

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2022 edition

Part 35D Interest Limitation

December 2022



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PART 35D INTEREST LIMITATION

Overview

This Part implements Council Directive (EU) 2016/1164 of 12 July 2016 as regards interest limitation. The legislation is referred to as interest limitation rules. The purpose of interest limitation rules is to link interest deductibility directly to a company's, or group's level of economic activity, based on taxable earnings before deducting net interest expense, depreciation, and amortisation (EBITDA).

Chapter 1

Interpretation and general (Part 35D)

Summary

Chapter 1 is the interpretation chapter and sets out the meaning of various terms used in this Part.

Section 835AY – Interpretation (Part 35D)

Summary

This section is the interpretation section for the Part. Many of the definitions introduced are new concepts while others are defined by reference to provisions in the Taxes Acts.

Details

Definitions

(1)

'**allowable amount**' is defined below in *subsection (2)*

'**alternative body of accounting standards**' means standards that accounts of companies must comply with in the following countries: Australia, Canada, Hong Kong, Japan, New Zealand, the Republic of Korea, Singapore, the United States of America, the Republic of India and the People's Republic of China;

'**associated enterprise**' other than in Chapter 3, is an enterprise that is associated as defined in *section 835AA subsections (2) and (4)* but does not include enterprises that are associated solely as a result of *paragraphs (e), (f) or (g) of subsection (2)*.

'**CGT rate**' is the rate of Capital Gains Tax specified in *section 28(3)*, the rate applicable to disposals of development land in *section 649(1)(b)* or the rate in *section 747A(4)* applicable to disposals of interests in offshore funds, as applicable.

'**consolidating entity**' means an entity, other than a non-consolidating entity, which is included in the ultimate consolidated financial statements or would be included but is excluded from consolidation on materiality grounds..

'**de minimis amount**' in respect of an accounting period means €3,000,000 or where the accounting period is less than 12 months an amount adjusted in proportion to the length of the accounting period.

'**deductible interest equivalent**' means the amount of interest equivalent that is deductible in calculating the relevant profit or loss of a relevant entity.

'**deemed borrowing cost**' is defined in *section 835AAD(1)*.

‘**Directive (EU) 2016/1164**’ means Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as amended by Directive (EU) 2017/952 of 29 May 2017.

‘**disallowable amount**’ means the amount by which the exceeding borrowing costs is greater than the allowable amount and represents the amount of interest equivalent to which the interest restriction applies.

‘**EBITDA**’ means an amount calculated under *section 835AAB(5)*.

‘**EBITDA limit**’ is 30% or where an election is made, the group ratio (see *section 835AAH*).

‘**enterprise**’ has the meaning assigned to it in *Part 35C*.

‘**entity**’ has the meaning assigned to it in *Part 35C*.

‘**exceeding borrowing costs**’ has the meaning assigned to it in *section 835AAB(4)*.

‘**finance cost element of non-finance lease payments**’ is the fraction of the deductible operating lease payment that is obtained by dividing the difference between the total expected cost of the lease and the right of use asset recognised in the accounts of the lessee (or would be so recognised if accounts were prepared under international accounting standards), by the total expected cost of the lease. Where the terms of the lease are amended during the life of the lease, the amounts used in the fraction must be calculated as if a new lease was entered into at the date of the amendment.

‘**finance element of finance lease payments**’ is the fraction of the deductible or taxable finance lease payment or receipt obtained by dividing the total finance cost or finance income of the lease recognised in the accounts over the life of the lease by the total expected cost or income of the lease. Where the terms of the lease are amended during the life of the lease, the amounts used in the fraction must be calculated as if a new lease was entered into at the date of the amendment.

‘**finance income element of non-finance lease payments**’ is the fraction of the taxable operating lease payment obtained by dividing the difference between

- the total expected income of the lease, and
- the value of the leased asset recognised in the accounts on the date the lease was entered

into less the expected depreciated value of the leased asset at the end of the lease, by the total expected income of the lease. Where the terms of the lease have been amended during the life of the lease, the amounts used in the fraction must be calculated as if a new lease was entered into at the date of the amendment.

‘**finance lease**’ is a lease which is treated as a finance lease in accordance with international accounting standards or Irish generally accepted accounting practice.

‘**interest equivalent**’ means interest and amounts which are economically equivalent to interest, including:

- discounts on securities issued at a discount,
- the finance element of finance leases,
- the finance income and finance cost element of non-finance lease payments in relation to lessors that carry on a trade of leasing as defined in section 403,
- amounts under derivative instruments or hedging arrangements directly connected with the raising of finance,
- profits and losses on financial assets or liabilities the return on which principally comprises interest or interest equivalent, to the extent that it would be reasonable to consider that such amounts are economically

equivalent to interest,

- amounts referred to above that are claimed under *section 420(6)*,
- interest or amounts economically equivalent to interest which are claimed under *section 420A(3)* or *section 420B(2)*, and treated under *section 247(4G)* as relevant trading charges on income for the purposes of Chapter 5 of Part 12,
- amounts directly connected with the raising of finance such as guarantee, arrangement and commitment fees,
- foreign exchange gains and losses on interest or amounts economically equivalent to interest, and
- any of the above amounts treated as excess expenses of management under *section 83(3)*.

