2018 Pre-Budget Submission

A Competitiveness Agenda to Future-Proof the Economy

August 2017

EXECUTIVE SUMMARY

The American Chamber of Commerce Ireland's priority is that Ireland remains a unique transatlantic trade and investment gateway and a location of choice for US inward investment to Europe.

The American Chamber believes that Ireland must focus on the things it can control in the face of political, economic, social and technological opportunities and challenges – whatever they bring and whenever they impact – to sustain competitiveness for inward investment. A competitiveness agenda must be central to economic decision making to future-proof the country. Following extensive consultation with FDI leadership within the American Chamber, this submission highlights the key priorities for Budget 2018 with a focus on:

Innovations in the Income Tax Code: Reform should be central to Ireland's ambition to reward existing talent, encourage émigrés back to develop their careers and ensure that working in Ireland is a rewarding proposition. The American Chamber supports reforms focused on rewarding productivity by reducing the burden on individuals while clearly signalling the pathway for further reform to remain competitive in the taxation outcomes of share-based remuneration programmes; attracting talent by amendments to the SARP regime; and incentivising those taking leadership responsibility by protecting pension provision measures.

Strengthening Ireland's Tax Roadmap: The American Chamber believes that an internationally competitive and certain tax policy is a necessary part of Ireland's Foreign Direct Investment (FDI) offering to retain and attract substantive operations in Ireland. The certainty of Ireland's tax regime, including its rate, of 12.5%, is a central pillar of the investment strategy. **Ireland must continue to evolve its corporate taxation regime in response to a changing investment environment with the implementation of the OECD's BEPS agenda, signalled reforms to the US tax code and further tax initiatives emerging from the EU**. Certainty, consistency of application and consultation should remain the cornerstones of Ireland's approach to investment policy.

Accelerated Capital Investment Programme: The American Chamber strongly supports the need for upgrading and modernisation of Ireland's infrastructure which, if not addressed and planned for, will constrain growth in the economy by dampening productivity growth, and increasing costs. **The American Chamber believes that an acceleration in investment is needed to narrow the gap between Ireland and our key competitors in physical (transport, housing and access to schools), digital and knowledge infrastructure.** The American Chamber believes that the upcoming Mid-Term Review of the Capital Plan should raise investment levels towards a long-term goal of 4% of GDP in a sustainable manner.

The American Chamber believes that measures suggested in this submission will help drive growth by making Ireland more attractive for future inward investment and employment creation.

A SUMMARY OF RECOMMENDATIONS

Income Taxation

Reduce the Marginal Income Tax Rate by 1% per annum over the Next Three Years.

- Share Based Remuneration: Reform to apply a capital gains regime on realisation of such remuneration
- Special Assignee Relief: Extend to USC (or its successor form)
- Pensions: Index link Thresholds to the Consumer Price Index (CPI) annually
- Business Travellers: Re-establish the 183-day threshold before PAYE obligations apply

Strengthening Ireland's Tax Roadmap

The Certainty of Ireland's Regime and its Corporate Tax Rate of 12.5% Remains.

- EU ATAD Reforms: Avail of the most competitive options when transposing ATADs
- R&D Credit Regime: Clarity and consistency is required in the administration of the regime
- IP: Consultation on opportunities to enhance competitiveness for IP related investment
- Double Taxation: Simplify the regime including reform on royalty payments and the pooling of credits
- Competent Authority: Resource Revenue to meet international tax environment demands

Expenditure Measures

Set Long-Term Capital Investment Goal of 4% of GDP.

- Housing: Sharpen Focus on the provision of well-managed urban apartment-homes
- Digital Leadership: Deliver high-speed broadband country-wide
- Resourcing: Office of the Data Protection Commissioner and the National Cyber Security Centre
- Knowledge Intensity: Support Science Foundation Ireland's (SFI) focus on "Excellence and Impact"
- Innovation 2020: Resource a new applied 'Challenge-Centric' research and innovation programme
- Trade and Investment Promotion: Support IDA leadership and Central Bank of Ireland capacity
- Education: Reform the National Training Fund to resource for Third Level, Training and Development

Prioritised Infrastructure Investment.

- Dublin: Delivery of Metro-North, Luas cross-city, Dublin Airport and M50 enhancements
- Southern & Western Priorities: Delivery of the M20 Cork-Limerick and M28 Ringaskiddy links
- Northwest Accessibility: Delivery of A5/N2 Derry-Dublin, N4-M4 and N5 route upgrades
- Spatial Diplomacy: Strategic plan to address north-south connectivity in the context of Brexit

INTRODUCTION

The American Chamber's priority is that Ireland remains a unique transatlantic trade and investment gateway and a location of choice for US inward investment to Europe.

Inward investment to Ireland continues to make a positive contribution to Ireland's economic and social progress. It provides not only rewarding career opportunities – but also acts as a channel for knowledge transfer and the ongoing transformation of the Irish-based enterprise and their respective industrial clusters. Today, 150,000 people are directly employed in over 700 US firms located in Ireland, accounting for over 74% of all employment supported by the Industrial Development Authority of Ireland (IDA). The value of this investment has reached $343bn and contributes €13bn annually in expenditure to the Irish economy in terms of payrolls, goods and services employed in their operations.

