR provisions, an SCWG is defined as a company that is not:

(i) a member of a consolidated group for financial accounting purposes;

(ii) a member of a notional local interest group (as discussed in further detail above); or

(iii) a standalone entity (see definition below).

Where a Section 110 company qualifies as an SCWG, it can avail of the group relieving measures referred to above and calculate the relevant ratios as if it was a member of a consolidated group, such that the ILR should not have unintended consequences for such vehicles, provided they do not owe amounts to associated enterprises (as defined for the purposes of Ireland's anti-hybrid rules) which give rise to deductible interest equivalent. A careful review of any potential associated enterprise transactions, as well as the consolidation tests for accounting purposes, will be important when seeking to rely on this provision.

The concept of an SCWG is a very welcome development for Ireland's securitisation regime since a typical bankruptcy-remote Section 110 company would not usually be consolidated (and able to avail of the group relieving measures) or a standalone entity (and able to qualify for exemption).

For Section 110 companies that will not qualify as an SCWG but earn only income or profits that can be considered "interest equivalent" (see further detail above), then we anticipate that there should be no ILR impact as "taxable interest equivalent" and "deductible interest equivalent" (including interest on profit participating notes) should match, so the Section 110 company should not have any "exceeding borrowing costs". The income streams of all Section 110 companies that will not qualify as an SCWG should be carefully reviewed to ensure that any income which would not qualify as "taxable interest equivalent" is identified and the possible application of the ILR is considered.

In particular, Section 110 companies with investments in assets such as shares, commodities and non-performing loans or potentially with leasing activities that are likely to give rise to income or gains which may not be entirely "taxable interest equivalent" should consider the impact of the ILR in advance of the start of any accounting period commencing on or after 1 January 2022.

Unlike Luxembourg and Cyprus, Ireland did not seek to treat its securitisation companies as "financial undertakings" and, therefore, as being outside the scope of the ILR. We understand that the European Commission has not accepted that a securitisation company can be a "financial undertaking" and has sent formal notices to these Member States.

Other ATAD derogations and exemptions

De minimis threshold

There is a de minimis threshold exemption for exceeding borrowing costs of up to €3 million for a 12-month tax period (or a pro rata amount for a tax period of less than 12 months). The current draft legislation provides that, once the de minimis threshold is exceeded, the ILR applies to the full amount of the exceeding borrowing costs (and not just the excess above the threshold).

Legacy debt

The draft legislation provides for an exemption for legacy debt where the terms were agreed before 17 June 2016 and have not been altered since then. The definition also extends to any contract entered into before or after that date with the sole purpose of eliminating or reducing interest rate risk on the debt.

However, the definition provides that a drawdown of principal after 17 June 2016 will be considered an agreed term of the debt only to the extent the lender is legally obliged to make available those amounts upon the happening of a predetermined deliverable or project phase defined in the terms agreed before 17 June 2016 (and specifically does not include a call by the borrower for a drawdown).

Standalone entity

The draft legislation excludes "standalone entities" from the scope of the ILR. A standalone entity is defined as a company resident in Ireland that

(i) is not a member of a consolidated group for financial accounting purposes;

(ii) has no associated enterprises; and

(iii) does not have a permanent establishment outside Ireland.

Long-term infrastructure projects

This exemption allows for borrowing costs on debt used to fund qualifying long-term infrastructure to be excluded from the ILR restrictions. In order for a project to be considered long-term and qualifying, it needs to be an infrastructure project:

(i) which is to provide, upgrade, operate or maintain a "large-scale asset" for a minimum of ten years; and

(ii) where the operator of that project is established in, and tax resident in, a Member State, the large-scale asset concerned is in a Member State, and the income arising and the deductible interest relating to the project arise in a Member State.

