American Chamber of Commerce Ireland

Pre Budget 2015 Submission

to the

Department of Finance

September 2014

Introduction

The priority for the American Chamber of Commerce Ireland in Budget 2015 is that Ireland remains the global location of choice for US foreign direct investment (FDI) into Europe, and by doing so we retain and attract further investment and jobs.

Since 2010, Ireland has seen the greatest surge of US investment in over a decade. Ireland remains a unique gateway for US investment into Europe. It is the third largest European recipient of US FDI, and investment flows from the US to Ireland since 2000 have been 6 times larger than those to China. Today, over 115,000 people are directly employed in over 700 US firms in Ireland accounting for over 70% of all IDA supported employment.

Collectively US companies have US $240b in foreign direct investment in Ireland, representing almost 10% of all US investment in the EU. This investment remains instrumental in helping to create and develop a world class labour force; critical in dispersing technology and innovative capabilities across the economy; and key in expanding the global reach of indigenous firms.

There are certain aspects of our tax system that need attention if we are to continue to compete for inward investment opportunities. Our comments and concerns on these areas are set out below.

Personal Tax and Talent

The Marginal Personal Tax Rate with its low entry threshold is damaging Ireland's ability to retain and attract talent, dampening productivity and placing upward pressure on labour costs.

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 open labour market within Europe. This is important as our member companies are of the view that the personal tax burden (income tax, PRSI and USC combined) on skilled workers is now at a level which is making it very difficult to retain critical technical and leadership talent within the jurisdiction. The current position is also impacting our ability to attract talent to take up open positions in companies. Senior leaders in our member companies are increasingly concerned about the persistently high personal tax burden in Ireland and are uniformly of the view that it should be a Government priority to lessen it.

The current marginal 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.

Hence we recommend that;

1. the marginal rate of personal taxation should be reduced, with a clear roadmap to reduce to a rate below 50% with the aim of retaining and attracting specialist and leadership talent.
2. the point at which employees hit the marginal tax rate should be increased to boost average employees' take home pay.
3. consideration should be given to a review of the benefits which are exempt from the BIK provisions with a view to enhance the options available to employers in this area to encourage employee productivity and reward exceptional effort.

The cost to the employer of employing people has a direct bearing on employment numbers, hence we must ensure that labour costs are competitive both from the employee and employer perspective. We therefore recommend that any changes to Social Security costs and benefits should not adversely impact upon costs in the private sector. Employers PRSI is a direct cost on employing staff. Higher charges would have a seriously detrimental effect on the ability of industry to hire and retain staff.

We continue to call for the extension and broadening of the qualifying criteria for existing PRSI reliefs and exemptions with a view to lower Employers PRSI being used as an effective tool to drive additional headcount in existing companies.

Special Assignee Relief Programme (SARP)

We refer to our recent detailed submission dated 12th May 2014 which was part of the public consultation process in relation to SARP. We welcomed the introduction of a new assignee tax regime (SARP) in 2012 aimed at attracting leadership executives to relocate to Ireland. Again, **the ambition of having an attractive regime is that such transferees will bring with them investment opportunities and the creation of new jobs**. Feedback from our members suggests that, as it is currently designed, the existing regime is not fit for purpose. Ireland is thus losing out on investment opportunities and the creation of new jobs they bring with them.

We have set out below some further recommendations in relation to the SARP regime and how the offering may be enhanced to ensure Ireland remains an attractive environment for expatriate employees.

1. The exemption should be increased to 40% and the relief should be extended to USC and PRSI to make the regime competitive with other international regimes.
2. The relief should be simple to administer, especially in the context of the many other issues that assignees need to consider when moving to Ireland. In this regard we believe that the current process of having the individual seeking prior approval in relation to

making a claim be abolished, with the responsibility to administer the relief resting with the employer in line with the self-assessment regime that applies to all other taxes. The proposed change to a scheme which is administered by the employer is consistent with the existing provisions which allow SARP relief to be granted at source through payroll, and can be underpinned by reporting obligations if necessary.

3. The threshold of €500K should be increased in order to attract key individuals with the required skills to Ireland.
4. The exemption should apply to new hires and the existing condition of at least 12 month's prior service with the foreign employer should be removed.
5. The requirement that the claimant must be resident in Ireland and not resident elsewhere should be removed. The application of this rule means that at a minimum, SARP is not available for the year of arrival or departure. As each country defines residence differently, it may also mean that an assignee may not qualify for the relief at all, depending on how their home country determines their tax residence status.

If the current regime cannot be enhanced then the scheme should cease and be replaced with a new competitive and easily administered assignee scheme.