The American Chamber believes that Ireland must focus on the things it can control in the face of political, economic, social and technological opportunities and/or challenges – whatever they bring and whenever they impact - to sustain competitiveness for inward investment. Companies are attracted to invest in locations where they can access skills, where people will want to live and work, and where the surrounding infrastructures are supportive of business. **A competitiveness agenda must be central to economic decision making to future-proof the country.**

The American Chamber is strongly of the view that further innovations in the Income Tax Code are now required to reward productivity and promote entrepreneurship. The American Chamber welcomes the Government's commitment in recent Budgets to lower personal taxation rates – a key recommendation of the American Chamber. Attracting and retaining specialised skills and leadership talent is vitally important in supporting the substance and ambitions of the FDI sector to retain and grow operations and employment in Ireland.

In parallel, **the American Chamber believes that an internationally competitive and certain tax policy is a necessary part of Ireland's FDI offering to retain and attract substantive operations in Ireland.** Ireland must continue to evolve its corporate taxation regime in response to the post-BEPS landscape to remain competitive, including resourcing critical international functions within Revenue.

This submission acknowledges, at the outset, that Ireland has made enormous strides to become the vibrant, high performing economy that it is today. **The performance of the FDI and exporting sectors has led Ireland back to strong economic growth with positive impact on employment levels, labour market participation, net migration and income growth**. This expansion is creating new challenges to provide essential services and associated infrastructure over the next 20 years in housing, transportation, energy, health, education and water services. On housing, its provision has the challenge of not only providing for the potential increases in population, but also for the backlog of those currently seeking suitable accommodation today.

The American Chamber concurs with the analysis of the National Competitiveness Council that the need for upgrading and modernisation of Ireland's infrastructure will require targeted and prioritised investment to address infrastructural bottlenecks which, if not addressed and planned for, will constrain growth in the economy by dampening productivity and increasing costs.

The membership of the American Chamber believes that **Ireland needs to provide the long term strategic priorities upon which planning authorities will make decisions knowing that it is part of a robust National Planning**

Framework to deliver very specific goals. Those goals will only be achieved if there is joined-up cross-sectoral decision making by those entities planning for public services and infrastructure, supported by the allocation of the appropriate levels of capital investment. Those sectors are not only different Government Departments, agencies and utility providers – but also regional, local and city authorities.

This submission has **three sections**. In the first two sections, our focus will be on sustaining tax competitiveness with recommendations for measures to be included in Budget 2018 and reflected in its enacting Finance Act. A third section considers capital expenditure priorities for the expenditure measures included in Budget 2018 and priorities for next phase of the Capital Investment Plan.

BUDGET 2018 – FINANCIAL MEASURES

2.1 Personal Tax and Talent

The American Chamber welcomes the Government's commitment in recent Budgets to lower personal taxation – a key recommendation of the American Chamber in recent years, and one that will send a positive signal that Ireland seeks to reward talent and ambition, not penalise it.

A competitive income tax regime is an important deciding factor for many of those with the option to choose where they wish to locate to develop their career. Ireland's proposition should be strengthened in this regard. As the American Chamber has previously stated in past submissions, the marginal personal income tax rate (together with PRSI and USC) with its low entry threshold should be reformed to enhance Ireland's ability to retain and attract leadership talent and specialised skills, improve productivity and reduce upward pressures on labour costs.

The evidence from our members is that Ireland's high marginal income tax rate continues to be a dissuasive factor in the retention and attraction battle for advanced skills and leadership experience. Ireland must remain sensitive to the fact that this vital talent pool is in short supply globally and both employees and potential recruits are being attracted to jurisdictions where their total income tax and national insurance burden is lower – often significantly so.

The current higher marginal income tax rate of 52%, when one includes PAYE/PRSI and USC, is among the highest when compared with countries that Ireland currently competes with for investment. The relatively early entry point that income is exposed to the highest marginal personal tax rate is especially uncompetitive for a traded economy reliant on a highly mobile labour market within Europe. This is a critical factor in the competition for attracting mobile investments and projects to Ireland. Indeed, the European Commission's July 2017 economic brief notes that:

"*…single earners in Ireland face among the highest marginal tax rates in the EU. …, a very high marginal tax rate in Ireland is reached at a relatively low point in the income distribution. While marginal tax rates for couples at the average wage (with or without children) remain below the EU21-OECD average, they sharply increase with income*".

Income Taxation

The American Chamber is strongly of the view that reform should be central to Ireland's ambition to reward existing talent, encourage émigrés back to develop their careers and ensure that working in Ireland is a rewarding proposition. **The American Chamber supports reforms focused on rewarding productivity by providing direct relief to individuals by reducing the current higher marginal income tax rate to below 50% on a phased basis of 1% per annum over the next three years.**

The American Chamber understands consideration is being given to merging the USC and PRSI regimes in an effort to alleviate the complexity of the income tax system and we would be happy to discuss the issue further given the differing bases involved.

The American Chamber continues to recommend an approach to personal taxation in 2018 designed to reward productivity, attract talent and incentivise those taking leadership responsibility – signalling the pathway for further reform to remain competitive. By targeting these three additional areas, the American Chamber believes that the ability of our members to attract and retain critical technical and leadership talent within the jurisdiction would be significantly enhanced. We have provided further details on these recommendations below.

(i) Taxation of Share Based Remuneration

The American Chamber made a submission to the Department of Finance as part of the 2016 public consultation on the Taxation of Share Based Remuneration. The American Chamber believes that certain amendments to the current taxation treatment of share based awards could, in conjunction with other reforms to Ireland's personal tax regime, significantly enhance Ireland's overall FDI offering by rewarding productivity.

