
Pillar Two Implementation, Second Feedback Statement

Response from the American Chamber of Commerce Ireland (AmCham) to the Department of Finance's public consultation.

August 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.

AmCham welcomes the opportunity to provide feedback on the second Pillar Two Implementation Feedback Statement. AmCham believes that Ireland’s Pillar Two regime needs to be competitive from an international perspective. To this end, the Department should approach the implementation of the Pillar Two directive with a view to providing maximum flexibility and minimum complexity for the taxpayer. As mentioned in previous consultations on this and other matters, the Irish Taxation system has become overly complex and unwieldy. Simplification of the Irish taxation system would, in itself, be a competitive advantage over other jurisdictions.

In addition, AmCham is again calling for confirmation on the move to a Territorial System of taxation with effect from 1 January 2024 to ensure that Ireland remains competitive on the international stage in a post Pillar Two environment. The timing of the introduction of a Territorial System of taxation cannot be understated as the Pillar Two rules (as drafted under the directive) presuppose a jurisdictions enactment of a territorial regime.

Finally, in keeping with the spirit and intent of OECD guiding principles, Ireland has designed a world class R&D incentive structure to encourage R&D activities within its jurisdiction. However, though the R&D tax credit is currently designed to fit within the structure of the income inclusion guidelines, its effectiveness in encouraging R&D activities is at risk. As implementation of the GloBE rules progresses, we would encourage Ireland to explore ways to mitigate any potential for negative impacts to the R&D tax credit regime.

AmCham understands that its members are providing specific feedback on the technical aspects of the legislative provisions through their local advisors. In this context, AmCham’s response to the current Feedback Statement is outlined below.

CbCR safe harbour

AmCham welcomes that the implementation of the transitional CbCR safe harbour is being placed on a legislative footing, noting that the proposed approach closely adheres to the OECD guidance.

On-going guidance with regard to the CbCR safe harbour will be important to monitor in ensuring stability and consistency for business. Further, it will be important that if an error occurs in the preparation of CbCR data in respect of one jurisdiction in which an MNE group has operations, this should not prevent the transitional CbCR safe harbour being applied in other jurisdictions where the data is correct. This is necessary to give certainty to businesses as the application of the CbCR safe harbour may not be reviewed by a relevant jurisdiction for a number of years (e.g. a 36 month review period is proposed in Section 5).

QDTT

For AmCham members, it is essential that the QDTT is conformed to ensure that any top-up tax paid is eligible for a foreign tax credit in the US.

With regard to the QDTT, AmCham seeks clarity on the meaning of generally accepted accounting principles (GAAP). In particular, there needs to be confirmation that the definition of GAAP, for the purposes of the proposed legislation, is the same as what currently exists in Irish corporation tax law. In this context, either international accounting standards or Irish generally accepted accounting practice could be applied for QDTT safe harbour purposes. In addition, MNE groups should be able to apply either for the purposes of the QDTT safe harbour.

AmCham recognises that changes to the legislation may be required in accordance with future OECD guidance. Should changes need to be made, it is important that they are targeted and avoid being overly broad in nature. In this context, it is worth noting that accounts, and amounts payable under the QDTT, will be prepared under existing company law and subject to statutory audit and, as such, the need for future adjustments is questionable. Imposing a requirement on businesses to undertake multiple adjustments to their local GAAP accounts figures could substantially increase the compliance burden faced by businesses, while undermining the rationale behind allowing local GAAP accounts to be used for QDTT purposes.

Where the Local Financial Accounting Standard is introduced for Irish QDTT purposes, AmCham believes flexibility must be provided for business to ensure companies do not inadvertently fall out of the scope of provisions. For example, concerns have been raised that a group relying on local GAAP could have to revert to calculating the QDTT based on the UPE GAAP due to an acquisition which results in some of the Irish group entities not having co-terminus year-ends. It will be important to ensure that a sufficient grace period is provided to groups to make any necessary changes so that the Local Financial Accounting Standard can continue to apply. A requirement to switch between accounting standards for QDTT purposes due to commercial M&A activity would give rise to significant complexity for business from a systems and processes perspective. It would also make accurate forecasting of QDTT liabilities difficult for Revenue, the Department, and businesses alike. We expect that the Local Financial Accounting Standard may not be available for many MNEs in Ireland where this flexibility is not put in place.

