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# Consultation on Pillar Two Implementation Feedback Statement

Response from the American Chamber of Commerce  
Ireland (AmCham) to the Department of Finance  
Consultation on the Pillar Two Implementation  
Feedback Statement

May 2023

# **The American Chamber of Commerce Ireland**

## **The Voice of US-Ireland Business**

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The American Chamber of Commerce Ireland (AmCham) is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and investment.

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## EXECUTIVE SUMMARY

AmCham welcomes the opportunity to provide feedback on the Pillar Two Implementation Feedback Statement and we look forward to engaging with the Department of Finance on this important change, throughout this year. While we have provided answers to the specific questions in the consultation, AmCham wishes to highlight a number of key points.

AmCham believes that above all else, Ireland's Pillar Two regime needs to be simple and competitive from an international perspective. It should also be robust, flexible and pragmatic. AmCham recommends that the 12.5% tax rate remains unchanged, augmented with a top-up tax.

It is essential that the QDTT is regarded as qualifying under the Pillar Two rules. However, the QDTT should be implemented in a way that provides as much flexibility as possible. For example, by allowing for the choice of accounting standards. It is very important that the top-up tax is regarded as a corporation tax to ensure that the tax is creditable in so far as possible.

Pillar Two will result in significant additional administrative burdens for taxpayers and tax authorities more generally. The administrative burden of the Irish Pillar Two regime needs to be minimised to the furthest extent possible, both for the ease of compliance by taxpayers and review by tax authorities. A separate return from the CT1 for each of the GIR and GloBE top up tax returns is welcomed so that the timelines for submission and the resources required in the preparation of the returns may be spread more evenly throughout the year. Having separate returns to the CT1 will also minimise any complexity with respect to the current corporation tax preliminary tax payment obligations. AmCham is further advocating for flexibility and leniency for taxpayers in the initial years of implementation to support businesses in adapting to this significant change.

The interaction of the adoption of the Pillar Two rules with the US tax code continues to be uncertain. It is very important that Ireland's QDTT is regarded as a corporation tax to ensure that the tax is creditable in so far as possible. Further to this, AmCham is aligned that the 12.5% corporate tax rate is not changed.

In relation to accounting standards, AmCham recommends that the provisions for the calculation of the QDTT should include flexibility for a taxpayer to calculate the QDTT under the GAAP most appropriate for their circumstances. Furthermore, it is essential that this optionality does not impact the safe harbour status of Ireland's QDTT.

Consideration should be given to the key areas through which Ireland would retain competitiveness on an international stage in a post Pillar Two environment. With this in mind, the need for the introduction, by 1 January 2024, of a participation exemption regime for dividends and branches cannot be understated. The Pillar Two rules (as drafted under the Directive) presuppose a jurisdiction's enactment of a territorial regime. Failure for the Irish regime to offer what is now a standard element of corporate tax regimes internationally would

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very much undermine the attractiveness of Ireland for foreign direct investment. A roadmap for the further simplification of the overall Irish tax regime would be welcomed.

AmCham advocates that any reference to the Administrative Guidance needs to be static, i.e., any subsequent changes to the OECD Guidance would need to be adopted into Irish law in subsequent Finance Acts (similar to the OECD Transfer Pricing Guidelines) and not have retroactive effect.

AmCham notes that under Irish corporation tax rules, Irish Revenue has four years from the end of the year in which the return is filed in which to carry out enquiries into a return (i.e., a 5-year enquiry window). If this provision is extended to the GIR / GloBE Top-Up Tax Return as is currently proposed, the window of enquiry would widen to 6 years. The impact of any enquiry during the 6th year by reference to the underlying CT1 needs to be considered, as well as the possibility of foreign tax authorities making enquiries into Irish filed GIRs / GloBE Top-Up Tax Returns after the Irish statute of limitation expires. Consideration should be given to aligning the GIR / GloBE Top-Up Tax Return's statute of limitations with the Irish corporation tax equivalent.

