THE AMERICAN CHAMBER OF COMMERCE SUBMISSION TO THE DEPARTMENT OF FINANCE PUBLIC CONSULTATION ON NEW TAXATION MEASURES TO APPLY TO OUTBOUND PAYMENTS

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. We are delighted to have the opportunity to submit to the Department of Finance the views of our members on the Consultation on New Taxation Measures to apply to Outbound Payments.

Firstly, AmCham commends the Department on continuing to use the process of Consultation with stakeholders on taxation matters. Ireland has long had a reputation among the inward investment community for predictability and stability in tax matters. The consultation process bolsters that reputation, indicating that even in times of fast-paced global change, Ireland will consult with stakeholders to ensure that their views are considered. There is a value to this stability that should not be underestimated.

Since 2008, the international community has made significant progress in updating and modernising the global tax framework. Throughout this time, Ireland has reformed and modernised its tax code in line with international developments and EU Directives, fully engaging in both the OECD BEPS process and EU discussions.

The resulting reforms which include the introduction of Controlled Foreign Company (CFC) rules, anti-hybrid rules, the amendment of the capital allowances rules for intangible assets, and changes to the corporate tax residency rules have had enormous impact. Likewise, Finance Bill 2021 increasingly aligns Ireland's tax code to the new international norms with the ongoing transposition of the Anti-Tax Avoidance Directives and the introduction of the Authorised OECD Approach for Transfer Pricing of Branches.

The most recent and ground-breaking achievement in a series of decade-long reforms to bring consistency to international tax law is the OECD Inclusive Framework agreement, which Ireland signed up to in October 2021. Important technical work continues with respect to the agreement, and to this end the full implications are still unclear. What is clear however, is that the implementation of the Inclusive Framework agreement will be a significant undertaking for both taxpayers and tax administrators. With so much flux, AmCham does not believe there is a need to create additional tax measures for outbound payments at a domestic level at this juncture.

AmCham members believe that the enactment of any new measures would be premature and create unnecessary complications resulting from the layering of new rules on top of an evolving tax system. With Pillar II set to be enacted in Finance Bill 2022, no additional tax measures around outbound payments should be considered until the Inclusive Framework agreement has been embedded within Ireland's domestic tax laws and the nuances and impact of this landmark change to the global tax landscape examined and understood.

Furthermore, page three of the consultation document refers to "Legislation to prevent double non-taxation to be introduced applying to outbound payments towards jurisdictions on the EU list of non-cooperative jurisdictions, no-tax, and zero-tax jurisdictions." The implementation of Pillar II will eliminate double non-taxation.

In addition, it is worth highlighting that Ireland has already fulfilled its commitment to the EU to implement defensive measures against countries on the EU blacklist by amending the CFC rules.

Considering the priorities laid out in the National Recovery and Resilience Plan, AmCham understands the need to have sustainable tax revenues. However, AmCham is of the opinion that the greatest way to achieve this objective is through business-friendly practices that promote investment and grow jobs.

Regarding the three categories of outbound payments—dividends, interest, and royalties—highlighted in the Consultation, AmCham has provided thoughts on the potential introduction of new measures below.

Dividends
As dividends are not a tax-deductible payment and are *prima facie* subject to dividend withholding tax, they cannot be considered a "base eroding" payment and therefore should not be grouped with the outbound payments under consideration in this Consultation.

Interest
With the previous work done around ATAD, Interest Limitation Rules, and enhanced transfer pricing provisions related to Debt Capacity, AmCham believes that the Department has introduced effective measures in relation to interest.

In addition, the Department has achieved the appropriate balance between interest withholding tax and exemptions, such as the Quoted Euro Bond and wholesale debt instruments exemptions, which our members believe should be maintained.

The introduction of further tax measures on interest would be untimely in light of the changes that will occur with the implementation of Pillar II. Introducing additional taxation measures without having clarity about the details of Pillar II could potentially result in double taxation.

Moreover, any new measures that would go further than Pillar II will make Ireland's domestic tax policy less attractive than those of its competitor nations. As AmCham has outlined in previous consultations, Ireland's existing interest deductibility rules are already complex. Rather than introduce new measures, simplification of Ireland's tax regime is urgently required to enhance Ireland's competitiveness and its reputation as a great place to do business.

Royalties

AmCham acknowledges previous changes made by the Department of Finance to reduce the amount of outbound royalty payments to offshore financial centres. A combination of factors including changes to Ireland's residency rules for Corporation Tax, the OECD Transfer Pricing Guidelines, and alterations to the US tax code following the Tax Cuts and Jobs Act of 2017 have caused many US multinational corporations (MNCs) to review their business models.

According to Mr. Seamus Coffey's *The changing nature of outbound royalties from Ireland and their impact on the taxation of the profits of US multinationals* (May 2021),[1] these changes have had a significant impact on the destination of outbound royalty payments from Ireland. Royalty payments from Ireland to the US jumped to €52 billion in 2020 having been at approximately €8 billion a year for the five previous years.

As Coffey's analysis explains, the 2020 data shows that outbound payments are now going to the US, and the annual reports of these MNCs show a large increase in the profits being attributed to US-based operations.

The European Commission has raised concerns about the volume of outbound royalty payments from Ireland. However, as Coffey notes, the high level of outbound payments should not give cause for alarm as it does not signal aggressive tax planning since greater shares of these payment are now flowing directly into the US as opposed to offshore financial centres. This trend is likely to increase in coming years.

Considering the impact of these recent changes, the results of Coffey's research, and the anticipation of a continued trend of outbound payment flows that align with companies' economic footprints, AmCham is of the view that the Department of Finance does not need to make further changes or enhance existing measures.

In conclusion, AmCham believes that the Department has taken appropriate actions to modernise Ireland's corporate tax system. Furthermore, the OECD Inclusive Framework agreement will significantly change Ireland's tax landscape. Time is needed for both taxpayers and tax administrators to implement and assess the impact of all these changes. In this context, potential new taxation measures related to outbound payments should not be implemented at this time. Instead, Ireland should focus on providing business with as much stability as possible.

Our members support the OECD Inclusive Framework's intention to end unilateral tax measures and would not support the creation of new unilateral measures that run contrary to this objective. From an Ireland, Inc., perspective the premature enactment of measures that move beyond or run counter to the goals of the OECD global agreement would certainly harm Ireland's competitiveness and reputation as a place of business and tax certainty.

Over the past decade, Ireland has made changes to its tax code, and these changes have resulted in an increasingly complex tax system that can be cumbersome for businesses to navigate. In signing up to the global agreement, Ireland gained an opportunity to enhance its domestic tax offerings and simplify its domestic tax code. Rather than create new measures that may increase the complexity of the system, Ireland should aim to simplify its tax laws in alignment with the new global agreement. Increasing the agility and adaptability of the tax system is a crucial aspect of Ireland remaining a competitive and attractive location for foreign direct investment.

[1] https://www.gov.ie/en/publication/fbe28-the-changing-nature-of-outbound-royalties-from-ireland-and-their-impact-on-the-taxation-of-the-profits-of-us-multinationals-may-2021/