For this purpose, a "large-scale asset" is an asset that has a minimum expected life span of ten years and falls within one of the definitions of existing domestic legislation cross-referred to in Finance Bill 2021. This includes types of:

(i) energy assets like oil, gas, thermal, coal and renewables;

(ii) road schemes;

(iii) public partnership schemes; and

(iv) strategic housing developments.

There is currently some uncertainty as to whether this definition is broad enough to capture certain telecommunications infrastructure, such as broadband. However, this will hopefully be addressed in published guidance by the Irish Revenue Commissioners. In addition, there is also provision in the draft legislation to allow the Minister for Finance (in consultation with the Minister for Public Expenditure and Reform) to make regulations specifying additional assets that can be treated as large-scale assets subject to certain conditions, e.g. the purpose of the asset needs to be to enhance the general public interest.

Conclusion

We consider that Ireland has adopted a relatively pragmatic approach with respect to its implementation of the ILR.

It has sought to ensure that it meets the minimum standards required under ATAD while remaining committed to Ireland's long-standing policy that bona fide securitisations can be established in a tax neutral manner. It has sought to ensure that the new rules are clear and operable in practice; however, as noted above, we expect published guidance from the Irish Revenue Commissioners to further assist taxpayers with applying the new rules in practice.

Ireland's decision to adopt the majority of the derogations available under ATAD (in particular, the group relieving measures and the de minimis threshold) is also a welcome development as it should help to mitigate the impact of the ILR in a number of cases.

[1] The discussion of the ILR in this Article is based on the draft legislation published by the Oireachtas on 18 November 2021.

[2] Article 4 of Council Directive (EU) 2016/1164 of 12 July 2016 as amended by Council Directive (EU) 2017/952 of 29 May 2017 (collectively known as the Anti-Tax Avoidance Directive or ATAD)

Taxation

The Irish government has put in place advantageous tax laws for finance vehicles in Ireland. The following tax points are of particular relevance:

a. Section 110 regime	Section 110 of the Taxes Consolidation Act 1997 ("**Section 110**") is the cornerstone of Ireland's securitisation regime which permits qualifying Irish resident SPVs to engage in an extensive range of financial and leasing transactions in a tax neutral manner. The scope of the regime is accommodating, applying to companies involved in the holding or management of a wide category of financial assets ("**qualifying assets**"), and includes the leasing of plant and machinery, and the holding or management of commodities and carbon offsets issues under voluntary as well as compulsory schemes. A "**qualifying asset**" consists of any financial asset, or any interest (including a partnership interest) in a financial asset, commodities, or plant and machinery. "**Financial assets**" are defined to include: "*shares, bonds, other securities, futures, options, swaps, derivatives and similar instruments, invoices and all types of receivables, obligations evidencing debt (including loans and deposits), leases and loan and lease portfolios, hire purchase contracts, acceptance credits and all other documents of title relating to the movement of goods, bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments, carbon off sets, and contracts for insurance and contracts for reinsurance.*" Given the extensive range of assets, most structured finance vehicles can qualify as Section 110 companies in such a way that the transaction should be tax neutral. As a result, Ireland is an ideal jurisdiction for locating an on-shore, EU/ OECD issuer with no tax leakage.
b. Transaction size	For an SPV to qualify under Section 110, there is a 'day-one' size requirement that the market value of all qualifying assets is not less than €10 million on the date they are first acquired, held, or legally enforceable arrangements in respect of the assets are first entered into, by the SPV. This requirement is a 'day-one' requirement only and asset levels can decrease over time.
c. Profit extraction	Minimal tax leakage and efficient profit extraction are crucial to any structured finance transaction. Under the Section 110 rules, the cost of funding and other related expenditure is generally tax deductible and is structured so that the SPV's net taxable profit is generally maintained at a negligible level as there is no minimum profit required for tax purposes. Section 110 in particular relaxes the rules regarding payments of interest on securities, the return on which depends on the results of the SPV, so that such payments will not automatically be deemed to be distributions (and therefore non-deductible). Certain targeted anti-avoidance provisions can limit a deduction for SPVs for certain payments of profit dependent interest or swap payments which are not subject to tax under the law of an EU/ treaty partner country. These provisions do not however apply to payments of interest on 'quoted eurobonds' or commercial paper where certain conditions are met. The majority of transactions should not be affected by these provisions. A restriction on the deductibility of interest that is profit or results-dependent and which is derived from Irish real estate was introduced in 2016. This restriction is only relevant to the extent that the SPV invests in assets which derive value from Irish real estate and the investor does not come within an exempt category. As part of its implementation of measures contained in the EU Anti-Tax Avoidance Directive, Ireland adopted anti-hybrid rules in 2020 (with additional reverse-hybrid rules coming into force from 1 January 2022). The rules are broadly designed to prevent arrangements that create a tax advantage by exploiting differing tax treatment in different countries. Most transactions involving Section 110 companies will be unaffected by the rules due to the way in which Section 110 companies are established and governed.