Interest equivalent also includes amounts arising from an arrangement which could reasonably be considered to be economically equivalent to interest when the arrangement is considered in the whole.

‘interest group’ has the meaning assigned to it in *section 835AAK(1)*.

‘interest spare capacity’ has the meaning assigned to it in *section 835AAB(4)*.

‘large scale asset’ means an asset with a minimum expected life span of 10 years that is:

- a) a development within the meaning of the Seventh Schedule of the Planning and Development Act 2000, as amended, where such a development has been approved by An Bord Pleanála under section 37G on foot of an application made pursuant to section 37A (2)(a) or (b) of that Act, or a Local Authority under section 170 of that Act (this includes certain energy, transport, environmental and health care infrastructure);
- b) a development within the meaning of section 182A of the Planning and Development Act 2000, as amended, where such a development has been approved by An Bord Pleanála under section 182B of that Act (this includes electricity transmission lines);
- c) a development within the meaning of section 182C of the Planning and Development Act 2000, as amended, where such a development has been approved by An Bord Pleanála under section 182D of that Act (this includes strategic gas infrastructure);
- d) railway works within the meaning of Transport (Railway Infrastructure) Act 2001, as amended, for which an order has been granted under section 43 of that Act;
- e) a scheme within the meaning of the Roads Act 1993, as amended, which has been approved under section 49 of that Act;
- f) a strategic housing development within the meaning of section 3 of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended, which has been approved by An Bord Pleanála under section 9 of that Act or a Local Authority under section 170 of the Planning and Development Act 2000;
- g) an asset (within the meaning of the State Authorities (Public Private Partnership Arrangements) Act 2002) constructed pursuant to a public private partnership arrangement (within the meaning of that Act);
- h) an installation generating energy from renewable sources (within the meaning of the European Union (Renewable Energy) Regulations (S.I.

No. 365 of 2020), which is regulated, either solely or jointly with another party, by the Commission for the Regulation of Utilities;

- i) an asset specified by the Minister for Finance in regulations made under section 835AAA(1), or
- j) a large-scale residential development within the meaning of the Planning and Development Act 2000, approved by a planning authority under section 34 or section 170 of that Act.

‘limitation spare capacity’ is the amount by which exceeding borrowing costs is less than the allowable amount.

‘long-term infrastructure project’ is a project to provide, upgrade, operate or maintain a large-scale asset.

‘non-consolidating entity’ means an entity that is valued using fair value accounting in ultimate consolidated financial statements, or on the basis that it is held for sale or distribution, or on an equivalent basis under an alternative body of accounting standards.

‘non-finance element of finance lease payments’ means the deductible, or taxable, finance lease payments in the accounting period which does not relate to the finance element of the finance lease payments as defined above.

‘P rate’ is the rate of corporation tax specified in *section 21A(3)(a)*.

‘payment for relief’ means a payment made by one member of an interest group to another member of an interest group, pursuant to an agreement for the allocation of disallowable amount or total spare capacity. The payment for relief must not exceed the tax value of the relief being paid for.

‘qualifying long-term infrastructure project’ means a long-term infrastructure project where the project operator is established and tax resident in a Member State, the large scale asset concerned is in a Member State, and the income and the deductible interest equivalent costs from which arise in a Member State.

‘relevant entity’ is either a company or an interest group, as defined.

‘relevant loss’ has the meaning assigned to it in *section 835AZ(7)*.

‘relevant profit’ has the meaning assigned to it in *section 835AZ(1)*.

‘reporting company’ has the meaning assigned to it in *section 835AAM(1)*.

‘single company worldwide group’ means a company that is not a member of a worldwide group, is not a member of an interest group or is not a standalone entity.

‘specified return date for the accounting period’ has the same meaning as in *Part 41A*.

‘standalone entity’ means a company resident in Ireland, that is not a member of a worldwide group, has no associated enterprises and does not have a permanent establishment in a territory other than Ireland.

‘T rate’ is the rate of corporation tax specified in *section 21(1)(f)*.

‘taxable interest equivalent’ is the amount interest equivalent income, profits or gains included in the calculation of the relevant profit or loss of a relevant entity and includes an amount previously treated as deductible interest equivalent which is subsequently reversed.

‘total spare capacity’ is the total of the interest spare capacity and limitation spare capacity.

‘ultimate consolidated financial statements’ means the consolidated financial

statements prepared by the ultimate parent in accordance with international accounting standards or Irish generally accepted accounting practice or an alternative body of accounting standards.

‘**ultimate parent**’ means an entity that prepares consolidated financial statements in accordance with international accounting standards or Irish generally accepted accounting practice or an alternative body of accounting standards and whose results are not fully included in any other consolidated financial statements prepared under such a practice or standard.

‘**worldwide group**’ means the ultimate parent and all consolidating entities in the ultimate consolidated financial statements and a member of this group is a ‘member of a worldwide group’.