In this context, for completeness, we have detailed below the recommendations made in the American Chamber's submission to this consultation:

- **The personal tax treatment of shares acquired under all share based remuneration arrangements (e.g. share option schemes, Restricted Stock Units, etc.) should be enhanced by removing the income tax charge on the acquisition/granting of such remuneration in favour of a capital gains charge on the realisation of the share based income to the individual.** Hence, move the marginal charge from today's marginal income tax, PRSI and USC liability to a capital gains tax (CGT) of 33%.
- As an alternative to the above suggestion, improve the tax treatment of all share based remuneration arrangements by removing Employee PRSI and the USC. This would lead to direct take home pay benefits to all workers in such schemes, enhancing their attractiveness and reduce the administrative complexity for business/employers.
- Under various approved Profit Sharing Schemes, employees, under certain conditions, can receive up to €12,700 worth of shares in any one tax year free of income tax, PRSI and USC. The limit of €12,700 has been in place for a significant period of time and accordingly the value of this benefit has declined over time. We recommend that this limited threshold should be significantly increased to not just reflect indexation but also to continue to encourage employee share ownership.
- The current employer social security position on the granting of share based remuneration should be maintained. This represents a 10.75% cost saving for all employers and represents a significant cost saving for US MNCs with operations in Ireland as such companies generally commit to strong levels of share awards.
- To simplify the reporting of gains and payment of taxes for share based remuneration (in the absence of moving to a CGT based approach, per (1) above) it would be preferable to allow for an election for such incentives to fall within the employer payroll system rather than be treated as share options and therefore avoiding an additional administration burden.

The American Chamber notes innovations being undertaken in other jurisdictions – for example, the European Commission's approval of Sweden's share based remuneration for certain entrepreneurial companies from a State Aid perspective and the UK's Enterprise Management Incentive. The American Chamber welcomes the signal from the Minister for Finance within the 2017 Summer Economic Statement that there is Government commitment to reform in this area. Innovations should consider the unique profile of Ireland's industrial base and the potential to grow investment and employment by keeping FDI in-scope for these changes. This is an area of significant importance for a wide diversity of our members, but has special relevance to the new and emerging FDI players wishing to use share incentives effectively to attract and reward talent that take on the risk associated with joining a start-up organisation with finite resources.

(ii) Assignee Program

The American Chamber has always welcomed Government initiatives aimed at attracting specialised talent and leadership executives to relocate to Ireland with an aim of bringing with them investment and employment. Reforms to the SARP regime announced in past Budgets, confirm Ireland's ambition to have a best-in-class programme making a tangible contribution to economic growth. To continue to make competitive enhancements to the current SARP regime, the American Chamber recommends that:

- The relief should be extended to USC (or its successor form).
- The American Chamber also recommends that the obligation for the employer to certify within 30 days of the assignees arrival that the employee is a 'relevant employee' should be removed. This condition was introduced in Finance Act 2015 and is proving problematic to administer, while not enhancing the operation of the relief. When an assignee arrives in Ireland there will usually be many pressing business matters that will require attention, this is particularly true of senior executives. By imposing the 30-day deadline for notification, there is a risk that these individuals will be denied the relief entirely for the duration of their assignment. The American Chamber believes that such a strict administrative approach would be inconsistent with the broader policy objectives that SARP seeks to achieve and should therefore be removed. To the extent that the Government does not wish to abolish this time period, at a minimum we would recommend that the time limit for this certification is extended to 90 days.
- An assessment is made as to whether the 5-year relief term under SARP should be extended to remain competitive with other jurisdictions.

(iii) Pensions Policy

It is of the utmost importance that pension policy changes do not adversely impact upon the sustainable competitiveness of doing business in Ireland and employers' ability to retain experienced leadership talent for Irish based operations. While a one-off move to a higher threshold would be a more impactful option, the American Chamber believes that a commitment by Government to index linking the thresholds would be a more equitable way of ensuring that the limits are annually revised to ensure the real value of the current limits are maintained at current levels and not diluted over time.

Thus, **the American Chamber strongly recommends that the individual's Personal Fund Threshold and the Standard Fund Threshold should be increased in line with the Consumer Price Index (CPI) and this indexation should henceforth occur automatically each year**.

In addition, employers would be wholly opposed to any change which would give rise to a restriction in the age-based thresholds and annual earnings cap which determine the maximum pension contribution of an individual qualifying for income tax relief. Any such amendment would only serve to further dis-incentivise individuals from contributing to the funding of their future pensions.

Business Travellers

In December 2016, Revenue issued a revised interpretation of the rules governing business travellers to Ireland, resulting in PAYE withholding tax implications and reporting obligations for companies if that employee spends greater than 30 days in Ireland in a calendar year. Previously, such a person had to be in Ireland for more than 183 days before these obligations arose. This change does little to improve the attractiveness of Ireland as a location to do business. It compares unfavourably to our European neighbours and competitors.

Business travellers are key to any open economy which hopes to attract inward investment and generate increased export activity. These travellers include those who travel from parent companies abroad in the US and UK to Ireland for meetings, for short projects or to provide experience and guidance to Irish staff. Given tax treaties protection against double-taxation, there is likely to be little tax involved on this issue and it is simply creating administrative costs for companies for little or no benefit to Ireland. Accordingly, the American Chamber will be discussing with Revenue the desirability of restoring the original practice, as a matter of priority.

2.2 Strengthening Ireland's Tax Roadmap

As outlined in previous submissions, there are several other areas of the Irish tax regime which should respond to the changing international tax competitiveness landscape. Included here are some further comments on these areas, together with specific amendments that the American Chamber recommends.