AmCham would welcome further clarification on the peer review process. Taxpayer certainty for reporting periods must be considered given the delay which exists

between the effective date of the legislation and the publication of OECD peer review results. Further, consideration must be given to resources and legislative processes in a jurisdiction in the context of implications and particular refinement plans and timeframes.

Safe Harbour Elections

AmCham notes the timeframes outlined by the Department in relation to resolving any questions arising in relation to safe harbour elections. In terms of the six-month period, it is essential that adequate dispute resolution mechanisms are put in place to ensure any matters can be resolved within the required timeframe. A key element of this will be ensuring that the notice required to be issued by Revenue includes a comprehensive description of the specific facts and circumstances that they believe have materially affected the eligibility to make the relevant election. This will be crucial in ensuring that businesses can fully respond to the Revenue notice in the time made available.

The OECD Model Rules, Commentary and Administrative Guidance

With regard to future guidance, it would be beneficial for references to OECD guidance to remain static within Irish law with any future changes being incorporated within future Finance Acts. In this context, where guidance has changed, it is important to be cognisant of the need to avoid the retrospective application of new guidance to past or current assessment periods.

Further, AmCham notes that it is proposed that future OECD guidance would be implemented by Statutory Instrument. AmCham believes the implementation of future guidance must be considered in the context of the accounting period of the taxpayer and must provide adequate lead time to allow the taxpayer to adapt to any changes required. As such, any changes which may impact taxpayers should be enacted from the start of the subsequent accounting period, allowing for an appropriate notification period, and should not have immediate or retrospective effect. However, where scenarios arise in which there are double taxation concerns, these scenarios must be addressed without delay.

AmCham notes that the OECD had previously indicated a consolidated version of guidance would be forthcoming. The provision of a consolidated version of guidance is required to provide clarity on the relevant guidance for business, taking account of how guidance has evolved.

Administration and GloBE Information Return

It is important that focus is placed on reducing the significant administrative burden for both taxpayers and tax authorities resulting from Pillar two rules, to ensure ease of compliance for companies and ease of review for tax authorities.

The introduction of the simplified jurisdictional reporting framework is welcome. The removal of the requirement to report adjustments on a CE-by-CE basis for jurisdictions in which a liability for a top-up tax does not occur is positive. Further, the possibility of making this transitional provision permanent should be examined given that there should be no significant need to provide CE-by-CE detail for such jurisdictions, where a top-up tax liability does not occur following 30 June 2030.

AmCham in its submission to the first feedback statement outlined that *“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.”*

Given the significant array of data points which taxpayers will be required to collect, analyse and review, and given that the legislation and OECD guidance are not finalised at this point, there should be a broad interpretation of ‘reasonable measures’ during the transition period. AmCham believes it would be beneficial, as internal processes and systems for data collection are established and refined, for taxpayers to be given the benefit of the doubt, noting that company financial statements will have been audited externally and are already subject to a significant level of rigour and review.

As AmCham outlined in its response to the first feedback statement:

- *“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.”*

AmCham further stated that *“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.”*

A group-based approach to register and file top-up tax returns allowing a single entity to file on behalf of the group is preferable. In addition, Ireland’s administration of the IIR / UTPR / QDTT rules should not require the reporting of additional or duplicative

information to that already provided under the GloBE Information Return by the MNE Group.

Protecting taxpayer confidentiality remains a concern for AmCham members. Tax return data should only be provided to those jurisdictions that require it for Pillar Two audit purposes. For example, if a jurisdiction adopts a QDTT safe harbour, only that jurisdiction and the MNE's UPE's jurisdiction should have access to the Pillar Two data related to the application of the QDTT Safe harbour.