‘**allowable amount**’ is the amount calculated by multiplying EBITDA by the EBITDA limit and represents the amount of interest which may be deducted in an accounting period without limitation. (2)

Provides that any words or expressions used in this Part, which are also used in Directive (EU) 2016/1164, will have the same meaning unless the context otherwise requires. (3)

Section 835AZ – Relevant profit and loss

Summary

This section sets out the rules for determining the relevant profit, or loss, of a relevant entity.

Details

Introduces the definition of a relevant profit for the purposes of the interest limitation rules. This is an important concept as it is the starting point for the calculation of EBITDA, upon which any interest limitation will be based. The definition refers to an amount of profits on which corporation tax falls finally to be borne, which in accordance with *section 4* Taxes Consolidation Act 1997, is a reference to the amount of those profits after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against those profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes. That amount of profits is then adjusted to include gains or losses on development land, relief for excess trade charges on a value basis, relief for trading losses on a value basis, and relief for non-trade charges surrendered by way of group relief that are treated as a trade charge by *section 247(4G)*, which may have been claimed but for this Part. (1)

In calculating the relevant profit, each element of the calculation that is taxable or deductible at the 25% rate is grossed up such that it gives the same result were the amount taxable or deductible at the 12.5% rate. This is necessary as, to calculate EBITDA and the interest limitation, amounts are required that have comparable values when considering Ireland’s different tax rates. (2)

This subsection provides for the grossing up of amounts of charges, income, expense, gain or loss, included in the calculation of relevant profit or loss which are subject to tax, or relieved, at the CGT rate as defined in *section 835AY*. (3)

In calculating the relevant profit, no account is to be taken of losses or excesses carried forward (under *sections 396(1), 399(1)* and *399(2)*) or back (under *sections 396(2)*, (4)

396A(3), 396B(3), 397(1) and 399(2)) from other accounting periods or amounts claimed or surrendered under group relief (under **section 420** or **420A**), with the exception of:

- interest treated as a charge on income that would be surrendered under **section 420(6)**,
- expenses of management that may be set off under **section 420(3)**, and
- interest treated as a charge on income that may be set off under **section 420A(3)**

i.e. interest which is deductible against total profits is to be taken into account in the relevant profit or loss of the claimant company which would take the deduction for that interest but for this Part.

Provides an exclusion of income or expenses (including interest) directly connected with qualifying long-term infrastructure projects from the calculation of relevant profit or loss. (5)

Where a relevant entity carries on both a qualifying long-term infrastructure project and activities that do not fall within the definition, the income and expenses of the relevant entity are apportioned between the activities on a just and reasonable basis. (6)

This paragraph provides that a relevant loss is to be calculated in the same manner as a relevant profit and a reference to the amount of profits on which corporation tax falls finally to be borne is read as a reference to an amount of loss arising after all reliefs and deductions for the purposes of corporation tax. (7)

Section 835AAA – Long-term public infrastructure projects

Summary

Section 835AAA provides rules pertaining to long-term public infrastructure projects.

Details

Provides that the Minister for Finance, in consultation with the Minister for Public Expenditure and Reform, may make regulations to specify an asset as a large-scale asset, but only where — (1)

- (a) specifying the asset would not give rise to a breach of State Aid rules,
- (b) the purpose of the asset is to enhance the general public interest,
- (c) it is in the public interest to so specify the asset, and
- (d) the financing arrangements of the project present special features which justify the specification.

Provides that in determining whether it is in the public interest to specify as asset as a large-scale asset the Minister will have regard to whether — (2)

- (a) the asset concerned would be likely to be provided, upgraded, operated, or maintained in the absence of such specification,
- (b) specifying the asset concerned would distort fair competition, and
- (c) specifying the asset would give rise to a loss of Exchequer income, and whether the public benefit of specifying the asset outweighs any such loss.

Chapter 2

Interest Limitation

Summary

This Chapter provides the legislation for the operation of the interest limitation, including any additional definitions, the rules for carry forward of disallowable amounts and total spare capacity and the reporting requirements of relevant entities.

Section 835AAB – Interpretation (Chapter 2)

Summary

This section provides further definitions relevant to the calculation of the interest limitation and instructions on the calculation of EBITDA.

Details

Introduces a definition of legacy debt for the purposes of this Part. (1)

‘legacy debt’ means a debt the terms of which were agreed before 17 June 2016 together with any contract entered into for the sole purpose of reducing interest rate risk on that debt. However, where the terms of the debt include provision for an amount of principal not yet drawn down at 17 June 2016, such principal will only be considered an agreed term of the debt where there is a legal obligation on the lender to make the funds available upon the happening of milestones as set out in the terms agreed before 17 June 2016.

‘milestone’ means a pre-determined deliverable or project phase defined in the terms of a debt, which is connected with the drawdown of the principal on that debt, but does not include a call by the borrower for the drawdown of that principal.