Approach to the recent EU Anti-Tax Avoidance Directives

The EU Anti-Tax Avoidance Directives ("ATADs") will lead to a number of changes to Irish tax legislation with effect from 1 January 2019. While the information included in the Directives are still relatively new and there are a number of key questions in relation to how certain aspects of the Directives will be implemented by Member States, it is clear that a number of the proposals have the potential to impact enterprises with significant operations here in Ireland.

Against this background, we believe that there are important tax policy aspects concerning the implementation of the Directives that should be carefully considered. The American Chamber has summarised its current perspective on these key areas below following extensive consultation with its membership. We would be more than happy to consult further with the Department on any aspect of the implementation of the ATADs.

(i) Interest Limitation

- On implementation, the 30% interest limitation should be included.
- Given the current Irish tax legislation in this area, the Government should agree that Ireland has "equally effective" legislation in this area such that the extended deadline to 2024 for this legislation as currently outlined in the Directive can be adopted by Ireland.
- On implementation, the proposed "grandfathering" of loans entered into pre-17 June 2016 should be included.
- The Government should consider how the interest limitation provisions can be efficiently implemented in conjunction with Ireland's existing tax legislation in this area, given the level of complexity that currently exists. The American Chamber believes that simply adding the proposed interest limitation provisions into Irish legislation without amending current Irish tax legislation (potentially on a phased basis) would put Ireland at a significant competitive disadvantage in this context when compared to most other Member States.

(ii) Controlled Foreign Company (CFC)

- In-line with most countries that currently have a CFC regime, on introduction of the proposed CFC legislation, we recommend that the Government considers introducing a participation regime in the context of dividends received from non-Irish subsidiaries. The American Chamber would also recommend consultation on the options for application of the CFC provisions contained within the ATADs.

(iii) Exit Tax

- On implementation, the extended introduction date of 1 January 2020 should be included.
- Consideration of the rate of tax applicable where the Exit Tax provisions apply should be undertaken. The current application of the 33% capital gains tax rate places Ireland at a competitive disadvantage when compared to other Member States. While further consultation should be undertaken, the American Chamber would recommend that the 12.5% tax rate should apply where the relevant assets are used as part of a trade carried on in Ireland.

R&D Tax Credit Regime

The American Chamber believes that Research and Development (R&D) activity is fundamental to growing the Irish economy. Global competition has intensified within the EU in recent years. This is mirrored on a global scale with the likes of Israel and Singapore establishing themselves as technological hubs for international companies. It is well established that the location of R&D activity has a significant impact on long term economic growth potential as it helps anchor related manufacturing and service activities in the State and drives enhanced skill levels.

Ireland's R&D Credit Regime is intended to be best-in-its class. However, it is the American Chamber's very considered assessment that the regime requires urgent targeted reform. The American Chamber is of the view that a "mismatch" has emerged between the principles underpinning the Regime, its promotion and its implementation. **The Regime needs to be clear and consistent if it is to be effective. As such, it needs to reflect the overarching policy, as outlined by Government and the Department of Finance, to be strategically focussed on reducing the business cost of undertaking R&D in Ireland.** The American Chamber warmly welcomes and supports Revenue's initiative to form an R&D Discussion Group to bring greater certainty to the administration of the R&D tax credit and the KDB.

To remove a level of uncertainty within member companies engaging in further R&D-led investment, the American Chamber recommends the following enhancements:

- Section 766 TCA 1997 should be amended to delete the term "wholly and exclusively in the carrying on….of research and development" and replaced with "for the purposes of research and development." This is a broader test and is more aligned with the aim of reducing the business cost of undertaking R&D in Ireland. It is also more in keeping with the broader Revenue interpretation previously outlined in pre-December 2013 Guidelines.
- The R&D legislation should be amended to ensure that certain costs incurred in undertaking a qualifying R&D activity under the general framework of S.766 TCA 1997 should be allowable notwithstanding that they may be capitalised as a component of the valuation of an IP asset and potentially come within the ambit of S.291A TCA 1997.

* To support global R&D projects the regime needs to become more flexible in allowing Irish subsidiaries to engage with connected parties (i.e. parent companies in the US). Therefore, the territoriality and connected party's restrictions contained in S.766 TCA 1997 need to be relaxed to allow Irish subsidiaries' collaborations to be catered for in the legislation.
* The regime, while remaining based on the OECD Frascati model, needs to evolve to expand the qualifying fields of science to emerging areas (e.g. such as the interaction between technology and human behaviour). This can be done by amending Statutory Instrument No.425 of 2004 and in particular, 'Appendix 2' that outlines categories of activity that are not research and development activities.
* The concept of 'scientific or technological advancement' contained in S.766 TCA 1997 needs to be more aligned to the specific requirements of a small island economy like Ireland. International R&D regimes have different novelty requirements, the most common being 'new to the company' rather than the more stringent "new to the world" approach. Typically, the "new to the world" approach is difficult to administer and is unlikely to capture the very significant 'D' that is undertaken in Ireland as it focuses more specifically on the pure 'R'. The American Chamber recommends that the level of novelty required to be sought in the Irish regime is clarified to reflect conditions on the ground and to allow Irish companies to continue on the path from 'D' to 'R' over time.
* The nature of the R&D which qualifies for grant aid administered by IDA and that which qualifies for R&D tax credits is not consistent. Evolving the regime to reduce this inconsistency would be beneficial to the companies which are awarded RD&I grant aid for their investment programmes into Ireland. In addition to any changes in legislation to clarify the level of novelty outlined above, utilising the State's own technical resource as per the IDA's grant assessments to review the technical basis of R&D tax credits claims would assist in this alignment and allow reduced administration and increased clarity for those companies claiming both incentives.
* The regime currently provides insufficient incentive and support to companies to collaborate with Higher Education Institutes. To further encourage companies to work with third level institutions and invest in the 'R' activities which are the foundation of longer term progress in science and technology based products and production methods, the American Chamber recommends that the limits applied to such expenditure are reviewed with a view to increasing them. This would encourage large investors in R&D to place more expenditure within academic institutions and assist in knowledge transfer to industry.
* At present Ireland markets the benefits available in respect of R&D investment as an effective 37.5% benefit, being a 25% R&D credit and a 12.5% corporate tax deduction for qualifying expenditure. A further potential innovation which would be welcomed by the American Chamber would be an election option for the R&D credit regime to allow claimants with a tax base to forgo corporate tax deductions and take the benefit foregone by way of R&D credit. Such an election would lead to a 50% increase in the potential "above the line" benefit. This increase in "above the line" R&D credits would make Ireland significantly more competitive when competing for mobile R&D investment.