R&D Tax Credit Regime

Ireland's R&D tax credit regime has become very important to the FDI community in attracting and retaining R&D activity to Ireland over the last decade. **It is well established that the location of R&D activity has a significant impact on economic growth as it helps anchor related manufacturing and service activities in the State (i.e. the exploitation of the intellectual property created by R&D).**

The administration of the regime needs to be clear and consistent. It also needs to reflect the overarching policy, as outlined by Government and the Department of Finance, and be strategically focussed on reducing the business cost of undertaking R&D in Ireland. Section 766 TCA 1997 should thereby be amended to delete the term "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.

Furthermore, 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.

In support of global R&D projects the regime needs to become more flexible in allowing Irish subsidiaries engage with connected parties (i.e. parent companies in the US). Therefore the

territoriality and connected parties 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.

More broadly, it is essential that there is joined-up thinking across the entire Irish R&D ecosystem and therefore expenditure incurred by FDI in stimulating and investing in the Irish ecosystem should be incorporated into the tax credit regime, including collaborative investments made in Irish research centres.

Finally, the incremental basis should be abolished to eliminate complexity and the focus on historical activity and documentation. It is also discriminatory against companies who made significant R&D investments in Ireland in 2003. We acknowledge that the Government has indicated that the intention is indeed to move to a full volume basis for all companies; however the expected timeframe is ambiguous and needs clarification.

Intellectual Property (IP)

Given the current international tax environment we believe that it is imperative that Ireland seeks to continue to develop the attractiveness of its tax regime in order to encourage US MNCs to own, develop and exploit their intellectual property ("IP") from Ireland.

In this context, we are of the view that an IP/Patent Box type regime (similar to the regimes that are currently in place in a number of other EU countries) should be the medium term strategic goal from an Irish tax policy perspective. Such 'exemption-based' regimes, which do not require all significant research and development activities of the relevant IP to be specifically located in Ireland, are compelling to companies operating in a global environment. We believe that such an IP/Patent Box regime is likely to be the most attractive type of regime to companies seeking to locate their IP and related activities in Ireland.

However, we do appreciate that there may be a number of external issues which could prevent the implementation of such a regime in the short term. On this basis, we believe that the near term strategic focus in this context should be to improve a number of key issues with the current Irish IP amortisation regime (Section 291A TCA 1997).

They are:

1. Amendments to provide that there is no claw-back of allowances previously claimed.
2. Provide further guidance (potentially certain "safe harbour" tests) in relation to what activities should be regarded as trading in an IP context.
3. Amend the definition of "specified intangible asset" to include goodwill and customer databases.
4. Remove interest payable on funds borrowed to acquire IP from the current Section 291A calculations.
5. Increase the current year restriction on profits from the IP against which the IP can be offset to 90% of the relevant income.

Amendments which would lead to a significant enhancement of regime allow for "revaluation" of allowances available every 3 years in the scenario where the company has incurred significant expenditure and has had significant input into the ongoing development of the IP. The requirements of what is regarded as "significant input into the development of the IP" could be defined and could include provisions whereby the company must incur the R&D costs of the relevant IP, must have economic ownership of the IP developed, and that the employees of the company/related Irish group companies involved in the development, maintenance and exploitation of the IP would be in line with value of the IP, etc. Other options are discussed in the Chamber's submission to the Department on the OECD BEPS Project in the Irish Context. We would be pleased to develop our suggestions further with the Department.

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.

As currently framed, our provision to grant relief for royalty withholding tax suffered in inbound payments is not competitive and requires a significant overhaul. Furthermore, while we have made good progress in recent years, further work is required in extending Ireland's tax treaty network. This would help to minimise the incidence of withholding tax being suffered by international companies doing cross border business from Ireland. Our detailed proposals are contained in our Submission on the OECD BEPS Project in the Irish Context which is with the Department.

Sustain Ireland's Competitive Position for Treasury Operations

Ireland has historically been a well-known and attractive jurisdiction for treasury and financing operations (for financial services and non-financial services multinational corporations). Ireland has taken many steps to ensure that it is an attractive jurisdiction for treasury services companies (FS) with requisite substance. Artificial debt push downs are not permitted, and in fact Ireland has gone further than some countries in relation to interest deductibility generally (see later).

Given the importance of this industry it is critical that we do not make it less competitive for attracting and retaining FS investment. Genuine FS companies employing treasury experts, and carrying on bona fide commercial operations, here should not be impacted by future BEPS actions. Accordingly an important objective for Ireland would be to hold on to what currently works, in particular our corporate tax rate of 12.5%, the Section 110 regime, no CFC rules, no thin capitalisation rules, the quoted Eurobond and commercial paper withholding taxation exemptions, and the excellent treaty network.