This subsection provides that the amount of deductible interest equivalent in respect of a legacy debt for accounting period is the lower of the deductible interest equivalent that arises on the legacy debt in that period or an amount of deductible interest equivalent that would have arisen in that period based on the terms of the legacy debt as at 17 June 2016. (2)

Where part of a debt which consists of both legacy debt and non-legacy debt is repaid, the amount repaid shall be treated as being a repayment of the legacy debt amount in priority to the part of the debt which is non-legacy debt. (2A)

This subsection introduces the term **‘net interest equivalent’** which is calculated by subtracting the deductible interest equivalent related to legacy debt from the deductible interest equivalent, and then subtracting the taxable interest equivalent of the relevant entity for an accounting period. (3)

Where the result of the calculation in *subsection (3)* is greater than or equal to zero, it is referred to as **‘exceeding borrowing costs’**, and if lower than zero, it is referred to as **‘interest spare capacity’**. (4)

Provides that, for the purposes of this Part, the amount of EBITDA in respect of a relevant entity and an accounting period is the greater of nil or the result of the (5)

formula provided in this subsection. The amount calculated is the sum of:

- the relevant profit or loss as defined above,
- exceeding borrowing costs or interest spare capacity (being a negative amount) as defined above,
- the deductible interest equivalent amount in respect of legacy debt (as defined above),
- any capital allowances or charges (being a negative amount) made to or on the relevant entity but excluding any amount of such allowance or charge referable to deductible interest equivalent, and the amount in respect of the non-finance element of finance lease payments, included in calculating the relevant entity's relevant profit or loss for the accounting period, and
- the amount of any foreign tax that has reduced the income of the relevant entity in arriving at the relevant profit or loss for the accounting period.

Section 835AAC – Interest Limitation

Summary

This is the main operational provision under this part which applies the interest restriction.

Details

Provides that an interest limitation applies where the relevant entity (1)

- is not a standalone entity,
- has a disallowable amount in respect of the accounting period, and
- the exceeding borrowing costs of the relevant entity exceed the de minimis amount (being €3 million in a 12-month accounting period).

This subsection provides the calculation to determine if the exceeding borrowing cost exceeds the de minimis amount. As the exceeding borrowing costs consists of amounts which have been grossed up to take account of income and expenses taxable and deductible at different tax rates, those amounts must be grossed back down for the purposes of assessing whether the de minimis threshold has been breached. (2)

Subject to the rules pertaining to interest groups and where this section applies, the tax payable, or the amount of the tax loss where there is no tax payable, by a relevant entity will be calculated by reducing the amount of interest equivalent that would have been deducted but for this Part by the disallowable amount, until such time as the disallowable amount has been exhausted. (3)

Where interest equivalent would have been deducted from profits chargeable to corporation tax at 25%, or treated as reducing the corporation tax payable on profits chargeable corporation tax at 25%, then the amount by which the interest equivalent will be reduced by the disallowable amount in accordance with **subsection (3)** is calculated by multiplying the disallowable amount by 12.5% divide by 25% i.e. as the disallowable amount has a tax value of 12.5%, it must be grossed back down for the purposes of reducing the amount of interest equivalent that is deducted from profits chargeable to corporation tax at the 25% rate. (4)

Where interest equivalent is deducted from chargeable gains taxable at the 'CGT rate', then the amount by which the interest equivalent will be reduced by the disallowable (5)

amount in accordance with **subsection (3)** is calculated by multiplying the disallowable amount by 12.5% divided by the applicable ‘CGT rate’ i.e. as the disallowable has a tax value of 12.5%, it must be grossed back down for the purposes of reducing the amount of interest equivalent that is deducted from chargeable gains taxable at the ‘CGT rate’.

This subsection provides that where a disallowable amount reduces the amount of interest deductible in connection with the provision of a specified intangible asset, then for the purposes of calculating the aggregate of capital allowances and deductible interest for an accounting period in connection with the provision of a specified intangible asset under **section 291A(6)**, the amount of interest as reduced by the disallowable amount is taken into account. (6)

Section 835AAD – Carry forward of disallowable amount

Summary

This section sets out the rules relating to the carry forward of disallowable amounts.

Details

Where a relevant entity incurs a disallowable amount, and **section 835AAC** applies, that amount is carried forward to succeeding accounting periods. When carried forward, the amount is referred to as ‘**deemed borrowing cost**’. (1)

This subsection applies to an amount of deemed borrowing cost that arises from a disallowable amount that would have, but for this Part, resulted in the company paying less tax in respect of the accounting period in which the disallowable amount arose or the accounting period immediately prior to that accounting period. (2)

Where **subsection (2)** applies, a relevant entity can, subject to **subsections (5), (6), (15) and (16)**, make a claim to have the deemed borrowing cost deducted from its total profits or chargeable gains for an accounting period after the accounting period that the disallowable amount arose, or to create a loss or excess where there is an insufficiency of profits. Relief for a loss or excess created by the deemed borrowing cost will be given in accordance with **section 31, 396(1) or 399**, as the case may be, and **sections 397, 400 and 401** will apply to that loss. (3)

Where a claim is made under **subsection (3)**, the deduction claimed applies after all other claims for relief have been made in respect of an accounting period. (4)