  The denial of a corporate tax deduction at 12.5% on the qualifying R&D expenditure means that the proposal is a cost neutral for the Exchequer. The American Chamber is conscious that without an appropriate restriction, a loss-making company could claim an unintended benefit but believe that this can be avoided by building appropriate safeguards into the legislation.

<u>Intellectual Property (IP)</u>

The American Chamber believes that the continued enhancement of Ireland's IP offering is critical from an Irish tax policy perspective to create an environment where Ireland can compete for mobile IP related investment.

IP amortisation regime

- The Government and Department of Finance have stated that they regard Ireland as having a suite of offerings to attract knowledge intensive activity to Ireland from an IP perspective. **The Irish IP amortisation regime (included in Section 291A TCA 1997) is a key pillar within this suite and there are a number of areas where the American Chamber believes enhancements should be made in order to improve competitiveness and attract further IP related investment.** These recommendations are:
- Amendments to provide that there is no claw-back of IP amortisation allowances previously claimed.
- Provide further guidance (potentially certain "safe harbour" tests) in relation to what activities should be regarded as trading in an IP context.
- Amend the definition of "specified intangible asset" to include goodwill where such an amount is amortised for accounting purposes.
- The current requirement included in Section 291A to regard the income and expenditure from qualifying IP as a "separate trade" from an Irish tax perspective causes a number of practical issues for some of our Members. In this context, the American Chamber would recommend that the impact of this requirement is fully considered in conjunction with any potential costs that would be associated with removing this requirement with a view to ascertaining whether the removal of the "separate trade" calculation could be a worthwhile enhancement to Section 291A. The American Chamber would be more than happy to discuss this issue in more detail as required.
- The accounting for amortisation regimes (such as Ireland's) under US accounting principles is a complex area. In a number of instances, this is a key issue for our Members. The American Chamber recommends that the Government considers whether the IP amortisation regime could be amended to deal with these particular challenges. Further, the majority of Irish companies who prepared financial statements under 'old Irish GAAP' were obligated to convert to FRS 100/101/2012. These new accounting standards require companies to 'fair value' certain assets, including IP. In effect, this means that such assets may no longer be amortised on an annual basis, and thus companies who claimed relief under Section 291A on the amortised basis may lose the relief if the law was to remain as is. In this context, it is evident that Section 291A may have to be amended in any event such that it is now timely for a review of the section for this and the abovementioned US accounting issue. The American Chamber would be happy to explore these issues further with the Government and the Department of Finance as required.

This area is of key importance in a post-BEPS environment and the American Chamber would be happy to consult further with the Department on any change not outlined above.

<u>Knowledge Development Box ("KDB")</u>

The American Chamber has been a key contributor to the consultation process initiated thereafter to consider the creation of a 'Knowledge Development Box' (KDB) regime for Ireland.

Understanding the necessity for reviewing tax expenditures requires an "end date" for the KDB, it would be important for investor certainty that the Minister make a positive statement in Budget 2018 that the intention would be to evaluate the incentive at that point for its 'fit-for-purpose'.

Double Taxation / Withholding Tax Regime

It is vitally important that Ireland can offer a competitive regime for dealing with withholding taxes suffered on inbound royalty payments. It is also important to at least maintain our current regime for granting relief for withholding tax on outbound royalty payments. Both are critical to ensuring that Ireland can compete internationally and be a hub for highly mobile, IP rich global operations.

While Ireland has implemented various attractive measures to compete for international business, its current withholding tax regime for inbound royalties is not competitive compared with other jurisdictions. This significantly impacts upon our members decisions to do business from Ireland with certain countries. The ***Irish Measure of Income*** regime is now extremely complex and burdensome for companies, and despite efforts to simplify it, the opposite is in fact the case for a lot of taxpayers.

Furthermore, the view that a deduction cannot be claimed for withholding tax under general trading principles is very unsatisfactory. All withholding tax should be deductible as a business expense on the basis it is incurred wholly and exclusively for the purposes of the company's trade and Ireland falls behind several other competitor jurisdictions that allow this. The lack of clarity in this area is of concern for taxpayers, and creates uncertainty. The American Chamber recommends that consideration be given to simplifying and streamlining the regime.