### **General approach to legislation**

**1. Comments are invited on the possible draft legislative approach. Please see the draft legislation in Appendix 1 of the Feedback Statement.**

AmCham acknowledges that the EU Minimum Tax Directive obliges EU Member States, including Ireland, to transpose its provisions into domestic legislation by 31 December 2023. AmCham expects that significant feedback will be provided from technical experts and stakeholders in response to the first draft of the legislation.

AmCham notes that a second Feedback Statement will be published in mid-2023, containing a further developed draft of the proposed legislation. To the extent that AmCham has any further technical feedback to provide on the draft legislation, we will provide it at that juncture.

**2. Comments are invited on what reference, if any, should be made to the OECD Model Rules, Commentary and Administrative Guidance (and any future Guidance) in the legislation.**

AmCham members believe that reference should be made to the OECD Model Rules, commentary, and administrative guidance in the legislation to ensure consistency in the implementation of the rules across jurisdictions and to provide certainty for taxpayers. The reference should follow the approach to the OECD transfer pricing guidelines, whereby amendments to the legislation are required when the OECD guidance is updated.

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In addition, it is particularly important that the legal status of the OECD safe harbours is clarified.

## QDTT

### **3. Comments are invited on the possible approaches to legislative implementation of a QDTT in Ireland.**

AmCham members have highlighted that stability and certainty for business has long been a key pillar of the Irish taxation system, which ensures that Ireland remains an attractive location for foreign direct investment. AmCham believes it is essential that this stability continues as we move towards the implementation of Pillar Two rules.

AmCham agrees with the approach to maintain the long-standing 12.5% headline corporate tax rate. In this regard, the QDTT approach may be best placed to support Ireland's attractiveness overall. It is essential to provide the greatest possible stability and certainty to businesses to ensure that Ireland remains a destination of choice for inward investment.

As previously highlighted by AmCham, consideration should be given to the scale and importance of the US-Ireland business relationship in both directions. AmCham recommends that a key consideration when contemplating changes to the Irish taxation system, should be the interplay between the Irish taxation system and the US taxation system. Therefore, if Ireland proceeds with the implementation of a QDTT, AmCham members have raised concerns as to whether the top-up tax will be recognised as a creditable foreign tax in the US. If it is not recognised, then US businesses in Ireland could be subject to double taxation.

In relation to accounting standards, AmCham acknowledges that the EU Directive allows the use of alternative accounting standards to those used in the preparation of the consolidated financial statements of the ultimate parent entity.

Therefore, AmCham recommends that the provisions for the calculation of the QDTT should include flexibility for a taxpayer to calculate the QDTT under the GAAP most appropriate for their circumstances. Furthermore, it is essential that this optionality does not impact the safe harbour status of Ireland's QDTT. It is critically important that a QDTT implemented in Ireland serves to "switch off" the imposition of IIRs in other jurisdictions. AmCham members request that Ireland advocates for confirmation of this point at an OECD level.

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## **Administration**

### **4.1.1 Comments are invited on the proposed approach that the administration of the GloBE rules and the associated top-up taxes will be kept separate to the existing corporation tax regime.**

AmCham agrees with the proposed approach to the administration of GloBE rules, to separate the headline corporation tax and the proposed QDTT. AmCham strongly advocates that the top up tax should be regarded as a corporation tax and be formally recognised as such in the US and by other relevant international partners.

AmCham notes that the US does not need to legislate for GloBE rules this year, however, Ireland is required to do so by the EU Directive. In this regard, AmCham members are requesting recognition from the Department that this will present a significant change in the taxation landscape and, as such, leniency should be provided for businesses when adapting to this significant change.

AmCham members have highlighted that there will be an increased demand placed on them for data gathering, system changes, and additional resources required to comply with the new legislation. AmCham is advocating for flexibility and leniency for taxpayers in the initial years of implementation to support businesses in adapting to this significant change. Similarly, noting that AmCham members will ensure that best efforts are made to meet their reporting obligations.

In this regard, AmCham proposes that no interest or penalties should apply in the initial years following the implementation of the Directive.