d. Withholding tax	The most commonly used exemption from Irish withholding tax on interest paid by an SPV is the 'quoted eurobond' exemption. This is generally available in respect of interest paid on securities listed on a recognised stock exchange where: (i) the securities are held in a recognised clearing system; (ii) payments in respect of the securities are made through a paying agent located outside Ireland; or (iii) where the holder is a non-Irish resident person, the holder has made an appropriate declaration to this effect. This may be restricted where the holder is known to be connected with the SPV and the interest is not subject to tax under the law of an EU/treaty partner country. However, in practice this is only likely to apply in limited cases and not to public investors. Alternatively, investors can rely upon an exemption from withholding tax for Section 110 companies which permits interest payments made to a person resident in an EU/treaty partner country (other than Ireland), and which are subject to tax under the law of that country, to be paid gross, provided that the interest is not paid in connection with a trade carried on in Ireland by the recipient through a branch or agency. Withholding tax exemptions are also available in respect of interest paid on commercial paper where certain conditions are met. In addition, interest payments between Section 110 companies are also free of withholding tax. This can assist where multi SPV structures are used.
e. Stamp duty	Stamp duty does not apply on the issue or transfer of securities issued by a Section 110 company.
f. VAT	Irish VAT legislation confirms that management services (which include portfolio management services) supplied to an SPV falling within Section 110, whether by an originator or otherwise, are exempt from Irish VAT. This legislative exemption provides clarity which is not necessarily available in other jurisdictions. Irish VAT may however be chargeable on certain trustee and rating agency services supplied to Irish SPVs, but proper structuring can usually eliminate or reduce VAT costs. Section 110 SPVs are typically engaged in VAT exempt activities, and so will generally have limited ability to recover any VAT charged to them.
g. Tax rulings	Not required. An Irish tax opinion will cover all relevant issues.
h. Double tax treaties	Ireland is party to an extensive range of double tax treaties that, depending on the particular treaty, can ensure that the SPV receives income on its underlying assets free from withholding tax or at a reduced rate.
i. No minimum profit	An Irish company is not required to make an annual statutory minimum profit for Irish tax purposes, but it is generally advisable to have a small retained profit for corporate benefit purposes.
j. "Thin capitalisation"	There are no 'thin capitalisation' rules for SPVs in Ireland. Ireland will be implementing interest limitation rules from January 2022. As evident in the recently published Finance Bill, Ireland has adopted these rules in a manner such that Ireland's Section 110 regime remains attractive for a securitisation vehicle.