In order to address the concerns outlined above, and ensure Ireland competes effectively for mobile IP-rich FDI, we strongly urge consideration be given to improving the double taxation relief afforded on tax suffered on inbound royalty payments. Improvements to this area are key to ensuring Ireland is competitive internationally to win global mandates:

- With effect from 1 January 2017 there should be a removal of the requirement for Irish taxpayers to estimate the Irish measure of income limitation for foreign withholding taxes on a formula based approach – one size simply does not fit all. For example, consideration could be given to enable the taxpayer, particularly with different margins on products in different markets, to calculate based on actual net income from each foreign source. It should also be clarified that a full deduction for unrelieved or excess foreign withholding tax (WHT) should be permitted where credit is unavailable or limited.
- Unrelieved or excess foreign WHT should be deductible under general tax principles (on the basis withholding tax is an expense of business incurred "wholly and exclusively" for the purposes of a company's trade), if it is not otherwise deductible under specific WHT provisions.
- Clarification needs to be provided such that unilateral relief for withholding taxes under paragraph 9DB, Schedule 24, applies to income which under Irish tax rules would not typically be considered to be royalty income, but which certain foreign jurisdictions view it as being subject to withholding tax. For example, companies suffer withholding tax on certain service fees including payments for software services / technical services, which are currently not included under the provisions of 9DB creating additional complexities to calculate the deduction for WHT. Therefore, extending the provisions of 9DB to include such services would be welcomed by the members.

It will be important to consider the interaction of withholding tax credit relief rules with capital allowances available on certain intangible property (under Section 291A Taxes Consolidation Act 1997) where intellectual property is on-shored in Ireland. Relief for withholding taxes on income arising from the exploitation of assets eligible for relief under Section 291A is currently ring-fenced against tax on income from those assets. As the operation of the allowances regime reduces the taxable measure of income and the amount of current tax payable, companies which invest in assets in Ireland face a further limitation on their ability to utilise withholding tax credits. This could potentially impact any decision to move intellectual property to Ireland. Ideally an enhanced regime would facilitate use of credits against tax on other income in order to minimise any loss of credit or deduction relief.

A key feature of a competitive offering in terms of tax relief for withholding taxes is the ability to pool surplus tax credits. Currently, in contrast to other areas of the Irish tax legislation (for example dividends, foreign taxes suffered on branch profits), no pooling is available for withholding taxes suffered on royalty income. This is a significant disadvantage and renders Ireland uncompetitive in this area. Recognising that there may be cost implications to the introduction of the full scope pooling of credits, it may make sense to introduce this on a phased basis over the next 2/3 years.

If it was determined to phase it in (as opposed to making the bold move in FA 2017), this would need to be clearly expressed and delivered within an appropriate timeline.

Developing Ireland's Tax Treaty Network

The American Chamber would stress the importance of continuing to develop Ireland's Tax Treaty network. Ireland has made positive steps in this area but the American Chamber urges continued efforts with countries such as China and Japan as noted in past submissions.

As well as developing very extensive treaty networks, consideration should be given to the breadth of withholding tax relief application. Ireland is lacking treaties with many key trading partners, and in many instances where treaties are in place the level of withholding taxes remains high. It is crucial for Ireland to continually improve on its competitiveness on these matters to attract and retain business into the future.

Resourcing the Competent Authority within Revenue

One of the many consequences of the OECD BEPS process has been a focus by Revenue Authorities around the world on increasing the tax yield from Revenue audits. One element of such audits in a cross-border group situation is to examine the supply of goods and services between group companies and in particular the transfer pricing arrangements that are in place to ensure these are at arm's length and thus fair to the Exchequers of both countries.

The American Chamber greatly welcomed the Government's actions over the last number of years to strengthen the capacity of the Revenue Commissioners to enable them to deal with any queries raised by other jurisdictions in a speedy and comprehensive manner. This is not just dealing with the speed of such responses, but also with pushing back on the demands of other countries and to preserve, as far as possible, Ireland's corporation tax position and its tax base.

Given the importance of this issue, **the American Chamber strongly encourages Government to continue to invest to have a well-resourced competent authority team within Revenue to engage with Ireland's treaty partner jurisdictions and to ensure that the team is appropriately trained with the relevant technical knowledge to engage with their counterparties in other jurisdictions.**

BUDGET 2018 - EXPENDITURE MEASURES

The American Chamber concurs with the analysis of the National Competitiveness Council that **the need for upgrading and modernisation of Ireland's infrastructure will require targeted and prioritised investment to address infrastructural bottlenecks** which if not addressed and planned for, will constrain growth in the economy by dampening productivity growth, and increasing costs.

According to the World Economic Forum, **the quality of infrastructure has been in decline** since 2010's fiscal retrenchment which severely curtailed capital investment programmes. Ireland's investment in transport infrastructure at 0.4% of GDP ranked Ireland 28th within the OECD and well below the OECD average of 0.8%. Further, the analysis of the Irish Fiscal Advisory Council suggests that capital investment is at levels well below its long run average (2.3% of GDP versus 3.7%).

While welcoming the increases in investment signalled in the National Capital Investment Plan (2016-2021), the American Chamber believes that an acceleration in investment is needed to narrow the gap between Ireland and our key competitors in physical (transport, housing and access to schools), digital and knowledge infrastructure. The American Chamber wants Ireland to be recognised as one of the most developed, ambitious and welcoming locations in the world for existing and new business investments, and a highly supportive environment for their future growth. In that context, the American Chamber supports calls for the upcoming **Mid-Term Review of the Capital Plan to accelerate Ireland's Capital Investment Programme to move investment levels towards a long-term goal of 4% of GDP** in a sustainable manner.