This subsection applies where a deemed borrowing cost is deducted from profits chargeable to corporation tax at 25%. The amount of deemed borrowing cost that is used up, in reducing the profits chargeable to tax at the 25% rate is the amount of deemed borrowing multiplied by $\frac{25\%}{12.5\%}$. This reflects the tax value of the deemed borrowing cost, being 12.5%. The effect is that where the deemed borrowing cost is deducted from profits chargeable to corporation tax at 25%, more deemed borrowing cost is utilised than where the deemed borrowing cost is deducted from profits chargeable to corporation tax at 12.5%. (5)

This subsection applies where a deemed borrowing cost is deducted from chargeable gains chargeable to tax at the ‘CGT rate’. The amount of deemed borrowing cost that is used up, in reducing the chargeable gains chargeable to tax at the ‘CGT rate’ is the (6)

amount of deemed borrowing cost multiplied by the $\frac{\text{'CGT rate'}}{12.5\%}$. This reflects the tax value of the deemed borrowing cost, being 12.5%. The effect is that where the deemed borrowing cost is deducted from chargeable gains chargeable to tax at the 'CGT rate', more deemed borrowing cost is utilised than where the deemed borrowing cost is deducted from profits chargeable to corporation tax at 12.5%.

This subsection applies to an amount of deemed borrowing cost that arises from a disallowable amount that would have, but for this Part, resulted in the relevant entity incurring a loss or excess, or a greater loss or greater excess, or offsetting a lower amount of loss against income under *section 396(1)*, *399(1)* or *399(2)* in the accounting period in which the disallowable amount arose. (7)

Where *subsection (7)* applies, and subject to *subsections (9)*, *(10)*, *(15)* and *(16)*, the deemed borrowing cost will be treated as a loss or excess arising in the period in which the disallowable amount arose and relief for that loss or excess will be given under *section 31*, *section 396(1)* or *section 399* as the case may be. *Sections 397*, *400* and *401* will also apply to this amount as they apply to a loss. (8)

This subsection applies where a deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 25%. The amount of deemed borrowing cost treated as a loss or excess that is used up in reducing the profits chargeable to tax at the 25% rate is the amount of deemed borrowing treated as a loss or excess multiplied by $\frac{25\%}{12.5\%}$. This reflects the tax value of the deemed borrowing cost treated as a loss or excess, being 12.5%. The effect is that where the deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 25%, more deemed borrowing cost treated as a loss or excess is utilised than where the deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 12.5%. (9)

This subsection applies where a deemed borrowing cost treated as a loss or excess is deducted from chargeable gains chargeable to tax at the 'CGT rate'. The amount of deemed borrowing cost treated as a loss or excess that is used up in reducing the chargeable gains chargeable to tax at the 'CGT rate' is the amount of deemed borrowing cost treated as a loss or excess multiplied by the $\frac{\text{'CGT rate'}}{12.5\%}$. This reflects the tax value of the deemed borrowing cost treated as a loss or excess, being 12.5%. The effect is that where the deemed borrowing cost treated as a loss or excess is deducted from chargeable gains chargeable to tax at the 'CGT rate', more deemed borrowing cost treated as a loss or excess is utilised than where the deemed borrowing cost treated as a loss or excess is deducted from profits chargeable to corporation tax at 12.5%. (10)

This subsection applies to an amount of deemed borrowing cost that arises from a disallowable amount that would have, but for this Part, resulted in the company incurring an excess of expenses of management under *section 83*, or incurring a greater excess of expenses of management in the accounting period in which the disallowable amount arose. (11)

Where *subsection (11)* applies, and subject to *subsections (13)*, *(14)*, *(15)* and *(16)*, a relevant entity's deemed borrowing cost will be treated as if it were expenses of management disbursed in the accounting period in which the disallowable amount arose and *section 83* will apply accordingly. (12)

This subsection applies where a deemed borrowing cost treated as an expense of (13)

management is deducted from profits chargeable to corporation tax at 25%. The amount of deemed borrowing cost treated as an expense of management that is used up in reducing the profits chargeable to tax at the 25% rate is the amount of deemed borrowing treated as an expense of management is multiplied by $\frac{25\%}{12.5\%}$. This reflects the tax value of the deemed borrowing cost treated as an expense of management, being 12.5%, such that where the deemed borrowing cost treated as an expense of management is deducted from profits chargeable to corporation tax at 25%, more deemed borrowing cost treated as an expense of management is utilised than where the deemed borrowing cost an expense of management is deducted from profits chargeable to corporation tax at 12.5%.