k. Financial account reporting	Ireland is a party to a Foreign Account Tax Compliance Act ("**FATCA**") Model 1 Intergovernmental Agreement ("**IGA**") with the US, and has implemented FATCA reporting obligations into its domestic legislation, similar to the UK. Ireland was an '**early adopter**' of the OECD's standard for the automatic exchange of financial account information, known as the 'Common Reporting Standard' ("**CRS**"), in 2014. Ireland's adoption of the CRS makes financial account reporting for investors and counterparties straightforward.
l. Accounting standards	As a general rule, the taxable profit of an SPV follows the accounting treatment. SPVs qualifying as Section 110 companies can choose to use Irish GAAP as it existed in December 2004, unless they elect to use IFRS. This applies to existing and new SPVs and can be useful in certain structures as it eliminates the risk of a change in accounting rules and generally solves any issues raised by IFRS.
m. New structures	In addition to using Irish SPVs for traditional structures such as repackagings, securitisations, receivables transactions, RMBS/CMBS, CDO/CLOs and loan participation note ("**LPN**") transactions, Section 110 SPVs are also used for structures such as structured corporate and leveraged finance transactions, life settlement issues and fund linked structures (where either a qualifying investor fund ("**QIF**") is used with one or more SPV subsidiaries as a structure to minimise withholding taxes underlying investments or the reverse).

Germany & Ireland: Leading centres of finance in cooperation

German-Irish Chamber of Industry & Commerce

Ralf Lissek

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Ralf Lissek - German-Irish Chamber of Industry & Commerce

The resilience and growth in Ireland's international financial services are matched by Ireland's potential influence in financial services' policy-making, suggesting great promise for cooperation with German financial services centres like Frankfurt.

Now 35 years old, Ireland's international financial services sector has in the space of a generation grown from having fewer than 100 employees at its inception in 1987 to reaching an employment level that, according to the Department of Finance,[1] is recently estimated at 44,000 employees.

Once entirely Dublin-focused, this employment is increasingly spread across every region of Ireland and is a significant contributor to the state's finances. According to Maeve McConnan, the Department Manager International Financial Services of IDA Ireland, the International Financial Services is now one of the largest and fastest growing sectors of foreign direct investment in Ireland, up 28% over last 5 years. It is a dynamic and highly competitive sector that delivers back, middle and front office services to a global customer base operating in sophisticated and regulated markets.

The German-Irish Chamber represents major financial services companies such as Deutsche Bank, Allianz Global Life, Barclays Bank, and Irish Life. Through our Financial Services Group within the Chamber, we have pioneered events promoting both the sector's growth (as advocated by the government's Ireland for Finance agenda) and the development of the Climate Action plan, as represented in events with Ministers of State Seán Fleming and Ossian Smyth last year. We are now delighted to welcome the contribution of Minister for Finance and Eurogroup President, Paschal Donohoe, to this publication as the strongest possible sign of our determination and ability to help develop this sector to its full potential and to bridge the interest of the financial services sector across Ireland and Germany.

Cooperation between the Irish financial services sector and key German financial centres – particularly Frankfurt – should be promoted strongly. According to the latest Global Financial Centres Index[2] (GFCI), Frankfurt is currently the 14th most important financial services centre in the world and in the top three European centres while Dublin's ranking is number 41. Of course, under the Ireland for Finance agenda the government seeks to promote not just Dublin's financial services sector but that of the whole country, with a particular emphasis on regional and rural jobs growth. Compared to Ireland's total financial services employment level of around 44,000, Frankfurt had a total employment level of 65,000 last year.[3]

Despite some falls anticipated in the coming years, employment in Germany's financial hub will remain at over 60,000 persons, some 4,000 of whom work at the European Central Bank. This compares with the Ireland for Finance agenda's target of 50,000 for the sector in Ireland by the year 2025.

With the European Finance Forum, an Irish initiative to engage in issues pertaining to the financial services industry, taking place February 17th 2022, now is a good time to consider how Ireland – with some focus on Dublin – can collaborate with Germany – with some focus on Frankfurt and, for fintech, Berlin – to achieve mutual advantage.