Planning and investment policy should prioritise:

- Raising Investment Activity: Set a long-term capital investment goal of 4% of GDP in a sustainable manner to <u>support economic and demographic growth</u>.
- <u>Reinforce Ireland's Digital Leadership</u>: It is vital that Ireland has the broadband coverage demanded by our knowledge-intensive economy and avoid digital, and thereby economic, blackspots.
- Champion Talent and Innovation: Ireland must improve its performance in the areas of science, technology, engineering and mathematics (STEM) and life-long learning (LLL) to adequately <u>resource the knowledge intensity of economic activity</u>.

Supporting Economic and Demographic Growth:

The American Chamber of Commerce supports investment plans and reforms that improve housing provision and availability in areas with good physical and digital connectivity, schools and amenities. The American Chamber is strongly of the view that provision of accommodation is a critical pressure point that requires continued prioritisation for planning and capital investment, most especially in Dublin. The current 'Rebuilding Ireland' initiative by Government is welcome, underway and should positively address the "starter home" segment of the market.

Provision in the short-term and entry-level rental accommodation, together with the emergence of a larger stock of well-managed apartment-homes is worthy of priority attention. In addition, ancillary facilities - such as schools, childcare, roads and transport access are also viewed as essential requirements for employment growth.

The American Chamber recommends that Government examine the competitiveness of the business case for building apartment units by **conducting and publishing a transparent and independent audit of construction costs against peer locations and a regulatory impact report** examining how the increased costs associated with regulation compare to the benefits derived from the regulation. The aim of improved transparency and shared understanding of these matters is to provide for a programme of targeted actions to improve the investment environment and bring on-stream more development of professionally managed apartment/home complexes in central urban locations.

Reinforce Ireland's Digital Leadership

It is **vital Ireland has the broadband coverage demanded by our knowledge-intensive economy and avoid digital, and thereby economic, blackspots**. The American Chamber welcomes the Government's ambition to ensure that the population of Ireland has access to quality fibre based broadband services across the island in its 'National Broadband Plan'. There has been a step-up in the provision of digital infrastructure among Ireland's competitors with basic broadband now widely available throughout the EU. For Ireland, the challenge is to improve the access to fast broadband outside the main population centres to add workplace flexibility, push-up labour participation and widen the available skills pool in city-regions. In addition, the mobility of users must be considered – especially as they move along the main transport arteries of the country. Plans should be matched by adequate planning, regulatory and financial commitments and be reflected in the Capital Investment Plan (CIP) where private investment shortfalls arise.

Specifically, with respect to the wider 'Digital Agenda', the American Chamber leadership believes that **Ireland can be positioned as a global centre of excellence for all things data and digital** within the EU. Every sector and every organisation now has data and digitisation at the heart of its strategy. Ireland needs to invest in the right kind of infrastructure at a national and local government level to take advantage of the digital transformation. This can be transformative in how citizens engage with government to access services. It will require state alignment with long term economic and industrial planning that actively exploits public-private opportunities for data-driven innovation and world class cloud use.

In parallel, the maintenance of a robust data protection and cyber security reputation, citizen trust and ubiquitous rapid broadband access are essential conditions for the sector to thrive. Therefore, **the American Chamber is strongly supportive of resourcing of key Competent Authorities in the form of the Office of the Data Protection Commissioner and resourcing for the National Cyber Security Centre in Budget 2018.**

Resource the Knowledge Intensity of Economic Activity

The American Chamber believes that the strategic goal for Ireland should be to attract further public-private investment through proven partnerships between US FDI and Ireland's research, development and innovation (RDI) system which would, within ten years, double national spending on RDI by 2025. The long-term objective should be to raise expenditure in Research and Development to 3% of GDP.

Science Foundation Ireland's (SFI) focus on "Excellence and Impact" is a sound strategy for inward investment. Investment must seek to retain the current RDI investment in scientific excellence, but provide additional resources to build out research centres of scale focused on the application of knowledge and product and technology development. The American Chamber is strongly supportive of investment to reinforce Ireland's leadership in **world class advanced manufacturing** as advances in robotics, technology and the digital marketplace makes automation more flexible and offers transformational benefits to many industrial processes.

Over the next period of Innovation 2020 resourcing a 'Challenge-Centric' research and innovation funding stream will be critical to achieve societal or economic impacts, as well as sustaining broad support for continued public investment in RDI. For 2018 the American Chamber recommends that Government formulate agreed criteria, an implementation process and a funding plan for a Grand Challenge Programme for Ireland in readiness for launch and implementation by 2020.

To strengthen Ireland's capacity to retain and attract investment and employment into Ireland, the American Chamber is **supportive of continued investment** in the trade and investment arms of the State including the marketing and account management **leadership of the Industrial Development Authority**, the **regulatory and supervisory role of the Central Bank of Ireland** in an expanding International Financial Services and Fintech sector, and the **trade development and economic diplomacy work of the Department of Foreign Affairs and Trade** through its Embassy in Washington D.C. and its Consulates across the USA.

Funding 3rd Level Education and Training

Industry and the FDI sector make significant contributors to higher and further education institutions through research and innovation programmes, curriculum development support and work placement opportunities. Benefits flowing from this engagement include strengthened learning outcomes, greater skills alignment and greater strategic linkages between industry and the sector.

The American Chamber believes that any meaningful discussion on the operation of the existing National Training Fund (NTF) and the National Training Levy (NTL) should be in-step with a strategic decision on one of the recommended funding options outlined in the report of Expert Group on Future Funding for Higher Education (July 2016).

Revenue buoyancy from the existing NTL from higher economic activity and resulting changes in the demand for programmes, coupled with a repurposing of the NTF and its governance is worthy of greater consideration in meeting and exceeding the Expert Group's ambition for the contribution of the NTL to the higher education and training system.