This subsection applies where a deemed borrowing cost treated as an expense of management is deducted from chargeable gains chargeable to tax at the ‘CGT rate’. The amount of deemed borrowing cost treated as an expense of management that is used up in reducing the chargeable gains chargeable to tax at the ‘CGT rate’ is the amount of deemed borrowing cost treated an expense of management is multiplied by the $\frac{\text{‘CGT rate’}}{12.5\%}$. This reflects the tax value of the deemed borrowing cost treated as an expense of management, being 12.5%. The effect is that where the deemed borrowing cost treated as an expense of management is deducted from chargeable gains chargeable to tax at the ‘CGT rate’, more deemed borrowing cost treated as an expense of management is utilised than where the deemed borrowing cost treated as an expense of management is deducted from profits chargeable to corporation tax at 12.5%. (14)

The total of relief available in an accounting period under *subsections (3), (8) and (12)* of this section, and any deduction in respect of an amount that was carried forward pursuant to *subsection (19)* under *section 291A* cannot exceed the amount of total spare capacity in that accounting period. (15)

Where the deemed borrowing cost exceeds the total spare capacity, in an accounting period, relief will be given under *subsection (8)* in priority to *subsection (3)* or *(12)*. (16)

When calculating the amount of relief available for deemed borrowing cost under *subsections (3), (8) and (12)*, the amount will be reduced by any amount of deemed borrowing cost relieved in prior accounting periods. (17)

Any amount of deemed borrowing cost carried forward will not form part of the relevant entity’s deductible interest equivalent for that accounting period. (18)

This subsection provides that a disallowable amount which reduced the amount of interest deductible in connection with the provision of a specified intangible asset in an accounting period cannot be carried forward as a deemed borrowing cost, but rather may be available for relief under *section 291A* and carried forward as an amount of interest for which relief cannot be given by virtue of *section 291A(6)(a)*. (19)

Section 835AAE – Carry forward of total spare capacity

Summary

This section sets out the rules relating to the carry forward of amounts of total spare capacity.

Details

A relevant entity can carry forward its total spare capacity forward for a period of 60 (1)

months from the end of the accounting period in which it arose. This period is referred to as the ‘**relevant period**’.

Where a relevant entity incurs a disallowable amount in an accounting period during the relevant period, a claim can be made to reduce the disallowable amount by the total spare capacity carried forward from prior accounting periods. (2)

Where a claim is made under *subsection (2)*, the disallowable amount for the accounting period concerned will be reduced by the amount of total spare capacity carried forward from previous accounting periods and any amount of total spare capacity not used to reduce the disallowable amount will be carried forward to subsequent accounting periods. (3)

Relief under *subsection 2* must be given in respect of total spare capacity arising in earlier accounting periods in priority to relief for total spare capacity arising in later accounting periods. (4)

Where an accounting period and a relevant period do not coincide, the amount of total spare capacity which may be relieved against a disallowable amount is reduced by multiplying it by the fraction which equates to the length of the period common to the relevant period and accounting period over the length of the accounting period. (5)

To determine the amount of relief available for total spare capacity, the amount is reduced by the amount of any claims previously made under this section, or under *subsections (3), (8) or (12) of section 835AAD*. (6)

Where an amount of interest carried forward under *section 291A* pursuant to *section 835AAD(19)* is deducted in a subsequent accounting period, then the amount of total spare capacity available for any subsequent claims or deductions shall be reduced by the amount deducted. (7)

Section 835AAF – Reporting

Summary

This section sets out the reporting requirements of relevant entities.

Details

The information required to be delivered by companies under this Part will be provided in the form made available by the Revenue Commissioners and will include several numeric values relating to the company as provided in *subsection (2)*. (1)

The return may include the following: (2)

EBITDA, allowable amount, exceeding borrowing costs, disallowable amount, interest spare capacity, limitation spare capacity, amounts carried forward from prior accounting periods, details in relation to the group ratio or equity ratio election and whether the company is a single company worldwide group.

This paragraph provides that certain information in *subsection (2)* is not required where the company is a member of an interest group, as the group reporting company will be reporting that information. (3)

Chapter 3

Group and Equity Ratios

Summary

This chapter contains two reliefs, one of which may apply on election where the relevant conditions are satisfied. The reliefs take into account the debt or net interest position of the relevant entity relative to the worldwide group to which it belongs. The group ratio operates to increase the threshold for the allowable amount of exceeding borrowing costs in certain circumstances. The equity ratio operates to exempt a relevant entity from the interest limitation in certain circumstances.

Section 835AAG – Interpretation (Chapter 3)

Summary

The section provides the definitions for certain terms for the purposes of this chapter.

Details

Definitions

(1)

‘**associated enterprise**’ has the same meaning as it has in *Part 35C*, other than Chapters 2, 3, and 8 of that Part and in the application of that Part to hybrid entities.

‘**group EBITDA**’ means the amount included in respect of profit of loss, before taking into account any amount of income tax, finance income, finance costs, depreciation, amortisation, or impairments, and excluding any amounts in respect of a qualifying long-term infrastructure project, in the ultimate consolidated financial statements of the worldwide group or single company worldwide group of which the relevant entity is a member for the period in which the relevant entity’s accounting period ends.

‘**group exceeding borrowing costs**’ means the net finance expense in the ultimate consolidated financial statements of the worldwide group or single company worldwide group of which the relevant entity is a member for the period in which the relevant entity’s accounting period ends, excluding any finance income or finance expenses relating to a qualifying long-term infrastructure project.