Pensions Policy

The Government's decision to extend the Pension Levy has had a negative impact on the ability of firms to retain critical leadership talent in the country.

It is of the utmost importance that pension policy changes do not adversely impact upon the sustainable competitiveness of doing business in Ireland. The views of the American Chamber of Commerce Ireland in relation to pension policy remain as set out in the Pre-Budget Submission 2014, in particular with regard to maintaining the Standard Fund Threshold ("SFT") at its current level, recognising it has significantly decreased in recent years. We have provided additional consultation on this specific issue in our letter to the Department on July 12th 2013.

In addition, we 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.

There remain many uncertainties in relation to the whole area of pensions especially in light of the decision by government to extend and increase the levy in Budget 2014. This has tended to discourage individuals from making contributions and is inconsistent with the overarching policy of encouraging individuals to make provision for their retirement and to reduce dependence on the State pension alone as a source of income in retirement.

Therefore we recommend that:

1. The pension levy should be dropped in Budget 2015 as promised.
2. The individual's Personal Fund Threshold and the Standard Fund Threshold should be increased in line with the Consumer Price Index and indexation should occur automatically each year.

Resourcing the Competent Authority with Revenue

One of the consequences of the Global Financial Crisis 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.

We have seen a growing incidence of Revenue Authorities taking a very aggressive approach to the amount of profit which is reflected by companies in their respective countries, and seeking to levy additional tax assessments on the multinational community under this heading. In many cases where the Irish entity is an EMEA headquartered / primary vendor of goods and services, the corresponding adjustment seeks to reduce the taxable profits of the entity in Ireland by a similar amount, thus reducing the Irish corporation tax take in this area.

In such circumstances there has been a significant increase in cases going to Competent Authority whereby the Revenue Authorities of the two affected jurisdictions seek to agree between them the appropriate adjustments, if any, which need to be made to the transactions between the parties in their respective jurisdictions. This has a significant impact both on Ireland's corporation tax take and the corporation tax position of the groups concerned.

While the Irish Revenue Authorities have quality resources in this area, there is a wide-spread belief that the quantum of resources which are devoted to this area is significantly underweight. Specifically, we believe there needs to be a significant increase in the resources of the Competent Authority area 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.

The Chamber believes that this should be a priority in relation to the deployment of Revenue resources and that the Department of Finance should make such resources available to Revenue.

Healthcare: No further State imposed Costs/Levies

American Chamber of Commerce Ireland member companies are concerned by the increasing cost of private health insurance (PHI). A large majority of our member companies currently provide for the full cost of health insurance for their employees. This is a significant contribution to the overall PHI market. That continuing contribution will be put under threat if costs continue to rise. Our member companies often set annual budgets for approval by their headquarters and sudden, unanticipated, large increases in health insurance costs challenge firms to retain that benefit for employees within the confines of the business plan in operation. The Chamber therefore recommends that in addition to cost saving measures across the health sector there should be no further Government imposed costs or levies on the PHI sector in order to ensure cost stability for budgeting purposes.

Energy: Rebalancing Excessive Costs

Ireland is one of the costliest locations in the EU for energy supply, and is 5th highest for industrial electricity prices in the euro zone. Many of our members are among the largest energy users in Ireland and they are acutely conscious of the need for a stable, transparent and cost effective energy environment. The American Chamber, recognising that Ireland is a price taker in global markets, believes that all measures possible to lower those prices should be employed. We wish to support the proposal that a portion of Irish carbon taxation revenues be set aside on an annual basis, to be disbursed among electricity intensive firms whenever Irish industrial electricity costs are substantially higher than the EU average. Due to our reliance on natural gas for electricity generation our wholesale prices are particularly vulnerable to international price movements. Acquiring the ability to hedge against volatility for energy intensive businesses would provide a welcome competitive boost to industry. Such a mechanism could also provide some certainty during periods of price uncertainty and should avoid prejudicing the interests of other groups of consumers.

Concluding Remarks

The American Chamber of Commerce Ireland promotes policies that enhance Ireland's competitiveness to be the location of choice for US foreign direct investment into Europe. Ireland remains a unique gateway for US investment into Europe and EU-US policies that advance transatlantic trade and investment will retain and attract further investment and jobs here.

Competition for FDI remains intense as investment, rather than trade, emerges as the key driver of the global economy in this century. Hence it is vital that an environment that supports the retention and growth of foreign direct investment continues to be fostered. While opportunities persist, Ireland must remain nimble and responsive to the evolution of industrial and tax policy in other jurisdictions or investment will be diverted away from Ireland and the EU.

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