The American Chamber believes that opportunities exist for further innovation and productivity to contribute to the sectors future resourcing, as well as a transparent and equitable financial participation of the student in their further education.

INFRASTRUCTURE PRIORITIES

Dublin: Ireland's Flagship City:

Ireland needs to invest to have a recognised flagship metropolitan city act as a beacon for the country's investment attractiveness with world-class global and all-island physical interconnectivity and digital capacity.

Dublin is a transatlantic magnet for service/digital media-centric inward investment and the American Chamber expects this demand to continue, if it can absorb that opportunity. In-step with American Chamber recommendations on planning targets around rapid access corridors, Dublin needs certain and reasonable travel and transfer times in and around the city, its orbital route and the man arteries of access to adjoining urban areas. This should be a key goal.

Further, a transport plan giving mobility to its citizens must be consistent with residential and commercial location strategies for the entire capital area, the wider connected country and the demands of its entire people. Dublin needs a credible funding commitment that reflects its 'Greater Dublin' population footprint, economic activity and required geographic connections, ensuring the right balance between integrated public transport services and private transportation to access clusters of employment and centres of education.

The American Chamber encourages the on-time and on-budget delivery of existing commitments on Metro-North, Luas cross-city and the expansion of Dublin Airport's capacity. Planned enhancements to the M50, greater use of high-speed bus corridors and the expanded capacity on existing rail/light-rail services have important contributions to make to easing congestion.

At a national level, an enhancement of rail services to Dublin port would reduce the pressure brought on the M50. In the medium-term the consideration of new orbital routes to connect suburban and commercial centres should seek to reduce the use of the M50 for shorter interconnections, allowing it to serve its main function in taking traffic away from the city centre.

Ireland's City-Regions:

Following a rollout of motorway routes during the first decade of the century, and as the economy expands, it is timely to continue the task of maintaining this endowment, addressing specific regional gaps and making required new investments to complete the following projects.

The development of advance building solutions has an important role in attracting new cycles of investment into regions. Such investment should be part of a joined-up approach to planning for transport, residential, schooling and other social assets needed when new jobs are being created.

Southern & Western Priorities: Building on the significant enhancements to the road network linking the capital with the main cities of the west and south, there remains vitally important opportunities to enhance connectivity with the following projects;

- In Munster, the delivery of the M20 project between Cork and Limerick would significantly enhance the Atlantic/Western economic corridor by creating a world-class backbone transport artery, linking population centres, industrial clusters, ports and air hubs and thus improving regional connectivity and competitiveness to retain and attract investment.

- In Cork, the immediate requirement for the N20 Croom-Mallow and the N28 Ringaskiddy-Cork upgrade projects and the N21 Ballyvourney-Macroom bypass;
- In Cork and Galway, the outer ring roadway projects;
- In Galway, improved access to Parkmore's industrial zone.

Northwest Accessibility: The investment attractiveness of the Letterkenny-Derry region would be significantly enhanced with a step-up in road connectivity. The region is currently an outlier in not being connected to Dublin and its international airport with an inter-urban motorway.

The development of the A5/N2 between Derry and Dublin remains the goal for American Chamber members in the region. The American Chamber strongly supports the western and north-western spurs to Ireland's Core T-TEN Network which is eligible for EU priority funding. Including this 'western arc' provides a critical signal to support and encourage regional economic development in these regions by expanding logistical capacity potential and improving accessibility.

In the short to medium term there is an urgency to the following projects;

- The N14 Letterkenny to Lifford route with connectivity to the A5 (with supporting improvement and bypass projects) to dual carriageway standard;
- In Sligo, while the N4-M4 route upgrade to dual carriageway standard remains the objective, the timely delivery of the N4 Collooney to Castlebaldwin development is greatly anticipated.
- A step forward in connectivity into Mayo will be achieved with the delivery of the planned N5 Westport to Turlough project. The completion of the entire N5 upgrade should follow.

Spatial Diplomacy

Planning and investment to address the Ireland-UK relationship is required to recognise and include all-island interdependencies in a post-Brexit relationship. The north-south context has shared talent pools, needs for improved physical interconnections in terms of road (A5/N2), rail (high-speed Dublin-Belfast services), energy and public services (health and education). In addition, the risks of a return to border and customs controls will require investment – to implement, yet mitigate the impacts of the outcomes of the UK's exit from the EU. The American Chamber is strongly supportive of calls to have long-term planning and co-operation on an all-island basis included within the NPF.

Utilities

Energy: Investment is required to ensure adequate regional/local capacity to support investment locations, especially in the main urban centres. Greater interconnection is also a priority, including delivery of the North-South Interconnector, and also with the continent to ensure energy security and generation diversity. Consideration should be given to extend the country's gas infrastructure network, to include penetration into the centres of the Northwest to improve their attractiveness for investment.

Water: The American Chamber continues to support efforts to develop and resource a strategic approach to water services and management. Future inward investment opportunities will arise with more certainty as to water availability, quality, treatment capacity and price competitiveness. A sustained commitment to capital expenditure is required to secure quality and affordable provision. In particular, Dublin’s critical capacity constraint is a risk to future industrial as well as population growth and must be addressed with urgency.

Concluding Remarks

The American Chamber promotes policies that enhance Ireland's competitiveness to be the location of choice for US FDI into Europe. Competition for FDI remains intense as investment, rather than trade, emerges as the key driver of the global economy in this century.

We believe that if the measures suggested in this submission are embraced they will help drive growth by making Ireland more attractive for future inward investment.