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AMERICAN CHAMBER of COMMERCE IRELAND

Public Consultation on Ireland’s Taxation of Share Based Remuneration

Submission from American Chamber of Commerce Ireland (AmCham) to the Department of Finance

January 2023

The American Chamber of Commerce Ireland
The Voice of US-Ireland Business

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.

The American Chamber of Commerce Ireland (AmCham) welcomes the opportunity to respond to the Department of Finance in relation to the consultation on Ireland's Taxation of Share Based Remuneration. Share-based remuneration stands as a common strategy deployed by Multinational Enterprises (MNEs) to attract and retain talent, and across the workforce to foster commitment, engagement, and productivity. These programmes play a crucial role in aligning the interests of all employees with the long-term success of the company. By offering employees a stake in the company's success, share-based remuneration creates a sense of ownership and shared goals which cultivates a work culture where individual efforts contribute to collective success.

AmCham believes that share-based remuneration should be supported by government policy. Beyond its role in fostering employee commitment and engagement, share-based remuneration has ripple effects that benefit not only companies and their workforce but also the economy. Share ownership serves as an incentive for increased commitment and productivity across all workforce levels, leading to improved overall business performance. This invariably leads to increased exchequer receipts including payroll tax, capital gains tax from share sales, and increased corporate tax receipts. This symbiotic relationship between government policy and share-based remuneration underlines the potential for mutually beneficial outcomes that extend beyond the individual employee and company, contributing positively to the broader economic landscape. Recognising the multifaceted advantages of such programmes emphasises the need for a balanced and supportive policy framework that encourages their continued use and evolution.

AmCham believes in fostering a sense of shared success among employees, and one of the most effective ways to achieve this, outside of traditional monetary remuneration, is through employee shares. Offering share-based remuneration not only aligns the interests of employees with the company's prosperity but also serves as a powerful tool for attracting and retaining talent crucial for business growth. This approach contributes to increased economic activity within the country, as our support to businesses of all sizes further propels overall economic development. By providing shares that reflect the company's growth, it cultivates an environment where employees are deeply invested in the success of the organisation, ultimately benefiting the broader economy.

Given the significant taxation changes which have taken place, including with the implementation of the global minimum tax rate, Ireland now has the opportunity to enhance its overall personal taxation offering to remain an attractive location for executive talent. In a recent AmCham FDI insights survey, 100% of respondents identified that executive talent is important to building teams and supporting further job creation within MNEs in Ireland.

AmCham recommends:

- An increase to the maximum tax-free annual amount which can be invested in Approved Profit-Sharing Schemes from the current €12,700.
- The current income tax exemption for Approved Profit-Sharing Schemes is extended to include USC and employee PRSI.
- Employer PRSI exemption is maintained in its current form for all share-based remuneration with no annual cap.
- Allow companies to process PAYE for stock related taxes the month after the tax event.
- Extend the benefits of tax qualification to non-qualified schemes, fostering inclusivity without increasing the administrative burden for companies.
- Streamline regulatory reporting requirements, especially for companies not issuing qualified shares, to reduce the administrative burden on businesses.
- Consolidate tax benefits for both forms of share schemes, simplifying compliance-related activities while maintaining periodic audits to ensure rule adherence.

Approved Profit-Sharing Schemes (APSS)

Under the rules of an APSS an employee is exempt from income tax on shares purchased to the value of €12,700 in a tax year, provided the shares are held in trust for 3 years. This limit has remained relatively unchanged since the mid-1990s and meaning the real value of the scheme has diminished over time. AmCham believes it would timely to increase the annual cap at this point.

A distinguishing feature of an APSS is inclusivity in that the scheme must be open to all employees in the company - from frontline employees to senior management. Feedback from members has highlighted that this scheme has provided employees with long-term savings and assisted in meeting large financial goals such as paying mortgages and funding their children's education. To this end there is a broader societal impact and meaningful financial support provided by such schemes, with this context, AmCham recommends that the current income tax exemption for APSS is extended to include USC and employee PRSI.

Restricted Stock Units (RSUs) and Share Options

From an employee perspective, Share Options and Restricted Stock Units (RSUs), are subject to taxation in a manner similar to cash-based remuneration. Currently, there is no tax advantage specifically granted to these types of schemes. This tax neutrality suggests that, from a fiscal perspective, there is no inherent benefit or drawback in choosing share options or RSUs over traditional cash-based compensation. As a result, employees evaluating their compensation packages must weigh the potential financial gains from share ownership against the inherent risks involved with share ownership, with tax considerations remaining a relatively neutral factor in their decision-making process.