### **4.1.2 Do stakeholders foresee any issues / challenges in treating the top-up taxes as separate to corporation tax?**

As the QDTT will be treated as a separate tax to the headline corporation tax, it is important that businesses can claim the QDTT as a foreign tax credit in the parent jurisdiction. AmCham members believe it is critical that the QDTT is recognised as a corporate tax in this regard.

In addition, Australia's current proposal to deny tax deductions for certain payments to jurisdictions with a corporate tax rate of less than 15%, highlights the importance that Ireland's top-up tax must be regarded as a corporation tax.

### **4.2.1 Comments are invited on the overall approach to registration / de-registration proposed.**

AmCham members have raised concerns in relation to the administrative burden that this legislation is likely to involve.

AmCham recommends the following suggestions to reduce the administrative burden on businesses:

- Leverage existing filing requirements, such as CBCR/form CT1. For registration, for example, businesses could tick a box in the CT1 to declare if the company is within scope for Pillar Two. There should also be an option for groups to elect for group filing, and an option to note the lead company in the country on the form CT1.
- Groups should have the option to complete a single registration for all Irish constituent entities or to complete registrations for each constituent entity.
- Groups should have the option to elect and file one consolidated return for all related entities.

#### **4.3.1 Comments are invited on the proposed approach for GloBE Information Returns and associated notifications.**

AmCham advises Ireland to approach the GloBE information return and associated notifications in the format which has been proposed in the OECD Pillar Two rules and in the EU Directive.

#### **4.4.1 Comments are invited on the overall approach to domestic returns / self-assessment in relation to the GloBE rules.**

**4.4.2 Comments are invited in relation to the proposed approach of having an additional return, separate return to the Form CT1, which will cover all three top-up taxes arising.**

**4.4.3 Do stakeholders have any views on the interaction of GIR and GloBE Top-Up Tax return?**

**4.4.4 Do stakeholders have any views on the information to be contained in the GloBE TopUp Tax return?**

In relation to section 4.4 above, AmCham believes that the administration of these new tax requirements should be kept as simple as possible.

AmCham welcomes the approach to have a separate return to the form CT1, which will cover all three top-up taxes arising.

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Information for inclusion on returns should be simplified as much as possible to provide the tax authorities the information they need to verify if taxes are due under GIR/QDIT or the application of safe harbour rules.

#### **4.5.1 Comments are invited on the proposed approach to payments.**

AmCham recommends that the timing of payments will coincide with the filing of returns. This would ensure that payments will not be subject to any preliminary tax obligations.

#### **4.6.1 Comments are invited regarding the proposed record keeping requirements.**

AmCham members are open to adopting the record keeping requirements prescribed in section 886 TCA 1997. However, if further OECD guidance prescribes a different record keeping requirement, consideration should be given to adopting it in Irish legislation to ensure Ireland is aligned with international partners for record keeping.

#### **4.7.1 Comments are requested regarding the proposed approach to other administration provisions.**

AmCham advises that the statute of limitations should remain unchanged for businesses under the scope of Pillar Two rules. In the current Irish corporation tax rules, Revenue has four years, from the end of the year when a return is filed, to carry out enquiries into a return. Therefore, this is a 5-year enquiry window. If this provision is extended to the GIR or GloBE Top-Up Tax Return, as is currently proposed, the window of enquiry would widen to 6 years.

The impact of any enquiry during the 6th year by reference to the underlying CT1 needs to be considered, as well as the possibility of foreign tax authorities making enquiries into Irish filed GIRs or GloBE Top-Up Tax Returns after the Irish statute of limitation expires.

#### **4.7.2 Comments are requested regarding the general approach to administration of the GloBE rules.**

AmCham members have highlighted that businesses in Ireland submitting GloBE returns should not be penalised if domestic appeal and resolution mechanisms are shorter than in other jurisdictions.

AmCham further recognises that the issue of tax certainty continues to be under consideration as part of the OECD Inclusive Framework. AmCham recommends that the Department engage with the OECD on this matter, to ensure that internationally agreed best practices are followed.