How might this be undertaken? The Ireland for Finance agenda aims to achieve several objectives, including the promotion of the Investment Limited Partnership vehicle, establishment of a Finance Fintech Group, the proposal to develop a Grand Canal Innovation District, new educational qualifications and a gender diversity drive. But one key measure deserves particular attention: the development of a portfolio of sustainable finance education programmes – an exciting area of potential referred to later in this article. As a developing area that will require flexibility to deal with an evolving set of guidelines – the EU's Taxonomy – Ireland's common law system is well placed to become an international destination for the sustainable finance operations of global corporations.

Another inherent advantage for Ireland is the early focus, dating from 2015 and the inception of IFS2020 (an earlier version of Ireland for Finance), of government efforts to promote gender diversity in Ireland's financial services sector. Ireland's brand in diversity is now strong due to the ESG focus of financial services and technology companies. Here, a joint partnership initiative with Frankfurt could, under possible guidance from European Commissioner for Financial Services, Mairead McGuinness, act as a beacon for the industry in the EU as a whole.

The development of Ireland's fintech industry is also an area of strong potential, given the deep pools of high-technology companies with EU headquarters here. Again, potential for collaboration with Frankfurt – and Berlin, which has a thriving fintech industry – is high.

A catalyst for cooperation is, of course, Brexit. While overall a negative for the Irish economy, Brexit has, according to IDA Ireland, attracted over 70 companies to Ireland – mostly in financial and professional services.[4] It has also raised the need for financial centres remaining in the EU to think about how to cooperate. An obvious area is to consider how common interests in the representation of the industry to supervisory authorities, such as the European Systemic Risk Board and European Insurance and Occupational Pension Authority, can be coordinated. The absence of the powerful City of London has, arguably, weakened the financial services industry's voice in a way that Germany (with its powerful financial services sector) and Ireland (with its influence in Brussels and experienced financial regulation expertise, developed over the last five years after the financial crisis) could collaborate to counteract regulatory authorities in both Frankfurt and Brussels.

Dublin's proximity to London, common law system and reputation for sound financial regulation, and Ireland's connection to the US, give it significant advantages that complement Frankfurt and should be explored further.

There are, additionally, some sectors in which Ireland has a leading global position or the capacity to develop one. Respectively, these include aviation leasing, and payments. Defying the impact of the pandemic on the aviation industry, Domhnall Slattery's aviation leasing giant, Avolon, last June announced the €2 billion purchase of 500 vertical take-off and landing aircraft from Vertical Aero space, all of which are electric, symbolising the growing contribution of the financial services industry towards climate action and the green economy. In relation to the payments industry, Stripe – the now global giant payments company founded by the Collison brothers from Limerick – announced the creation of hundreds of software jobs in Ireland over the next three years.

Finance-related cybersecurity is another area where Ireland has the potential to lead, in a sector that is becoming increasingly important as we see more and more businesses move online and into digital environments. According to Tadhg Young, State Street – a member of the Financial Service Group within the chamber – is creating a new global technology and cybersecurity unit in Kilkenny – aiming to add up to 400 jobs in the process – also symbolises something else about the industry that is ever more important: its ability to create jobs in almost any part of Ireland.

As the post-pandemic economy creates a momentum for relocation, this particular aspect of the industry could be its most interesting feature. Typically, we have to date associated financial centres with great cities like London, Frankfurt, Paris, and New York. But Ireland could be offering the world something new.

A key problem for financial services centres is the impact that success has on property prices and access to specialist labour. The cost of living in Ireland however remains favourable to other leading financial centres in Europe. Additionally, Ireland can offer the advantage of being the only native English-speaking country left in the EU which is an important criterion for overseas investment of the financial services sector.

Early 2022, the Tánaiste and Minister for Enterprise, Trade and Employment, together with IDA Ireland, will host a virtual European Financial Forum to promote international investment in Ireland's international financial services sector. As he does, Ireland will be in a unique position for such a small country: Not only does Ireland's finance minister hold the position of Eurogroup President but the European Commissioner for Financial Services, Mairead McGuinness, is Irish, as is the Chief Economist of the European Central Bank, Philip Lane. However, in a collegiate and European-focused setting of EU institutions, these senior figures serve the European and not their national interest.