‘**group ratio**’ is the amount of group exceeding borrowing costs divided by group EBITDA, expressed as a percentage.

Where the relevant entity is a single company worldwide group, group exceeding borrowing costs and group EBITDA are calculated based on the financial statements of the relevant entity as prepared in accordance with international accounting standards or Irish generally accepted accounting practice, which are adjusted by disregarding transactions with associated enterprises. (2)

Provides that where it is reasonable to consider that the main purpose or one of the main purposes of an arrangement, or part of an arrangement, is the avoidance of the effect of an adjustment to the calculation of group exceeding borrowing costs and group EBITDA as required under *subsection (2)*, then *subsection (2)* applies as if the arrangement or part thereof had not been entered into. (3)

Section 835AAH – Group ratio

Summary

This section sets out the rules in relation to the group ratio.

Details

Subject to *section 835AAJ (2) and (3)*, this section allows a relevant entity to make an election where the group ratio for an accounting period exceeds 30%. (1)

Where an election is made under subsection (1), the definition of ‘allowable amount’ for an accounting period is adjusted such that ‘30%’ is replaced by the group ratio. (2)

Section 835AAI – Equity Ratio

Summary

This section sets out the rules in relation to the equity ratio.

Details

Provides that the ‘**ratio of equity over total assets**’ is calculated as equity over total assets expressed as a percentage. Equity includes the share capital, share premium and reserves of a relevant entity, worldwide group, or single company worldwide group, as applicable. The figures to be used are those disclosed in the financial statements of the relevant entity, worldwide group or single company worldwide group, as applicable, prepared in accordance with international accounting standards or Irish generally accepted accounting practice, or an alternative body of accounting standards. (1)

The ratio of equity over total assets for a relevant entity shall be calculated on the basis of financial statements that are prepared using the same body of accounting standards and the same accounting policies that apply to the ultimate consolidated financial statements of the worldwide group of the which the relevant entity is a member. (1A)

Provides that in calculating the ratio of equity over total assets for a single company worldwide group, the equity amount must be increased by an amount in respect of the debt owing to associated enterprises by the relevant entity, where that debt gives rise to deductible interest equivalent. (2)

This section applies to a relevant entity in respect of an accounting period where: (3)

- (a) the relevant entity’s equity ratio is no lower than two percentage points below the worldwide group’s equity ratio based on the ultimate consolidated financial statements of the worldwide group in which the relevant entity’s accounting period ends, or
- (b) where the relevant entity is a member of a single company worldwide group, where the relevant entity’s equity ratio is no lower than two percentage points below the single company worldwide group’s equity ratio based on the financial statements in which the relevant entity’s accounting period ends.

If, in the last 6 months of an accounting period, a scheme or arrangement is put in place which results in an increase in the equity of the relevant entity, the effect of that scheme or arrangement will be ignored for the purposes of calculating the relevant entity’s ratio of equity over total assets for that accounting period unless it can be shown that the scheme or arrangement was put in place for bona fide commercial reasons and not does not form part of any scheme or arrangement of which the main purpose, or one of the main purposes is to ensure the application of the relief under this section. (4)

Provides that where it is reasonable to consider that the purpose or one of the main purposes of an arrangement, or part of an arrangement, is the avoidance of an increase in the amount of equity used in the calculation of the ratio of equity over total assets for a single company worldwide group as required under *subsection (2)*, *subsection (2)* applies as if the arrangement had not been entered into. (5)

Provides that where this section applies, a relevant entity may make an election in respect of an accounting period subject to *section 835AAJ (2)* and (3). (6)

Where an election is made under *subsection (6)*, *section 835AAC* will not apply to a relevant entity in respect of the accounting period, such that no interest restriction arises under this Part. (7)

Section 835AAJ – Election

Summary

This section sets out the provisions to apply where an election is made under either the group ratio or the equity ratio.

Details

Where a relevant entity makes an election under the group ratio or equity ratio provisions, it must be made before the specified return date for the accounting period to which it relates on the form made available by the Revenue Commissioners. (1)

An election cannot be made under both the group ratio and equity ratio provisions for the same accounting period. (2)

Where a relevant entity is an interest group, and its members include a company which is not a member of a worldwide group, an election cannot be made under the group ratio or equity ratio provisions. (3)

Chapter 4

Application of this Part to interest groups

Summary

Chapter 4 details how the provisions of the interest limitation rules apply to interest groups.

Section 835AAK – Interpretation (Chapter 4)

Summary

This section sets out how an interest group is formed and conditions relating to the formation of such a group.