**4.8.1 Should it be possible for one Constituent Entity within a group to register on behalf of other Constituent Entities within the group? If so, how should this operate in practice? How would the appropriate permissions (e.g. for an entity to act as a Designated Local Entity on behalf of another Constituent Entity) be granted?**

Please see the response to 4.2.1 in relation to this matter.

**4.8.2 Should it be possible for one Constituent Entity within a group (a “group filer”) to file a GloBE Top-Up Tax Return on behalf of other Constituent Entities within the group? If so, how should this operate? Should there be:**  
**(i) One “joint return” filed by the group filer which covers numerous entities?**  
**(ii) Separate returns for each Constituent Entity within the group but filed by the group filer? (iii) Other “group filer” approach used? If so, please provide details of same.**

Please see the response to 4.2.1 in relation to this matter.

**4.8.3 If some form of “group filer” approach were available, how should it operate from a compliance perspective? If returns are filed late or filed incorrectly how should any surcharges / penalties be applied (e.g. which entities should be liable)? Which entity(ies) should be liable for any top-tax liabilities arising? Please provide an answer based on the possible options to group filing outlined at question 4.8.2 above.**

AmCham members believe that a nominated group filer should be liable for the top-up tax from a compliance perspective. Further, there should be no surcharges imposed on the group filer in the initial years. AmCham members are advocating that the Department shows leniency if errors do occur. Please see the response to 4.1.1. in relation to this.

**4.8.4 Should it be possible for one Constituent Entity within a group (a “group payer”) to pay top-up tax liabilities on behalf of other Constituent Entities within the group? If so, how should this operate?**

AmCham is advocating for as much flexibility and optionality as possible with respect to the new legislation. AmCham recommends that businesses should be given the option for one Constituent Entity within a group to pay top-up tax liabilities on behalf of other Constituent Entities within the group.

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#### **4.8.5 If a group payment option were available, how should it operate from a compliance perspective? If payments are made late or incorrectly how should any interest be applied (e.g., which entities should be liable)?**

AmCham would again highlight the complexity of Pillar Two rules and the need for leniency and flexibility in the initial years after the implementation of the legislation. In contrast to Preliminary Tax payments, AmCham members expect that exposure to interest should be limited, given that payment is made on filing. In the event that interest is owed, AmCham members expect that the interest should be applied to the group filer.

#### **Other issues**

#### **Views are sought on any issues relevant to the Directive not specifically covered in the Feedback Statement.**

AmCham advocates that there is a need to develop additional permanent safe harbours to further simplify compliance and to avoid double taxation.

As written in the EU Directive/OECD Model rules, the Under Taxed Profits Rule (UTPR) rule will negate the value of legitimate tax incentives in the US such as the R&D tax credit and the FDII. Until the OECD and/or US Treasury agree to revise the rules to extend exemption to these unqualified tax incentives, US MNCs will be disadvantaged.

AmCham Ireland would like to highlight that we are aware that AmCham Netherlands has made representations to, among others, the Department of Finance regarding the legal status of the UTPR. AmCham Ireland supports AmCham Netherlands in raising these concerns and would ask the Department of Finance to advocate at an EU and OECD level for legal certainty with respect to the UTPR. In the absence of legal certainty, AmCham Ireland members are concerned about the implications for increased tax disputes in the future.

Consistent with previous feedback statements, AmCham continues to advocate for the need to simplify the Irish taxation system so that it remains competitive and transparent. The need for the introduction of a participation exemption regime for dividends and branches cannot be understated in a post Pillar Two environment. The Pillar Two rules (as drafted under the Directive) presuppose a jurisdiction's enactment of a territorial regime. Failure for the Irish regime to offer what is now a standard element of corporate tax regimes internationally would very much undermine the attractiveness of Ireland for foreign direct investment. AmCham members continue to recommend the implementation of a territorial taxation system in Ireland with effect from 1 January 2024.