Germany, when it establishes a new government, should also take note of areas for potential cooperation.

Perhaps the first is that the presence of the Green party in government in Ireland for the first time since 2005 will give a strong impetus to the Green Finance agenda as the government's focus is realigned. Simultaneously, under the leadership of Ireland's Mairead McGuinness, the European Commission's Directorate General for Financial Services, Financial Stability and Capital Markets published its Green Taxonomy in 2020, which sets out conditions that economic activity has to meet in order to qualify for environmental sustainability. This Taxonomy is a crucial tool for the financial services sector.

And here Ireland's leadership is not just in public policy at an EU level. As demonstrated by the influx of interest in Green Finance among leaders in the field, the European chapter of the United Nation's Financial Centres for Sustainability (FC4S) is based in Dublin in recognition of Ireland's dynamism in promoting Green Finance.

Preparation for the COP26 conference in November 2021 led to Ireland's influence in financial services in the European Commission, European Central Bank, and Eurogroup combining with its membership of the UN Security Council. Additionally, Ireland's good ties with the US and China open up a possible role as an honest broker between them, proving that small countries like Ireland often have the benefit of being excellent dealmakers on a multinational level.

Germany is a leading nation in renewable energy and finance and remains the EU's largest and most powerful – economically and politically –member state. The climate agenda cannot be realised without the collaboration of the global financial services sector. The EU's Taxonomy, a central guide for financial services to transition to sustainable investment, has been published but remains to be fully implemented. Perhaps one of the key factors that attracts British and other nations' financial services firms to Ireland – common law – can also play a key role in making Ireland a centre of leadership in translating the Taxonomy into legal and professional practice and operational reality. Ireland's financial centre is politically located between the US, Asian and central European zones of influence, and remains close to the UK. Perhaps these advantages can be leveraged and combined to promote Irish and German collaboration to advance the climate action agenda in financial services.

Symbolising continuity and stability in both fiscal policy and financial policy and avoiding the temptation to weaken either (understandable in the wake of a pandemic that has caused so much economic suffering), will be important to protect Europe's economy and financial system against shocks. Ireland's own progress and recovery from this pandemic, like the recovery from the previous crisis that our Chamber highlighted in our book Ireland and Germany: Partners in European Recovery (2014), has been hard won through prudent policies – policies that the Department of Finance has been instrumental in delivering.

By including the SPD, Greens and FDP, the new German government will aim to show that the three goals of social recovery, climate sustainability and financial stability can be combined in a new formation. With the Greens also in the Irish government, the possibility to establish strong connections and collaboration are high. During the process of German reunification in 1990, the preparation of the Stability and Growth Pact in 1997, EU accession in 2004 and the global financial crisis from 2008 to 2013, cooperation between Ireland and Germany was pivotal to European progress and recovery. With strong climate action commitments in the current Irish Programme for Government and most likely to be high on the new German government's agenda, this partnership can be equally relevant in meeting the challenge of climate action.

In conclusion, there are many reasons to intensify cooperation between the financial centres of Frankfurt and Dublin. Both centres would benefit greatly from one another's assets – Ireland from Germany's established influence and prestige over the EU financial market, and Germany from Ireland's pre-existing relations with the UK and US. Joint efforts would be certain to help the EU overall to rise to greater strengths – an endeavour the German-Irish Chamber of Industry and Commerce and its partners are more than willing to support.

[1] https://www.gov.ie/en/publication/526a06-ireland-for-finance/

[2] https://www.longfinance.net/media/documents/GFCI_30_Report_2021.09.24_v1.0.pdf

[3] https://www.helaba.com/media/docs/de/informationen-fuer/medien-und-oeffentlichkeit/presseinfo/finanzplatzfokus-2021.pdf

[4] https://www.idaireland.com/newsroom/70-companies-have-invested-in-ireland-as-a-result