Details

Subject to *subsection (2)*, an interest group is made up of all companies within the charge to corporation tax, that are members of the same worldwide group or members of a group of companies as defined by *section 411*, where such companies have elected to be in the interest group. (1)

Where a company, branch or agency, or any activities of a company, branch or agency fall within two interest groups, that company, branch, or agency must elect to be a member of one interest group only. (2)

The election to be a member of an interest group under this section will last for a period of at least three years from the beginning of the accounting period to which the election relates, or if later, the date on which the company became a member of the same worldwide group or *section 411* group. It must be communicated on the form made available by the Revenue Commissioners, and by the specified return date for the accounting period. (3)

Where a company makes an election under *subsection (1)*, and the period of three years has lapsed, the election to be a member of a group in *subsection (1)* can be withdrawn. The withdrawal will apply for a period of at least three years the beginning of the accounting period in respect of which the withdrawal is made. It must be communicated on the form made available by the Revenue Commissioners, and by the specified return date for the accounting period to which the withdrawal first relates. (4)

Section 835AAL – Application of Part to interest group

Summary

This section details how the provisions of earlier sections are to apply to an interest group.

Details

This section applies where a company is a member of an interest group. (1)

This subsection provides that where the interest limitation in *section 835AAC* applies to an interest group, references to a disallowable amount of a relevant entity are read as references to a disallowable amount of a member an interest group, calculated or allocated under *subsection (6), (7) or (8)*. (2)

Any amount to be calculated in respect of an interest group for the purposes of *Part 35D* will comprise the results of all members of the interest group. (3)

The accounting period of an interest group will be the period that is common to most members of the interest group, and if no such period exists, it will be the accounting period of the reporting company. (4)

Where the accounting period of a member of an interest group does not coincide with the accounting period of the interest group, then the income and expenses of the group member will be those that arose during the accounting period of the interest group, apportioned on a just and reasonable basis. In addition, all balance sheet amounts of the group member will be taken to be the amounts which would be reflected in the balance sheet of the member of the interest group on the final day of the accounting period of the interest group. (5)

Subject to *subsections (7) and (8)*, the disallowable amount of a member of an interest group for an accounting period will be calculated as a fraction of the disallowable amount of the interest group, by reference to the deductible interest equivalent of the member and of the interest group. (6)

Under this subsection, a reporting company and each member of the interest group concerned may jointly notify the Revenue Commissioners of an allocation of disallowable amount other than the allocation as described in *subsection (6)*. (7)

A disallowable amount allocated under **subsection (7)** to a member of the interest group cannot exceed the deductible interest equivalent of that group member for the accounting period. (8)

Subject to **subsection (10)**, the total spare capacity of a member of an interest group for an accounting period will be calculated as a fraction of the total spare capacity of the interest group by reference to the taxable interest equivalent of the member and of the interest group. (9)

Under this subsection, a reporting company and each member of the interest group concerned may jointly notify the Revenue Commissioners of an allocation of total spare capacity other than the allocation as described in **subsection (9)**. (10)

In applying **section 835AAD** (carry forward of disallowable amount) and **section 835AAE** (carry forward of total spare capacity) to an interest group, the references to relevant entity are read as references to a member of an interest group. (11)

An amount of total spare capacity that is being carried forward by a member of an interest group may be reallocated to other members of an interest group for an accounting period where the reporting company and the members of the interest group concerned notify the Revenue Commissioners in the form made available. (12)

Subject to **subsection (14)**, when calculating the equity ratio for an interest group, the amounts used in the calculation for equity and total assets are based on a consolidation of the results of all members of the interest group (as if each member of the interest group had a common ultimate parent resident in the State) prepared under the same body of accounting standards as applies to the ultimate consolidated financial statements of the worldwide group. (13)

Where members of an interest group hold investments in subsidiaries which are not members of an interest group, and those investments would but for this subsection be fully consolidated in the results of the members of an interest group prepared pursuant to **subsection (13)**, then those investments are accounted for at cost (measured at the lower of their carrying amount and fair value less costs to sell), as if the interest group was a single company preparing non-consolidated financial statements. (14)

Where a payment is made for the allocation of deemed borrowing cost or total spare capacity from one member of an interest group to another, that payment will not be taken into account in calculating the profits or losses of either company and will not be regarded as a distribution or a charge on income for the purposes of the Corporation Tax Acts where the value of the payment does not exceed the tax value of the amount allocated. (15)

Section 835AAM – Interest group reporting

Summary

This section sets out the reporting requirements of interest groups.

Details

An interest group must appoint a member of the group to be the reporting company. That member must be a chargeable person within the meaning of **Part 41A**. (1)

The reporting company must make a return on behalf of the interest group on or before the specified return date in the form specified by the Revenue Commissioners. (2)

The return may include the following in respect of the interest group and an accounting period of the interest group: (3)

the name and tax reference number of each member of the group, EBITDA, allowable amount, exceeding borrowing costs, disallowable amount and its allocation amongst the members, total spare capacity and its allocation amongst the members, amounts carried forward from prior accounting periods and its allocation amongst the members, details in relation to the group ratio or equity ratio election and whether payments for reliefs have been made or received, including the amount of the payment.

Chapter 5

Application of this Part

Summary

This chapter provides the scope and order of application of the Part.

Section 835AAN – Scope of application

This Part applies to all accounting periods of a relevant entity (companies or interest groups) commencing on or after 1 January 2022.

Section 835AAO – Order of application

This Part applies after all provisions of the the Tax Acts and the Capital Gains Tax Acts, other than *section 811C*.