In Ireland, the taxation of RSUs solely depends on the tax residence status of an employee at the vesting date. If the employee is a resident in Ireland, the entire RSU share vest becomes taxable in the country. This contrasts with the approach taken by numerous other OECD nations, such as the US and the UK, where RSUs are regarded as earned over the grant-to-vest period. Consequently, these countries source and tax the RSU vest based on the duties performed during this timeframe. The relocation of an individual to Ireland with unvested RSUs could result in double taxation, as Ireland taxes the full vest, and the previous location may also impose taxation on the vest element related to the earnings in that specific location. While double tax relief may be an option in some cases, it typically becomes available only after the filing of income tax returns in both jurisdictions, presenting challenges in managing cash flow effectively.

AmCham recommends adopting a sourcing approach for RSUs where the share vests would be earned over the grant-to-vest period, allowing for the sourcing and taxation of RSU vests based on the duties carried out during this period. Such a shift would bring greater coherence to Ireland's taxation framework and potentially alleviate the challenges associated with double taxation on RSUs for relocated individuals. Further, in ensuring Ireland remains attractive for mobile talent, the Department may wish to consider aligning the taxation of RSU's and share options to capital gains tax rather than income tax.

AmCham highlights the importance of extending the benefits of tax qualification to plans that are presently non-qualified. This approach would create a more inclusive and supportive environment for a broader range of employee share schemes. By allowing non-qualified schemes to potentially qualify, the framework can be expanded to accommodate a variety of plans. Moreover, it is essential to ensure that any potential changes do not impose an additional administrative burden on companies. Striking a balance between enhancing tax benefits and preserving administrative efficiency is vital to encourage the adoption of these share schemes without imposing undue complexities on businesses.

Employer PRSI

The maintenance of the employer PRSI exemption in its current form for all share-based remuneration, without imposing an annual cap, adds a layer of flexibility and continued incentive for companies to utilise such schemes. This approach recognises the varied structures and scales of businesses, allowing for the adoption of share-based incentives without being constrained by an arbitrary annual limit. This flexibility is welcomed by AmCham as it encourages businesses of all sizes to explore and implement share-based remuneration strategies to attract and retain talent. In ensuring Ireland remains an attractive location for international talent, measures which may impede this should be avoided, for instance, the cost to employers which would result from the removal of employers PRSI.

In addition, AmCham recommends allowing companies to process PAYE stock-related taxes in the month following the tax event, due to the increased complexity of administrating PAYE on stock-based remuneration. There is an additional workload placed on employers and flexibility on this matter would therefore be welcomed. Specifically, when processing a tax event that is beyond a practical inclusion in the regular payroll cycle, a one-month extension could be provided as a measure to ensure that the administrative burden on payroll is minimised. By affording this flexibility, companies can more effectively navigate the intricacies of stock-based compensation, ensuring smoother administrative processes and mitigating potential logistical hurdles associated with the immediate incorporation of stock-related tax events into regular payroll cycles.

Administration and Compliance

Ensuring compliance with annual regulatory reporting requirements is a cornerstone of transparent and accountable corporate governance. Companies are tasked with navigating the intricate landscape of regulatory filings, particularly through Form ESA and Form RSS1. To streamline processes and foster efficiency, there is a need to consider reducing and simplifying requirements, especially for companies not issuing qualified shares. This adjustment would not only alleviate the administrative burden on businesses but also make compliance more accessible for a broader spectrum of companies participating in share schemes.

A key aspect of enhancing the effectiveness of share schemes involves consolidating tax benefits and rationalising compliance-related activities. This consolidation could lead to a more straightforward and unified approach to taxation for both forms of share schemes. Reducing or eliminating redundant compliance requirements while maintaining the integrity of the qualification rules can significantly contribute to fostering a more business-friendly environment. Periodic audits can serve as a sufficient check to ensure companies adhere to the stipulated rules, allowing for a more streamlined and less burdensome compliance landscape.

The existing Irish tax legislation for globally mobile employees is currently recognised for its effectiveness and ease of administration on a global scale. AmCham advocates for the maintenance of this stability, recognising the importance of consistency and reliability in tax legislation for globally mobile employees. This approach not only upholds Ireland's reputation as a favourable destination for businesses but also contributes to the country's attractiveness for globally mobile talent, supporting continued economic growth.

In conclusion, AmCham recommends:

- An increase to the maximum tax-free annual amount which can be invested in Approved Profit-Sharing Schemes from the current €12,700.
- The current income tax exemption for Approved Profit-Sharing Schemes is extended to include USC and employee PRSI.

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